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Editorials

- Special needs: We need accountability for recipients
- Rethink SITLA pay: Trust land executives should not get bonuses
- Foundation ignores realities of teaching in Utah
- To build new roads, fuels tax must be hiked
- The Thumb
- The nuclear option: Nuclear power no panacea for reducing global warming
- Longboard bombers: Cops need to curb skateboarders
- Report card: Intelligence report an indictment of Bush terror strategy
- Older drivers: Testing every five years may not be often enough
- Pyro problems: Municipal officials should ban personal fireworks

Commentaries

- Broder: At last, Democratic hopefuls give due attention to urban problems
- Washington County's Vision Dixie exposes a great divide
- Learning to withhold judgment
- Keillor: Here's a primer on how the Norse stay on course
- An attack on Parents Television Council is attack on all families
- High time to end our selfish ways
- Guy: Fear, hope and humor in face of cancer
- Lowry: Commute sentences of border agents who shot drug smuggler
- Galloway: NIE report card gives Bush a 'D' in anti-terror fight
- Farmers fed up with lack of immigration reform

Letters

- Missed the point
- Faith as culture
- Forbids China pact
- Ban campaign gifts
- Ban ads, too
- Nuclear nasties
- Awakening Congress
- Comments offensive

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BLM determinations of RS 2477 roads are valid, necessary

By Mark Habbeshaw

Article Last Updated: 06/23/2007 12:11:14 PM MDT

The *Tribune* editorial "Road fight: Courts, not BLM, should decide RS 2477 claims" misinterprets the 10th U.S. Circuit Court's decision in *SUWA v. BLM* and the legal relationship between roads and wilderness.

The U.S. Department of the Interior's current guidelines implementing *SUWA v. BLM* are legally necessary to comply with the court's holding that while only courts can determine the ownership of roads along RS 2477 rights of way, BLM has a duty to conduct determinations as to the validity and scope of such claims for administrative purposes.

The court further held that BLM has an obligation to render such determinations in a timely and expeditious manner and that it may not, by delay or by unreasonable disapproval, impair the county's rights. The court held that only in the event of disagreement should the courts get involved.

The court also recognized the current congressional policy of "freezing" RS 2477 rights of way in protecting existing uses without the need for BLM or court recognition. In fact, the court ruled that counties have no legal obligation to consult with BLM regarding the "existing state" of RS 2477 roads. In other words, Congress currently protects the status quo of RS 2477 roads without the need for court adjudication.

The Southern Utah Wilderness Alliance and the The Wilderness Society are unwilling to accept these conditions and the fact they lost in *SUWA v. BLM*. They are, therefore, pushing Rep. Mark Udall, D-Colo., a sponsor of SUWA's proposed 9.5 million-acre Red Rock Wilderness Act, to redefine out of existence rights of way previously granted by Congress.

The obvious motive is the fact that wilderness by congressional definition is "roadless." In order to create more than 9 million acres of new wilderness in Utah, rural roads have to go.

If Congress addresses the RS 2477 issue it should do so with a full congressional process, including public hearings, rather than through the funding process with no public input, except for SUWA's inside track with Rep. Udall.

If the Udall amendment is finally approved, it will contravene the Federal Land Policy and Management Act of 1976, congressional policy protecting RS 2477 roads and the 10th Circuit Court's precedent in *SUWA v. BLM*. It would require that all RS 2477 roads in Utah be

adjudicated by quiet title litigation.

That process would take years. It would drain federal, state and county budgets and manpower resources. It would bog down the federal court system. And it would raise serious questions regarding interim management.

Utah counties have amassed a tremendous amount of documentation and are prepared to protect RS 2477 rights of way. For the sake of the "common good" recognized by the 10th Circuit, we should follow its reasoned guidance, relying on court-required BLM determinations rather than endless litigation.

* MARK HABBESHAW is a Kane County commissioner.

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