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Utah case now model for new BLM road policy

By **Joe Baird**
The Salt Lake Tribune

An appeals court last fall ruled that state law, not federal policy, is the ultimate arbiter of who owns the dirt backroads that crisscross the West's vast public lands.

Outgoing Interior Secretary Gale Norton today is expected to sign a memorandum that she says largely reflects that court decision, which stemmed from a decade-old lawsuit filed by the Southern Utah Wilderness Alliance against the Bureau of Land Management over the agency's failure to prevent San Juan, Kane and Garfield counties from grading routes across the Grand Staircase-Escalante National Monument.

The order provides a set of guidelines that effectively repeals BLM rules that, since 1997, required states and counties to show proof of construction in order to claim a road under Revised Statute 2477, an old mining law that granted rights of way across federal land. The law was repealed in 1976, but existing claims were grandfathered in, leading to numerous ownership disputes, particularly in Utah.

Under the new Interior policy, counties in the West need only prove road claims under state law. In Utah, that essentially means demonstrating continuous use for 10 years prior to 1976.

Norton says the new Interior guidelines are written in such a way as to give federal land managers and states and counties flexibility in resolving road claims. They "do not impose binding rights or obligations," she wrote in the memorandum.

Utah officials, predictably, hailed the new policy, calling it a victory for states' rights and local control.

"Embracing the 10th Circuit guidelines is appropriate, not only for Utah, but for the nation," said Lynn Stevens, director of the state's Public Lands Policy Coordination office.

And as expected, environmental groups have panned the memorandum, warning that some of the nation's most precious natural assets will now be put at risk.

"There are red flags all over this," said SUWA Conservation Director Heidi

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McIntosh. "The biggest red flag is that trails and other routes that are now closed

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to vehicular traffic will be turned over to the counties, which will in turn try turn them into highways."

That 2003 memorandum of understanding that Norton signed with then-Utah Gov. Mike Leavitt - which created a process to sift through the state's road claims and determine ownership - is now history. But Interior officials say the new guidelines and 10th Circuit decision give them plenty of clout to protect resources.

Under the ruling each side must consult the other before moving ahead with any plan to change the "status quo" of a road, according to Dan Domenico, special assistant to the Interior Department's solicitor general. In the BLM's case, that would mean any attempt to close or restrict travel. For the counties, it would mean plans to improve or expand a road.

"If this did anything, it drove a stake through the idea that counties could assert a claim, then willy-nilly upgrade the road without consulting the [federal] agency," said Larry Jensen, a Utah-based regional solicitor for the Interior Department.

Interior officials believe they will have the continued ability to manage off highway vehicle use on county-claimed roads because of what Jensen calls the "spillover effects" OHVs have on public land when they hop off a trail and start creating new ones.

But Stevens, the state's public lands policy director, doubts that the BLM or other federal agencies would have the ability to restrict or close a road to off-road travel under the new guidelines.

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