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Local officials provoke BLM over roads in monument

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The Sagebrush Rebellion of the 1970s lasted less than a decade as a potent political force. But the sentiment that sparked the backlash over the management of federally owned lands in the West has never really gone away. And nowhere does the movement's heart beat more loudly today than in southern Utah.

Specifically, in Kane County.

For more than two years, officials in the county, which is home to spectacular redrock vistas enshrined in countless Hollywood films, have been sticking a figurative finger in the eye of the Interior Department, daring it to do something about the federal road signs they have removed and the county road signs they have put up in and around the Grand Staircase-Escalante National Monument. All without authorization from the Bureau of Land Management, and in defiance of the BLM's existing transportation plan for the area.

County officials frankly admit they are trying to provoke a response from the feds to force a lawsuit or a criminal trespassing charge that will land them in court and give them a chance to make their claim to the roads under an old mining law known as Revised Statute 2477, which granted rights-of-way across federal land.

"It certainly has overtones of the Sagebrush Rebellion," says Robert Keiter, director of the Wallace Stegner Center for Land, Resources and Environment at the University of Utah. "The Sagebrush Rebellion was based in large part on legal claims some Western states asserted on public lands, claims which were ultimately rejected."

But such actions are, he adds, "as much a political statement as a legal matter. It reflects federal-local tensions that have been part of the system from the beginning in the parts of the West where there is a heavy federal presence."

Anti-government feelings in Kane County only intensified when President Clinton created the monument at the height of his 1996 re-election campaign without consulting state or county officials.

But Kane County Commissioner Mark Habbeshaw, the driving force behind the county's bid to force the issue, says the ownership of roads is a simple property issue. "We need clarification on whose roads these are, and the courts may be the best place to do it," Habbeshaw says.

The county's actions have enraged environmentalists, who view Kane's defiance as a not-so-subtle effort to reopen protected monument and wilderness areas for energy development and off-highway vehicle recreation, as well as local BLM officials and even a U.S. senator. Illinois Democrat Richard Durbin is holding an Interior undersecretary nomination hostage until the department cracks down on the Kane County scofflaws.

"The stakes here are unbelievably high for public lands West-wide, not just in Utah. And what we have is an Interior Department that is essentially motionless," says Kristen Brengel of the Washington, D.C.-based Wilderness Society.

There have been occasional noises that something might happen. A grand jury was convened after Habbeshaw and Sheriff Lamont Smith removed 31 BLM signs restricting off-highway vehicle use in the monument in August of 2003. And former state BLM Director Sally Wisely issued a cease-and-desist order to the county last winter after it began erecting more than 80 of its own OHV route signs - in some cases right next to BLM signs closing the roads to off-highway use.

Wisely ultimately set a deadline for removal, then sent a request to the Justice Department requesting legal

action after county officials declined to comply.

But the federal government has not taken any action in either instance. And now, there are increasing indications that it won't. A September appeals court decision has turned the entire roads issue on its head. Current BLM policy requires that the state and counties show proof of destination or mechanical construction to lay claim to ownership of a road prior to the 1976 repeal of R.S. 2477. But the Denver-based 10th Circuit Court of Appeals ruled that, because Congress never gave the agency the power to adjudicate such claims, state law trumped the policy.

Based upon the ruling, Utah and its counties must now prove only that roads were in continuous use for 10 years prior to 1976. And that interpretation of the law is exactly where the Interior Department is heading, an official said last week.

In the most expansive explanation yet of where Interior's new policy is headed, Deputy Assistant Secretary Chad Calvert says once the new policy is in place, many road ownership disputes will likely be settled by an "administrative determination" that wouldn't require input from the public.

Further, "the court makes a pretty clear distinction between 'maintenance' and 'construction,'" he says. Under the new policy, counties would be free to grade their roads or place signs on them without consulting the BLM. Only construction - such as widening or making other improvements - would require collaboration.

The tricky part now, Calvert says, is to convince the county to remove its existing signs in the monument and elsewhere until road ownership can be determined under guidelines that are still being developed.

"They either need to take the signs down or we'll take them down," Calvert said. "But what I don't want is a sagebrush war. That doesn't solve anything."

The Interior Department is looking to the state to help ease the transition. Under the administration of Gov. Jon Huntsman Jr., though, state officials have at least rhetorically backed the county. Lynn Stevens, Utah's public lands policy coordinator - and a close ally of Kane County in his other role as a San Juan County commissioner - says he is hopeful Kane and the feds work things out on an interim basis, but goes no further.

"The state is not forcing its policy on the counties; they are the co-owners of the roads, and have the independent prerogative to pursue demands of ownership on those roads," Stevens says. "You don't want to create a precipitous action and talk later, but I think Kane County is sincere about wanting to solve the issues that preceded the [10th Circuit] ruling."

Habbeshaw last week said he was willing to help Interior in any way he could - short of removing the signs.

Whether Kane County ultimately cooperates or not, environmentalists aren't waiting. Arguing that the 10th Circuit decision has nothing to do with the current impasse over the road signs, several groups filed suit last month against the county, accusing it of defying federal law by opening lands designated for wilderness study and other protections to OHV use.

"We filed the suit because the Justice Department is dragging its feet," says Heidi McIntosh, conservation director of the Southern Utah Wilderness Alliance.

"The sad thing is," McIntosh added, "we had this settled back in 1999 with the previous commission. This was put to bed until Habbeshaw stirred up this hornet's nest."

Indeed, after months of negotiations with the BLM, the former Kane Commission did sign off on the current monument travel plan that was hailed by moderates as a pragmatic compromise. But that, on top of the creation of the monument itself, led county conservatives to mobilize under the banner of the Canyon Country Rural Alliance - an offshoot of the old People for the USA organization. Today, the hard-liners rule the commission roost.

But they rule over a divided county, which is evolving quickly as newcomers arrive seeking second homes or retirement residences, or jumping into a tourism business that has been energized by the monument.

For Adam Rogers, who owns the Cedar Post Trading Co. in Kanab, the issue comes down to environmentalists

and liberals trying to abolish the traditional use of roads in favor of more restrictions or closures.

"The environmental groups get away with more than the county, which I support 100 percent," said Adams, as a group of locals leaning over his gun display cabinets nod in agreement. Environmentalists "file one lawsuit after another and will keep on pushing until someone pushes back. That's why I support the commission. I'm totally for what they are doing."

But fellow resident Fred Chapel, who moved to Kanab four years ago, thinks the county has gone too far in its attempts to fight the government.

"The land is not theirs to do with as they please," says Chapel. "They've had their own way for so long they think they own the land."

Keiter, the Stegner Center director, thinks the county should declare victory, remove the signs and go forward under the new 10th Circuit guidelines.

"The 10th Circuit ruling may have altered the legal terrain, but it also created a clear procedure for resolving these types of claims," he says.

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