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KANAB WEATHER

Date	November		Prec
	High	Low	
1	91	56	
2	86	59	
3	84	64	
4	84	56	
5	89	53	
6	90	53	
7	90	53	
8	88	59	
9	87	56	
10	84	44	
11	82	47	
12	80	47	

Courtesy: Wayne & Stacy Grosz

Court of Appeals sides with Kane County

By Dixie Brunner

The United States 10th Circuit Court of Appeals handed down a favorable decision on September 8 to the State of Utah and Kane, Garfield and San Juan counties over RS2477 roads. Of the 16 road right-of-ways in question, the status of five in Kane County were positively affected: Skutumpah, Moquith Mountain, North Swagg and two roads in the Burning Hills area.

"This is a major victory for the counties as well as the state," said Assistant Attorney General Ralph Finlayson. "This is a major victory for the counties, as well as the state," said Assistant Attorney General Ralph Finlayson.

Ralph Finlayson. "This case has been in litigation since 1996, when Kane, Garfield and San Juan counties were accused of trespass for performing maintenance on roads they asserted as their rights-of-way under federal law."

The 10th Circuit Court case was between Southern Utah Wilderness Alliance (SUWA) and the Bureau of Land Management on one side, and the three rural counties on the other. The decision was concerning the counties asserting the federal statute known as RS2477 rights.

In the decision, a three judge panel unanimously rejected the BLM administrative determinations that U.S. District Court Judge Tena Campbell had previously affirmed in disallowing the roads. The 10th Circuit Court stated the BLM lacked authority to make those determinations.

"The decision basically said that Judge Tena Campbell of the District Court used the wrong criteria to make her ruling," said Kane County Commissioner Mark Habbeshaw. "This court said her deference to the BLM's administrative determination was in error."

What happens now is the decision will be remanded back to Judge Campbell's District Court for complete review, under new standards ordered by the 10th Circuit Court opinion.

The latest decision also re-

jected numerous standards employed by the BLM determinations, including a requirement that the roads be established by mechanical construction, and rejected the BLM's contention that a 1910 coal withdrawal in the area over which some of the roads run, disqualified the area for RS2477 road establishment.

The 10th Circuit instead upheld the counties' argument the correct law to apply in determining RS2477 road status is Utah law, which provides that continuous use for 10 years prior

to 1976 is sufficient to establish a right-of-way.

Federal law controls the giving away of the grant. State law determines when the grant is accepted, therefore, the state determines the right of way. The state contended RS2477 rights of way were accepted by the state and counties according to law and thus, the state is the controlling entity.

"Campbell is supposed to determine whether the state of Utah would consider whether a grant of RS2477 on the road has been accepted," said Habbeshaw.

But not everything went the counties' way in the recent decision. While the county can do routine road maintenance, it has been determined the county must confer with the BLM on changes or major improvements.

The Circuit Court also held that when a right-of-way is in question, the claimant now will have the burden of proof. While this could prove expensive since the counties assert many RS2477 claims, Commissioner Habbeshaw said he feels Kane County is in good shape to defend its position. "We've got a lot of documentation on the roads."

All in all, the 10th Circuit Court decision was a victory for the counties' in their ongoing battle over roads and access on public lands.

"I think it goes a long way to prove the validity of RS2477 road rights," said Habbeshaw.



The Western Legends wagon train circles at a stop adjacent to Highway 89 to enjoy a great lunch and final visits with fellow participants. Photo by Dixie Brunner.

Wagons west

By Dixie Brunner

Shod hooves clop rhythmically on the pavement, and wooden platform seats creak and groan as tight canvas ruffles in the breeze. Meandering past lush green meadows and down through a vermillion canyon, sounds of the pioneer procession echo off the walls of the towering cliffs.

The wagon train, accompanied by 11 riders on horseback, wound its way from Alton through scenic Johnson Canyon, and then on to Kanab to join Western Legends festivities. The approximately 35 mile trip was taken in two days, with meal stops and overnight campouts in Alton and Johnson Canyon.

"I think people want to get back to simpler, less complicated times and enjoy the outdoors," said Mel Heaton of the popularity of the wagon trains he organizes and provides livestock for.

The seasoned rancher and Moccasin, AZ native Heaton has degrees in political science and language, and worked for the Park Service for 12 years before being recruited by an Arizona

Highway editor to take a group on the Honeymoon Trail.

The rest is horse history. Heaton's fame includes being featured in a wagon train shot in the opening scene of *America, The Beautiful* in the Circle Vision film at Disneyland and Disneyworld. He once led and organized a 28 wagon, 270 people wagon train from Moccasin to the movie fort in Kanab.

Heaton leads trail rides, wagon trains and cattle drives all over northern Arizona and southern Utah. He specializes in long trips. The cattle drives are booked for the next four years.

"Most people are willing to punish themselves to get an opportunity to do this," Heaton admitted with a grin, as we sat around the campfire.

Heaton has been providing the wagon train for Western Legends for the past five years. The wagon train and trail ride give those wanting to participate a taste of the old west. Local residents and guests from all over the country welcome the oppor-

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