

Kane County wins legal fight over Civil War-era roads

By Amy Joi O'Donoghue



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SALT LAKE CITY — Kane County officials and the Utah Attorney General's Office are celebrating what they say is a major win in the longstanding legal fight to win title from the federal government to multiple rights-of-way on Civil War-era roads.

"It marks a great victory for Kane County in our road battle we have been working on for a decade," said Kane County Commissioner Dirk Clayson.

The Wednesday ruling by U.S. District Judge Clark Waddoups granted the county and the state title to 12 of 15 roads that had been in dispute with the U.S. Department of Interior — access Clayton said is important to preserve for motor vehicle use.

"There is this perception here that we are making new roads, but we are not," he said. "We are trying to preserve what already exists."

The case — and 22 other lawsuits filed by the state and counties last year — revolve around what's called RS2477 roads, part of a transportation network established through an 1866 law to foster movement in the West.

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They are roads traveled by ranchers, by rural country truckers, deer hunters and maintained by county construction crews.

Although that law has since been repealed through the adoption of federal environmental laws, the state and counties' rights of way to roads that already existed were grandfathered in.

What constitutes a "road" and what access remains, however, has since been at the heart of protracted dispute with the federal government to the frustration of counties that have seen key witnesses die off before they can offer testimony to the roads' uses.

To force some sort of resolution in the disputes, the state filed its lawsuits asserting claims to nearly 12,000 RS2477 roads in 22 counties.

With this victory, state and Kane County officials believe they will prevail in other roads' cases, with Clayton pointing out that close to 900 more roads remain in contention in Kane County alone.

"These rulings clearly show these historic public roads have and will continue to belong to the people of Utah," Attorney General John Swallow said. "This is the first of many anticipated legal victories that will confirm that the federal government's refusal to recognize these roads as state and county roads is not legally justified."

We now hope this ruling motivates all stakeholders to work together to resolve our other public road cases.

—Gov. Gary Herbert

The decision granted title to 89 of 95 miles of roads sought in the litigation. Waddoups also rejected claims made by the federal government and the Southern Utah Wilderness Alliance that he did not have jurisdiction over the matter because of a lack of controversy and the statute of limitations.

Steve Bloch, litigation director with SUWA, said the group was not surprised at the ruling, and he expects there will be an appeal filed by the federal government to the 10th Circuit Court of Appeals in Denver.

Bloch noted that four of the roads "won" in the court ruling are in the Grand Staircase-Escalante National Monument, and others in dispute do not lend any credence to the state and counties' assertions.

"Many of the routes claimed in these lawsuits are nothing more than faded two-tracks and stream bottoms," he said. "Some are virtually impossible to locate. Often the routes lead to no landmark or destination and are not part of any reasonably described transportation network."

Utah Gov. Gary Herbert said he is hopeful that the decision will lead to a resolution of the disputes through negotiation, rather than court rulings.

"This victory clearly demonstrates that Utah's historic public roads belong to the people of Utah," Herbert said. "We now hope this ruling motivates all stakeholders to work together to resolve our other public road cases."



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