

From Las Cruces Sun-News

NEWS

Suit: Open BLM roads

By Heath Haussamen
Dec 13, 2004, 12:01 am

The lawsuit Doña Ana County is preparing on behalf of four-wheeling groups seeking the reopening of roads in the Robledo Mountains north of Las Cruces is complex and involves somewhat conflicting laws, many say. Commissioners voted 3-2 in November to sue the U.S. Bureau of Land Management on behalf of the groups, which have verbally agreed to pay all costs. A written agreement is currently being drafted, and is scheduled to be approved at Tuesday's meeting.

The BLM closed about 15 miles of roads in the Robledo Mountains six years ago because of damage to the land, which is part of an 11,000-acre federal wilderness study area. The land was designated as such an area in 1980.

The BLM, working with the four-wheeling groups, opened another 20 miles of roads outside the wilderness study area to compensate.

Despite that, the Southwest Four Wheel Drive Association and Las Cruces Four Wheel Drive Club sued the BLM in 2000 to try to reopen roads in the wilderness study area, but the lawsuit was dismissed. Earlier this year, the 10th Circuit Court of Appeals in Denver rejected their appeal without considering its merits, saying the groups weren't the proper parties to bring the lawsuit. Only a governmental organization has such authority, the court said.

But the question of who is right is much more complex than the question of who can sue the BLM.

On the BLM's side is a congressional mandate to protect the land in wilderness study areas. The BLM has aerial photographs of the area that show that some roads were widened significantly by traffic after the 1980 designation. Two roads that appear on aerial photographs from 1996 weren't visible on photographs from before 1980.

The law says the BLM cannot allow an increase in surface disturbance in wilderness study areas, said Mark Hakkila, natural resources specialist for the BLM.

In 1980, he said, the BLM estimated that only 50 vehicles traveled on roads in the wilderness study area each year, so allowing the roads to remain open would not increase surface disturbance.

But the development of a new sport, extreme rock crawling, in the 1990s changed that, Hakkila said. Suddenly hundreds of specialized, four-wheel drive trucks and jeeps would descend on the area for days at a time. The 1996 photograph shows the effects that had on the land, he said.

The BLM had to close the roads because of that, said Len Brooks, BLM assistant field manager.

"It's pretty clear that Congress said these are going to be roadless areas," Hakkila said.

On the other side of the fight is a law that's more than 100 years old. Homer Van Zandt, president of the local four-wheeling club, said the law passed by Congress in 1866 allowed the public to create public highways on public lands. In 1976, Congress repealed the law, but roads created before then were grandfathered in.

Van Zandt said his group, citing that law, is seeking the reopening of roads that photographs prove existed in the area before 1976.

"We're doing this on behalf of the public," Van Zandt said.

The BLM was not informed that the commission vote was going to take place in November, and has since requested a chance to visit with commissioners about the battle. At Tuesday's meeting, commissioners will discuss the BLM lawsuit in closed session, but BLM officials weren't invited.

Commissioner Oscar Vasquez-Butler, who voted against the lawsuit, said he will try to convince the three commissioners who voted for the lawsuit — Gilbert Apodaca, Paul Curry and Kent Evans — to change their votes.

Curry, after meeting with BLM officials recently, said he isn't sure what to do.

Congress needs to decide whether to make the area a wilderness area and close all roads, or release it for public use and open the roads, Curry said. Congress has failed to act for 24 years.

In the meantime, the question is whether the county should lobby Congress to act, or proceed with a lawsuit and force the courts to act in Congress' absence.

County Manager Brian Haines joined Vasquez-Butler and Commissioner Arturo Terrazas in opposing the lawsuit in November, citing an unspecified potential conflict of interest, the perception that the county is working for a special-interest group, and the fact that the county and BLM work together on other issues.

Lee Peters, the attorney representing the four wheelers and the county, is Apodaca's personal attorney and godson. When asked if that was the potential conflict he had in mind, Haines said he didn't know that about Peters' relationship to Apodaca.

He said he was referring to the fact that Peters' firm sometimes represents entities that sue the county.

Apodaca said there is no conflict in his relationship with Peters.

"If I thought it would be a conflict in any way, shape or form, then I would have abstained," Apodaca said.

Van Zandt said since his group is representing the interests of the public, it isn't a special interest group, so there should be no perception that the county is working for anyone but the public by suing the BLM.

"We've asked them to stand up and assert the public status of these roads," Van Zandt said.

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(updated 12/19/2002).