

## 10 years later, legal battle continues over remote Nev. road

BY SANDRA CHEREB • ASSOCIATED PRESS WRITER • JUNE 9, 2008

[Read Comments\(9\)](#)

[Recommend\(1\)](#)

[Print this page](#)

[E-mail this article](#)

**SHARE THIS ARTICLE:**

[Del.icio.us](#)

[Facebook](#)

[Digg](#)

[Reddit](#)

[Newsvine](#)

[What's this?](#)

A federal appeals panel has revived a 10-year legal battle over a remote Nevada road on national forest land and a threatened fish, siding with environmental groups who argued they were denied participation earlier this decade in negotiations to quell the bickering.

ADVERTISEMENT

The recent ruling by a three-judge panel of the 9th U.S. Circuit Court of Appeals in San Francisco vacates a truce reached in 2001 and implemented five years later between the U.S. Forest Service and Elko County over South Canyon Road.

It also sends the case back to federal court in Reno.

The ruling issued May 20 reversed a lower court order against The Wilderness Society and Utah-based Great Old Broads for Wilderness, who argued the Justice Department lacked authority to cede the road's right of way to the county without environmental studies and a public process.

"This ruling certainly puts the status of the settlement agreement in doubt," said Ed Monnig, the third supervisor of the Humboldt-Toiyabe National Forest to grapple with the case that has simmered since the mid 1990s.

Kristin McQueary, Elko County chief deputy district attorney, said more appeals are anticipated.

"We're going to request the whole Ninth Circuit consider our problem, not just the three judge panel," McQueary said. She said the county also was looking into whether it could simultaneously appeal directly to the U.S. Supreme Court.

South Canyon Road is a narrow stretch of dirt and gravel that meanders along the Jarbidge River, habitat to the southernmost population of threatened bull trout. It leads to a wilderness area along the Nevada-Idaho line.

Michael Freeman, an attorney for Earthjustice Legal Defense Fund who represented the environmental groups, called the ruling a victory.

"It's a big step toward protecting the Jarbidge Wilderness Area and making sure the bull trout get the protection they deserve," he said.

The environmental groups last year filed a separate lawsuit in federal court in Las Vegas seeking permanent closure of the road.

The ongoing legal wrangling began in 1995 when South Canyon Road was washed out by floodwaters.

It became a flash point for anti-government activists three years later when the county, unwilling to wait any longer for the Forest Service to decide the road's fate, sent in its own crew to fix it. The county argued it was a county road because it was there before the national forest was created.

The Forest Service effectively closed the road after accusing the county of illegally repairing it in 1998. The river's population of bull trout was declared threatened in 1999.

In 2000, several hundred people dubbed the "Shovel Brigade" gathered at the scenic enclave near the Nevada-Idaho line over the Fourth of July holiday to reclaim the road using picks and shovels.

The Forest Service and Elko County first reached a tentative settlement in 2001. The Forest Service agreed not to challenge the county's right of way and the county pledged not to repair the road without Forest Service approval.

The latest ruling marks the second time the appeals court has sent the case back to a lower court based on the arguments of the environmental groups. The formerly Utah-based Great Old Broads for Wilderness is now based in Durango, Colo.