



Road policy crosses public lands

Norton's access plan affects Canyons of the Ancients monument

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A new federal policy addressing ownership of thousands of miles of roads crisscrossing public land includes rights of way in Canyons of the Ancients National Monument.

"Many roads are easements or right-of-ways, which are considered private sort-of roads."

**-Jamie Sellar-Baker Dolores
Public Lands Office**

Interior Secretary Gale Norton, who's leaving office, has directed her agencies to apply a 10th U.S. Circuit Court of Appeals ruling nationwide when deciding whether local governments or individuals have valid claims to roadways across federal land.

The policy is producing warnings of more conflicts, lawsuits, and trails in national parks and wilderness morphing into motorways.

Announced Wednesday, the policy is intended to help agencies manage existing nonfederal roads on federal land, said Dan Domenico, special assistant to the Interior Department's solicitor.

Jamie Sellar-Baker, deputy manager of the Dolores Public Lands Office, said traditionally-used roadways are often claimed by counties via mining law so they can start to use and maintain them as infrastructure.

Some roads are present in the Canyons of the Ancients National Monument, said Sellar-Baker, who added that those avenues are typically used as in-holdings for people who want legal access to their private property.

"Many roads are easements or right-of-ways, which are considered private sort-of roads," she said.

Charlie Higby, a realty specialist for the U.S. Bureau of Land Management, said there is no current organized or recognized road system for unnamed, lesser-known tracks and paths within counties. With Norton's decision, the BLM and counties will be able to start processing roads, he said.

"There are a lot of roads (in the Southwest), but the extent is not known yet," said Higby, of Durango.

When in the field, BLM officers use old photos and maps to try to identify roadways, Higby said. Areas in the West, which were hot spots for mining, also contain a high number of roads, he said.

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Norton has said the decision by the Denver-based appeals court made clear that only courts can determine ownership, using laws in individual states as a guide. But federal agencies can develop an administrative process to analyze claims.

"It's still going to be contentious on roads where there's disagreement on historic and current use (of roads)," Domenico said.

Critics see that as an understatement.

"It's a prescription for more litigation. It will not result in a final solution," said Rep. Mark Udall, D-Colo., who has offered legislation since 2003 to come up with a uniform process for settling disputes.

Udall also questioned whether the guidelines are an end-run around Congress. He said he is concerned about new roads being carved in federally protected lands.

One of the biggest problems with the policy is that it doesn't exempt national parks, monuments and wildlife refuges and wilderness areas, environmentalists say. Heidi McIntosh, a lawyer with the Southern Utah Wilderness Alliance, said there is fear that off-road-vehicle groups will push to turn paths and trails in protected areas into roadways.

Domenico said there's "no principled way under the law" to exempt those lands.

"But that doesn't mean we're opening up parks to a lot of roads that aren't there now," he said.

That's the catch, said Mary Wells, executive director of the California Wilderness Coalition. She wondered if the new policy will change the status of the hundreds of miles of roads and paths that San Bernardino County claims as county roads in the Mojave National Preserve.

"Many of the roads they call roads are old Jeep tracks and literally goat trails," Wells said.

At the core of the conflict is an 1866 mining law, known as Revised Statute 2477, that allowed local governments to claim rights of way across federal land. When the law was repealed in 1976, Congress allowed states and counties to keep using traditional highways.

Left unresolved were disagreements over whether thousands of miles of dirt paths and trails qualify as roads. In 1997, Congress, wrangling over changes to the law, imposed a moratorium on approval of claims.



That left places like Moffat County in northwestern Colorado with no recourse when federal agencies closed roads traveled since the 1880s by ranchers and others, said Jeff Comstock, the county's natural resources director.

"We've been accused of wanting to turn cow paths into super interstates across pristine national park land," Comstock said. "That's not true. We live, work and play on those lands."

Moffat and other counties in the region with pending claims were heartened when Norton and former Utah Gov. Mike Leavitt signed an agreement in 2003 that settled thousands of road claims in that state. Environmentalists criticized it as a back-room deal that would allow dirt trails to be paved in pristine areas.

The new guidelines supersede that agreement. They apply to Interior Department agencies, which include the National Park Service, BLM and U.S. Fish and Wildlife Service, and manage 507 million acres, or one out of every five acres nationwide.

Critics are again assailing Norton for a policy they feel was drafted behind closed doors.

"This is being done without the public input that we were promised we would have," said Dorothea Farris, a commissioner with Colorado's Pitkin County.

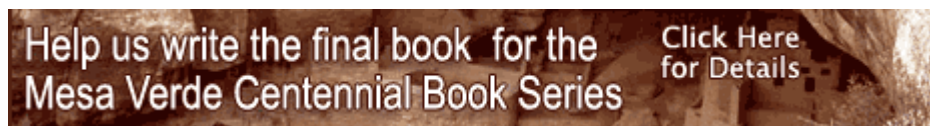
What happens on public land is important to the county, which includes Aspen, because it's in the middle of three federal wilderness areas and the White River National Forest, Farris said.

The same tenet applies to Moffat County, much of it federal land, Comstock said. Until now, he said, the federal government has refused to recognize roads that are crucial to ranchers moving cattle from summer to winter pasture or to hunters accessing public land.

"It finally opens the door so we can talk about these," Comstock said.

AJ Chamberlain, who lives in the mountains west of Boulder, said she feels the door has been slammed shut on resolving the problems of private property owners facing rights of way claims across their yards or driveways. She said the guidelines do nothing to help her and property owners across the West.

"From Wyoming to Alaska to California, it's happening," Chamberlain said. "If I had known this, I never would have bought mountain property."



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