

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

County of San Bernardino,

CASE NUMBER

PLAINTIFF(S)

ED CV 06 - 01179 VAP

v.

United States of America,
Department of Interior,

DEFENDANT(S).

SUMMONS

(RCx)

COPY

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney Charles S. Scolastico, Deputy County Counsel _____, whose address is:

County of San Bernardino
Office of County Counsel
385 North Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415-0140

an answer to the complaint _____ amended complaint counterclaim cross-claim which is herewith served upon you within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

SHERRI R. CARTER

Clerk, U.S. District Court

MARGO MEAD

Dated: OCT 26 2006

By: _____

Deputy Clerk

(Seal of the Court)

SEAL

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Virginia A. Phillips and the assigned discovery Magistrate Judge is Rosalyn M. Chapman.

The case number on all documents filed with the Court should read as follows:

EDCV06- 1179 VAP (RCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

PLEASE
CONFORM

FILED

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2006 OCT 26 PM 1:27

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

7 Attorneys for Plaintiff COUNTY OF SAN BERNARDINO

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 ED CV 06 - 01179 VAP

13 COUNTY OF SAN BERNARDINO,
14 Plaintiff,
15 vs.
16 UNITED STATES OF AMERICA,
DEPARTMENT OF INTERIOR,
17 Defendant.

Case No.
COMPLAINT TO QUIET TITLE (RC)
(28 U.S.C. § 2409)

18 Plaintiff County of San Bernardino ("County") alleges as follows:

19 **INTRODUCTION**

20 1. This is an action to quiet title to certain described rights-of-way
21 for highways, including the scope thereof, in accordance with Revised
22 Statute 2477 (R.S. 2477). R.S. 2477 was passed as part of the Mining
23 Act of July 26, 1866.

24 **JURISDICTION AND VENUE**

25 2. The County alleges that this Court has federal question
26 jurisdiction under 28 U.S.C. sections 1346(f) and 2409a (quiet title to real
27 property in which the United States claims an interest). The highways
28 which are the subject of this action are located in San Bernardino County,

1 California, and venue is proper in this Court pursuant to 28 U.S.C. section
2 1391(b), and all applicable law.

3 **THE PARTIES**

4 3. The County is a political subdivision of the State of California
5 and is organized and existing under the laws of said State. The County is
6 responsible for providing local government services, including but not
7 limited to road construction, reconstruction and maintenance, search and
8 rescue, emergency medical services, law enforcement, and recreational
9 opportunities, all of which depend on access along the highways which
10 have been historically (prior to 1976) and currently part of the County's
11 basic system of public roads.

12 4. The United States of America is the federal government and
13 the owner of the Mojave National Preserve, a unit of the National Park
14 System. The relevant highways at issue in this action are located within or
15 adjacent to the boundaries of the Mojave National Preserve.

16 5. The United States Department of the Interior ("DOI") is the
17 department of the federal government to which Congress delegated
18 specific authority to administer the public lands under federal law,
19 including the Mojave National Preserve.

20 6. The United States National Park Service ("NPS") is the agency
21 within the DOI that has been delegated specific authority by Congress to
22 administer the Mojave National Preserve. Prior to October 31, 1994, the
23 U.S. Bureau of Land Management ("BLM") was the agency within the DOI
24 that had been delegated authority by Congress to administer federal
25 public lands, which included the land now contained in the Mojave
26 National Preserve.

27 **THE HISTORY OF R.S. 2477 HIGHWAYS**

28 7. R.S. 2477, enacted as part of the Mining Act of July 26, 1866,

1 provides in pertinent part as follows:

2 § 8. And be it further enacted, That the right of way for the
3 construction of highways over public lands, not reserved for
4 public uses, is hereby granted.

5
6 (Mining Act of July 26, 1866, § 8, codified at 43 U.S.C. § 932,
7 repealed by Federal Land Policy Management Act of 1976 ("FLPMA"),
8 Pub.L. No. 94-579 § 706(a), 90 Stat. 2473.)

9 8. Though Congress repealed R.S. 2477 on October 21, 1976 by
10 the FLPMA, it specified that any "valid" R.S. 2477 rights-of-way "existing
11 on the date of approval of this Act" (October 21, 1976) would continue in
12 effect. (FLPMA § 701 (a).)

13 9. R.S. 2477 was self-executing and, therefore, ratification or
14 approval by the federal government was not required to perfect an R.S.
15 2477 right-of-way. (Sierra Club v. Hodel (10th Cir. 1988) 848 F.2d 1068,
16 1083-84.)

17 10. As evidenced in BLM regulations dating as far back as 1939,
18 BLM has long declined to regulate R.S. 2477 rights-of-way or require any
19 affirmative part by any State in establishing its claim to an R.S. 2477 right-
20 of-way:

21 a. In 1939, BLM regulations provided:

22 The grant [under R.S. 2477] becomes effective
23 upon the construction or establishing of highways,
24 in accordance with the State Laws, over public
25 lands not reserved for public uses. No application
26 should be filed under said R.S. 2477 as no action
27 on the part of the Federal Government is
28 necessary.

(43 C.F.R. § 244.55 (1939).)

1 b. In 1963, BLM regulations provided:

2 Grants of [R.S. 2477 rights-of-way] become
3 effective upon the construction or establishment of
4 highways, in accordance with State laws, over
5 public lands, not reserved for public uses. No
6 application should be filed under R.S. 2477, as no
7 action on the part of the Government is necessary.

8 (43 C.F.R. § 244.58 (1963.))

9 c. In 1974, BLM regulations provided:

10 No application should be filed under R.S. 2477, as
11 no action on the part of the Government is
12 necessary . . . Grants of [R.S. 2477 rights-of-way]
13 become effective upon the construction or
14 establishment of highways, in accordance with the
15 State laws, over public lands, not reserved for
16 public uses.

17 (43 C.F.R. §§ 2822.1-1 & 2822.2-1 (1974.))

18 11. The DOI recognizes that there is “[n]o formal process for either
19 asserting or recognizing R.S. 2477 rights-of way currently is provided in
20 law, regulations, or DOI policy,” which creates a “a continuing cloud” on
21 right-of-way claims. Accordingly, DOI asserts that “[c]ourts must ultimately
22 determine [sic] the validity of such claims.” (Department of Interior, Report
23 to Congress on R.S. 2477 (June 1993), pp. 6 & 25.)

24 12. The holder of an R.S. 2477 right-of-way is not required to
25 consult with BLM prior to conducting maintenance within the right-of-way
26 or using the right-of-way in the same manner as it was used on October
27 21, 1976. (Southern Utah Wilderness Alliance v. BLM (2005) 425 F.3d
28 735, 749; See also Department of the Interior, Report to Congress on R.S.

1 2477 (June 1993) (Appendix II, Exhibit M at pg. 4) (stating that activities
2 within the R.S. 2477 right-of-way that are within the jurisdiction of the right-
3 of-way holder "include, but are not necessarily limited to, maintenance,
4 reconstruction, upgrading and reasonable activities.")

5 13. Although R.S. 2477 is an offer by the federal government,
6 acceptance of an R.S. 2477 right-of-way by a government agency is
7 governed by state law. (Western Aggregates, Inc. v. County of Yuba
8 (2002) 101 Cal.App.4th 278, 296.)

9 14. Under California law, the acceptance of an R.S. 2477 right-of-
10 way could be established by public use without formal action by any public
11 authority, or by other affirmative action by the public in general or a public
12 agency indicating an intent to accept the statutory dedication, including
13 but not limited to, use, public repair and depiction of the public road on
14 official maps and documents, inclusion in the County Maintained Road
15 System.

16 15. Prior to October 31, 1994, BLM historically did not attempt to
17 require the County to inform BLM, submit plans, or request approval or
18 other authorization before conducting maintenance or improvement on the
19 highways subject to this suit. Following the creation of the Mojave
20 National Preserve in 1994, the NPS has attempted to require the County
21 to submit plans or request approval or other authorizations before
22 conducting maintenance on the highways subject to the suit, and has, in
23 fact, complained that the County was inadequately performing such
24 maintenance to the detriment of visitor experience; except that the NPS
25 has restricted access to materials required for maintenance and have
26 assumed regulatory responsibility on the roads without County input or
27 approval.

28 16. BLM historically did not object to the County's maintenance on

1 the highways subject to this suit.

2 17. The County has performed regular maintenance on thousands
3 of miles on the majority of the subject highways dating back to pre-1921
4 including the roads in this complaint lying within the Mojave National
5 Preserve.

6 18. Beginning in 1929 and continuing yearly until the mid-1970s,
7 the County published books containing maps depicting the roads
8 maintained by the County. The books contained a listing of each road
9 maintained by the County, including the road name, a brief description,
10 mileage, type of road (dirt, paved, etc.) and other identifying and
11 descriptive information.

12 **GENERAL ALLEGATIONS REGARDING THIS QUIET TITLE ACTION**

13 19. This is an action under 28 U.S.C. §2409a to quiet title to
14 fourteen (14) R.S. 2477 rights-of-way in the County. The rights-of-way are
15 described herein and in Exhibits 2 through 15, incorporated herein.

16 20. The County holds its R.S. 2477 right-of-way interests in the
17 highways in issue without necessity of any approval of the federal
18 government. (Western Aggregates, Inc. v. County of Yuba, supra, 101
19 Cal.App.4th 278, 296.)

20 21. Effective October 31, 1994 Congress passed the California
21 Desert Protection Act of 1994 (16 U.S.C. § 410aaa through 410aaa-83).
22 The Act established the Mojave National Preserve ("Preserve") in the
23 California desert. Among other things, the Act requires the Secretary of
24 the Interior to administer the Preserve in accordance with laws and
25 regulations governing the NPS. Under the auspices of this Act, and other
26 federal laws, BLM, National Parks Service (NPS) and other federal
27 agencies under the Department of the Interior have attempted to close
28 highways which are part of the County's Highway System across federal

1 lands or interfered with the actions of the County and its authorized agents
2 in conjunction with the regulation, operation and management of these
3 highways. Various actions on behalf of the County with various federal
4 officials and agencies have failed to resolve this dispute. These
5 circumstances present a case in controversy through federal abridgment
6 of the County rights pertaining to the rights-of-way. Moreover, this
7 controversy is "a continuing cloud" on the County's right-of-way claims.

8 22. On April 4, 2006, the County submitted a notification of
9 intention to file suit under 28 U.S.C. §2409(m) to DOI. (Attached as
10 Exhibit 1 hereto.)

11 23. The description of highways in Exhibits 2 through 15 attached
12 hereto are the result of information recorded within the County database of
13 records. The subject highways were also driven and measured by staff
14 from the County Department of Public Works, with current photographs
15 taken at intervals along the length of each highway or a portion of the
16 subject highway.

17 24. The age and use of all of the subject highways is verified by
18 County Road System books published yearly during the period extending
19 from 1929 to the early-1970s. The published books contained a listing of
20 each road maintained by the County, including the road name, a brief
21 description, mileage, type of road (dirt, paved, etc.) and other identifying
22 and descriptive information. County staff reviewed published books from
23 1929, 1931, 1941, 1951, 1961 and 1971. Information was also obtained
24 from the Water Supply Paper 490-B entitled "Routes to Desert Watering
25 Places in the Mohave Desert Region, California (1921), which was
26 prepared by David G. Thompson and contains a detailed set of geological
27 survey maps covering the entire Mojave National Preserve area.

28 25. The majority, if not all, of the subject highways may have been

1 realigned to a greater or lesser degree over time to reach various
2 destinations, and the County has essentially maintained a direct route
3 from one location to another over an extended period of time on
4 essentially the same routes and alignments prior to October 21, 1976 and
5 continuing to present. (*Id. at 308.*)

6 **FIRST CAUSE OF ACTION**

7 **(Quiet Title to Black Canyon Road)**

8 26. The County realleges and incorporates by reference the
9 allegations of paragraphs 1 through 25.

10 27. Black Canyon Road is located on public lands, not reserved for
11 public uses prior to 1976. It is part of the County-maintained road system,
12 as more particularly shown and described in the attached Exhibit 2,
13 incorporated herein by reference.

14 28. A portion of Black Canyon Road was known as the "Cima-
15 Fenner Road" in 1921, and it served as a connector to many other
16 destination points. The road alignment varies in length and description
17 from 1941 to 1951, but the present road alignment was established by at
18 least 1961.

19 29. The County has performed maintenance of the road since at
20 least as early as 1941. The County often adds asphalt to reinforce the
21 shoulder to minimize undercutting to the roadway. The roadway has also
22 been actively graded to delineate the road from the wash.

23 30. The purposes for use of this road include access to
24 homesteads and mining operations, search and rescue, and traveling in
25 and through the area.

26 31. Defendants have asserted their claim to the property
27 constituting the County's R.S. 2477 right-of-way by their actions as
28 described above in paragraph 21.

