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### U.S. Supreme Court to review Utah wilderness case

Government appeal: Environmentalists had sued over alleged inaction by the BLM in protecting lands

*Brent Israelsen The Salt Lake Tribune*

America's highest court has agreed to hear a Utah wilderness case that will decide whether the judicial branch can compel a government agency to take action. The Supreme Court decided Monday to consider the government's appeal of a lawsuit filed in 1999 by the Southern Utah Wilderness Alliance (SUWA) and other environmental groups against the U.

S. Bureau of Land Management.

The case asked a federal district judge in Utah to force the BLM to protect several "wilderness study areas" in southern Utah from damage caused by off-highway vehicles.

Though the district judge dismissed the case in late 2000, a split 10th Circuit Court of Appeals panel overruled the judge nine months later, ruling that the courts can compel a government agency to take action, such as preventing the degradation of a potential wilderness area.

In their lawsuit, SUWA, the Wilderness Society, the Sierra Club and five smaller environmental groups sought to force the BLM to ban off-highway vehicles (OHVs) in and around wilderness study areas in Kane, San Juan and Emery counties.

They argued that the BLM has a legal responsibility to protect those lands' wilderness character until Congress has a chance to decide whether to designate them as official wilderness areas.

While their primary focus is on protecting pristine lands in Utah and other Western states, environmentalists say the 10th Circuit ruling -- which was similar to a 9th Circuit Court ruling in a Montana case -- is an important one for citizens and watchdog groups that want to ensure the government is effective.

If the environmentalists lose, any agency could ignore statutes that do not specifically say how the agency is to achieve its mission, said Jim Angell, attorney for the Denver-based law firm Earthjustice.

In the SUWA case before the Supreme Court, the government argues that the Administrative Procedures Act, which is the basis for SUWA's lawsuit, applies only to an agency's action, not inaction.

"The [act] does not authorize the federal courts to entertain challenges to anything and everything that an agency may do, or fail to do, in the conduct of its business," according to a 114-page brief filed with the Supreme Court by the U.S. solicitor general.

Also appealing the 10th Circuit ruling is a coalition of OHV interests, including the Payson-based **Utah Shared Access Alliance**, which won the district court ruling.

Paul Turcke, attorney for the groups, said the circuit ruling gave the courts too much review power over the executive branch.

"You can challenge agency inaction under the Administrative Procedures Act, but only under certain circumstances and we don't feel those circumstances were warranted here," said Turcke.

However, Turcke said his clients would not be disappointed in an unfavorable ruling. Off-highway vehicle groups, for example, have sued the U.S. Forest Service to compel the agency to develop vehicle-management plans, Turcke said.

Environmentalists say preserving the right to force agencies to do their job is important to preserving the public lands, especially considering the Bush administration's wilderness policies.

Earlier this year, in a deal worked out with Utah Gov. Mike Leavitt, the Department of the Interior agreed to remove interim wilderness protection on about 6 million acres of BLM lands in Utah. The agency later said it would not recommend any more BLM lands in the United States for wilderness designation.

"Action after action, the Bush administration is attempting to wipe out America's wilderness," said Mike Matz, director of the Campaign for America's Wilderness.

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**Caption:** This wilderness study area on Moquith Mountain in Kane County is one of the sites at issue in a lawsuit filed by the Southern Utah Wilderness Alliance and other groups against the Bureau of Land Management.

Brent Israelsen/The Salt Lake Tribune

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