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Western senators blunt about 'flawed' road policy

Interior guidelines: Environmentalists fret method of determining who owns highways

By Robert Gehrke
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Salt Lake Tribune

WASHINGTON - Six Democratic senators have asked the Interior Department to reconsider its policy on how to decide ownership of thousands of miles of roads around the West, voicing "deep concern" about what they call a "flawed" policy.

Last month, the Interior Department issued new guidelines laying out how it will handle disputes with counties and states over road ownership, after a 2005 ruling by the 10th U.S. Circuit Court of Appeals in a lawsuit over disputed Utah roads.

The new Bureau of Land Management guidelines expanded the ways counties could claim ownership of roads, granting them permission to do routine maintenance and allow land managers to grant permission to expand or improve roads.

"The new policy would risk significant harm to our national parks, wildlife refuges, national monuments, wilderness areas, wilderness study areas, proposed wilderness and other special public lands by paving the way for unprecedented road development and damaging off-road vehicle use," the senators said in a letter to acting Interior Secretary Lynn Scarlett.

"We strongly urge you to reconsider this ill-advised policy," they wrote.

The letter was signed by Sens. Diane Feinstein and Barbara Boxer of California; Ken Salazar of Colorado; Ron Wyden of Oregon; Richard Durbin of Illinois; and Jeff Bingaman of New Mexico, who is the ranking Democrat on the Senate Energy and Natural Resources Committee.

The senators said the Interior Department policy could devastate places like the Grand Staircase-Escalante National Monument and Dinosaur National Monument, among others.

Interior Department spokesman John Wright said the department believes it has accurately interpreted the 10th Circuit ruling.

"The new guidelines will not intrude on parks and monuments. More specifically, it recognizes the special status of national parks, wildlife refuges and congressionally designated wilderness areas," Wright said.

When the department issued the new policies, they were hailed by departing Secretary Gale Norton as a thoughtful way to resolve the thorny disputes over ownership of traditional roads over federal lands.

Under a Civil War mining-era law, Revised Statute 2477, Congress granted local governments continued rights to highways across federal land. The law was repealed in 1976, but roads existing at the time were grandfathered in under the statute, however counties and environmental groups have squabbled over what qualifies as a "highway," and the Interior Department had not established clear guidelines.

"The new guidelines will provide the necessary tools that managers need to make improved land-management decisions without creating the types of conflicts that have inundated R.S. 2477 discussions over the past several decades," Wright said.

The senators also objected to construing the 10th Circuit decision to apply nationally, rather than strictly within the six states under the 10th Circuit's jurisdiction.

"The Department has broad discretion to protect our special places from potentially harmful R.S. 2477 claims, and it should not surrender that discretion lightly," they wrote.

Brian Hawthorne, public lands director for the Blue Ribbon Coalition, an off-road group, said the environmentalists were making too much of the policy.

"Nothing in any Department of Interior policy will infringe upon the rights of any proper party to seek review of the legal status or management of specific rights of way. The courts continue to have the final word on these issues," he said.

And from a practical standpoint, the road network is the only way for many to enjoy the scenic lands.

"The roads themselves are national treasures," he said. "Without the roads, the special features might as well be on the moon for people who want to see them."

The senators also said the policy contradicted promises made to Congress in 2003, when the Interior Department signed an R.S. 2477 agreement with Utah, regarding what roads would qualify for road status. And they voiced concern that the proposed road-maintenance agreements will allow states or counties to change the landscape with road construction without adequate environmental analysis.

"I think the letter is significant because they just ask point blank that the policy be revoked, so it isn't just that usual nuanced senatorial language," said Kristen Brengel, a roads specialist with The Wilderness Society.