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## Kane near deal with BLM on road signs

Tentative accord: The county will take signs off federal land but plans to 'assert its right of way'

See KANE COUNTY, A12

Kane County near road deal with the feds

**By Joe Baird**  
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**Salt Lake Tribune**

The long, sometimes nasty standoff between Kane County and the Bureau of Land Management over the county's unauthorized placement of road signs on federal land is on the verge of being settled.

County and Interior Department officials on Tuesday reached a tentative agreement to end the dispute, which dates back over two years and intensified in February when the county began placing off-highway vehicle route signs in and around the Grand Staircase-Escalante National Monument in defiance of BLM rules.

Under the framework of the agreement - which must still be approved by Interior Secretary Gale Norton and Kane County commissioners - the county will remove all signs that don't comply with the BLM's current transportation plan for the monument and the surrounding area.

In exchange, the county soon will be able to assert its right-of-way claims across federal land through a new process that officials say will closely mirror a recent appeals court decision that redefined how road ownership claims are to be evaluated and resolved.

"There's still some flesh we need to add to the bones, but we've agreed to the general concept," Larry Jensen, the Interior Department's regional solicitor, said following a four-hour meeting at the state Capitol. "I'm encouraged by our progress. And I'm comfortable with this being something we can recommend."

Kane County will not drop the lawsuit it filed this past fall challenging the monument's transportation and water plans. But County Commissioner Mark Habbeshaw said the suit could eventually be resolved as part of a larger settlement. He called Tuesday's informal agreement a giant step forward.

"We had three goals when we went into this," Habbeshaw said. "We wanted to eliminate all the controversy, reserve the BLM's authority to manage the monument and ensure that county rights of way are recognized. This resolution achieves all of that."

It doesn't necessarily end the conflict. Environmental groups on Tuesday panned the agreement as a "back-door deal" that cuts the public out of the process.

"Why is it that the Department of Interior and Kane County are comfortable only operating behind closed doors?" said Heidi McIntosh, conservation director of the Southern Utah Wilderness Alliance. "If they're going to change the management plan [for the monument] they need to have the same level of public involvement as they did for the first management plan. No more back-door deals that undermine Utah's quality of life."

Jensen acknowledged Norton's previous promise of public inclusion in settling the Kane County dispute, but is unsure what form it will take. Habbeshaw says Kane County residents will get a look at the details of the agreement only after the commission approves it.

Kane County's confrontation with the federal government began in 2003, when Habbeshaw and Sheriff Lamont Smith removed dozens of BLM signs in the monument that restricted OHV use, an event that prompted the U.S.

Attorney's Office to convene a grand jury to determine whether charges would be filed.

Seeking to assert its road claims, the county then upped the ante last February, placing more than 80 OHV route signs on roads in and around the monument - in some cases right next to BLM signs closing the roads to OHV use. Then-state BLM Director Sally Wisely eventually issued a cease-and-desist order, threatening the county with legal action if the signs weren't removed.

But no criminal or civil complaints ever were filed. And the road ownership terrain shifted last September when the 10th Circuit Court of Appeals ruled that state law had precedence over BLM policy when assessing road claims under RS2477 - a Civil War-era mining law that granted rights of way across federal lands. The statute was repealed in 1976 by Congress, but existing roads were grandfathered in.

Now, based on the court's ruling, Utah and its counties must prove 10 years of "continuous use" to assert ownership of a road on federal land. Previous claims were subject to more rigorous agency rules requiring proof of "destination" and "mechanical construction."

Assistant Attorney General Mark Ward, who participated in Tuesday's negotiations - and the six-hour meeting that preceded it earlier this month - said the agreement could become a new template for how other road disputes in Utah can be resolved.

"The 10th Circuit decision has recalibrated this whole issue," he said.

Fearing county and state encroachment into national parks and wilderness areas, SUWA's McIntosh says her organization and others will continue to battle what she called "Kane County's bogus road claims."

"We think they've misread the decision. The 10th Circuit did not say it was OK to disregard BLM regulations and commit trespass," she said. The Interior Department "should have dealt with this issue months ago."

Kane County residents, long divided on this issue, are taking a wait-and-see approach.

"It's one more step in the battle," said Sky Chaney, who helped start a local volunteer group that works with OHV groups and the BLM to help mitigate OHV damage. "What I'm interested in is, how [is the state] going to provide accurate information about the roads?"

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Reporter Mark Havnes contributed to this story.