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## Salt Lake Tribune, The (UT)

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### Off-roaders take their fight for access to appeals court

*Keith Coffman Special to The Tribune*

A coalition of Utah off-road enthusiasts seeking to reverse a Bureau of Land Management ban on motorized vehicles over hundreds of thousands of acres in Box Elder and Grand counties took their case before a federal appeals court Wednesday. The **Utah Shared Access Alliance** (USA-ALL) sued the BLM in 2001, claiming that the agency closed off 250,000 acres near Moab and 189,000 acres around the Grouse Creek Mountains to off-highway vehicle (OHV) use without conducting public hearings and a required environmental analysis.

The group is asking the Denver-based 10th U.S. Circuit Court of Appeals to overturn a decision by U.S. District Judge Bruce Jenkins of Salt Lake City, who dismissed the group's lawsuit against the BLM in December 2004. In his decision, Jenkins ruled that the BLM had taken the mandated "hard look" at the environmental impacts before issuing the closures.

In oral arguments before the three-judge appellate panel, USA-ALL's attorney, Paul Mortensen, said the closures are forcing OHV users into smaller areas where damage to the terrain could be greater. Additionally, he said, the BLM made its decision "by fiat" and violated requirements to take public input before issuing its land-use decision.

"We were never allowed to comment," Mortensen said.

Mortensen said the order to close off areas in Box Elder County in the first place was "rather dubious" given the area's remote location.

Assistant U.S. Attorney Jeff Nelson, who represents the BLM, argued that the agency has to act on the side of caution. If it waits until a pristine area is overrun, he said, it would be too late to carry out its mandate to protect the wilderness.

"The agency has to have the flexibility to take into account on-the-ground conditions," Nelson said.

Nelson said that the BLM did modify its closure order in Box Elder County, noting that the agency originally closed more than 500,000 acres in 2000 but three years later scaled it back to 189,000 acres.

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