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MONDAY, July 23, 2007

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Grand Staircase-Escalante

## Kane, Garfield to appeal ruling on road ownership

Counties to argue that judge's conclusion goes against case law and congressional intent

By **Patty Henetz**  
The Salt Lake Tribune

Article Last Updated: 07/11/2007 01:09:46 AM MDT

Less than two weeks after a federal judge rejected Kane and Garfield counties' claims on roads in a national monument, the two county commissions have decided to appeal the ruling.

Kane County Commissioner Mark Habbeshaw said the commissions decided on the move during a closed-session conference call Monday, believing the ruling's requirement to take each road claim to court separately is too great a burden.

Habbeshaw said the counties' attorney will file a notice of the impending appeal this week. The appeal would argue U.S. District Judge Bruce Jenkins' June 29 opinion goes against case law and congressional intent on how to determine ownership of the roads that crisscross the 1.8 million acre Grand Staircase-Escalante National Monument, the commissioner said.

Jenkins dismissed the lawsuit, ruling Kane and Garfield counties can't autonomously claim ownership of roads or expect the U.S. Bureau of Land Management to do so for them. That's because the BLM doesn't have the power to make binding decisions on road ownership, the ruling said. Further, until the counties prove ownership under legally required "quiet title" action, the lawsuit is premature, the judge said.

Jenkins' ruling reiterated an earlier federal appeals court decision that, based on Utah law, each claim had to be judged in court after a county claimed title to a road.

Central to the dispute is Revised Statute 2477, a Civil War-era mining law that allowed counties and cities to construct roads across federal land. The open-ended language was repealed three decades ago, but existing rights of way were grandfathered in.

Road claims are part of the ongoing battle over mechanized access to potential wilderness areas in Utah that has pitted environmental organizations seeking to conserve roadless areas against local officials who fear wilderness designation will harm their economies.

Several years ago, Kane County officials yanked down road signs banning all-terrain vehicles in the monument. Those stunts are in the past, Habbeshaw said.

"We're not doing those kinds of things anymore. We're in court now," he said.

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