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## **Kane County Fighting To Keep 'Roads' Open**

*SALT LAKE CITY* Kane County asked a judge Tuesday to throw out a lawsuit challenging its defiance of federal managers over disputed roads in a national monument.

U.S. District Judge Tena Campbell, however, was skeptical of Kane County's claim that it can't be sued in federal court. The county's lawyer, Shawn Welch, said environmental groups could sue Kane County only in the state courts.

"That claim just doesn't have enough legs to make it stick. It's just not serious," countered Robert Wiygul, an attorney for The Wilderness Society.

Wiygul argued Kane County can't designate its own byways inside Grand Staircase-Escalante National Monument.

But Welch said Kane County had authority under an obscure 1866 mining law, RS2477, that allowed local governments to claim rights of way across federal land. The law was amended in 1976, when only roads in regular use for 10 years qualified.

Normally, Kane County would have to prove that faint tracks and paths across the monument qualify as roads, but in 2003, County Commissioner Mark Habbeshaw and Sheriff Lamont Smith took matters in their own hands to allow vehicles in many areas of the monument where the federal government prohibits them.

They ripped up 31 monument signs prohibiting vehicle travel and started planting their own route number signs for hundreds of disputed roads in the park. In many places today, BLM and Kane County signs are in conflict, one banning vehicles, the other permitting them.

At the outset, former U.S. Attorney Paul Warner threatened charges against county officials and convened a grand jury.

"We were willing to risk federal prosecution," Habbeshaw said outside court Tuesday. "Nothing ever became of that."

Earthjustice, the Southern Utah Wilderness Alliance and the Wilderness Society stepped into the dispute, asking Campbell to stop Kane County.

The judge said she'd rule on Kane County's motion to dismiss the lawsuit in four to five weeks. "This is not an easy case," she said after a two-hour hearing.

Habbeshaw said negotiations with the U.S. Interior Department have lapsed, while the 10th U.S. Circuit Court of Appeals has defined a new process for validating road claims, leaving the dispute in limbo.

The BLM, he said, tells visitors not to drive on county-asserted roads at the southern Utah monument, but isn't enforcing the rule with tickets.

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