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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

COUNTY OF INYO, Plaintiff, v. UNITED STATES DEPARTMENT OF INTERIOR, et al. Defendants, and SIERRA CLUB, *et al.* Defendant-Intervenors.	Case No: 1:06-cv-1502 AWI-DLB **INTERVENOR-DEFENDANT SIERRA CLUB ET AL.'S MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION** Date: June 23, 2008 Time: 1:30 p.m. Room: Courtroom 3, 5th Floor Anthony W. Ishii United States District Judge

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INTRODUCTION

Inyo County seeks to quiet title to rights-of-way along four alleged highways that the County claims were constructed and maintained across designated wilderness in Death Valley National Park. Under the federal Quiet Title Act (QTA), the County was required to file its claim within 12 years of when it knew, or should have known, of an adverse claim by the United States. In 1979, the Bureau of Land Management (BLM) completed an inventory of the lands traversed by the routes – an inventory of which the County was well aware – and determined the lands to be "roadless" and free of any constructed, maintained public highways. BLM's 1979 roadless determination put the County on notice that the United States believed no roads or constructed highways existed in the areas, and thus started the clock on the QTA's 12-year statute of limitations. Because that clock ran out in 1991, 15 years before the County filed this case, this Court lacks jurisdiction to hear the County's claims.

STANDARD OF REVIEW

Rule 12(c) (when read together with Rule 12(h)(3)) permits defendants to move for dismissal for lack of subject matter jurisdiction after a responsive pleading has been filed. Wright & Miller, Federal Practice and Procedure § 1367 nn.17-21 (2004). "A judgment on the pleadings is properly granted when, taking all the allegations in the non-moving party's pleadings as true, the moving party is entitled to judgment as a matter of law." Fajardo v. County of Los Angeles, 179 F.3d 698, 699 (9th Cir. 1999).

Federal courts presume that a cause of action lies outside their limited jurisdiction, "and the burden of establishing the contrary rests upon the party asserting jurisdiction." Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994) (citation omitted). See also Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (party invoking federal jurisdiction bears the burden of establishing subject matter jurisdiction); Vacek v. U.S. Postal Serv., 447 F.3d 1248, 1250 (9th Cir. 2006) (same).

STATUTORY BACKGROUND

Inyo County's case is based on the interaction of two statutes, the QTA and a repealed, 19th Century right-of-way law known as R.S. 2477. Two other laws – the Wilderness Act and the wilderness inventory and management provisions of the Federal Land Policy and Management Act (FLPMA) – bear directly on when the QTA's statute of limitations began running.

A. The Quiet Title Act

Federal courts are courts of limited jurisdiction. Vacek, 447 F.3d 1248 (quoting Kokkonen, 511 U.S. at 377). Limitations upon federal jurisdiction may not be "disregarded or evaded." Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 374 (1978). "Sovereign immunity is an important limitation on the subject matter jurisdiction of federal courts. The United States, as sovereign, can only be sued to the extent it has waived its sovereign immunity." Vacek, 447 F.3d at 1250 (citation omitted). Thus, the terms of the United States' consent to be sued "define the court's jurisdiction to entertain the suit." Caton v. United States, 495 F.2d 635, 637 (9th Cir. 1974) (quotation omitted), citing United States v. Sherwood, 312 U.S. 584 (1941).

The QTA waives the United States' sovereign immunity in civil actions brought "to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. § 2409a(a). The Supreme Court has explained that "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property," holding that plaintiffs claiming an interest in property could not circumvent the QTA's limited waiver of sovereign immunity by filing suits against government officials. Block v. North Dakota, 461 U.S. 273, 286 (1983) (emphasis added).

The QTA limits how and when claims may be filed. The QTA requires that a party file suit within twelve years after learning of any United States claim to the property at issue:

> Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

28 U.S.C. § 2409a(g) (emphasis added). See also Block, 461 U.S. at 285-88; Fidelity Exploration and Prod. Co. v. United States, 506 F.3d 1182, 1185 (9th Cir. 2007). Courts have no jurisdiction to inquire into the merits of a case that is time-barred by § 2409a(g). See Block, 461 U.S. at 292 (because statute of limitations had run, "the courts below had no jurisdiction to inquire into the merits"); Fidelity Exploration, 506 F.3d at 1186 ("we treat the statute of limitations in the QTA as jurisdictional"). As a waiver of sovereign immunity, the QTA's limits must be strictly construed. United States v. Kubrick, 444 U.S. 111, 117-18 (1979); Nevada v. United States, 731 F.2d 633, 634 (9th Cir. 1984) (citing Block).

The QTA's twelve-year limitations period begins to run when a plaintiff knew, or should have known, of an adverse United States claim. 28 U.S.C. § 2409a(g). The "should have known" prong is satisfied when a plaintiff receives notice that the government may no longer recognize the interest plaintiff claims in the property at issue. United States v. Mottaz, 476 U.S. 834, 843-44 (1986). As the Ninth Circuit has explained: "The statute itself does not require that the United States communicate its claim in clear and unambiguous terms." State of Cal. ex rel. State Land Comm'n v. Yuba Goldfields, Inc., 752 F.2d 393, 397 (9th Cir 1985), cert. denied sub nom California State Lands Com. v. United States, 474 U.S. 1005 (1985). See also Spirit Lake Tribe v. North Dakota, 262 F.3d 732, 738 (8th Cir. 2001) (government's claim "need not be 'clear and unambiguous.'") (citation & quotations omitted). "Whether the interest claimed amounts to legal title in the United States is irrelevant if it constitutes a cloud on the plaintiffs' title …. Knowledge of the claim's full contours is not required. All that is necessary is a reasonable awareness that the Government claims some interest adverse to the plaintiff's." Knapp v. United States, 636 F.2d 279, 282-83 (10th Cir. 1980) (emphasis added). See also Park County, Montana v. United States, 626 F.2d 718, 721 n.6 (9th Cir. 1980).

B. R.S. 2477

R.S. 2477 states simply: "the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." Act of July 26, 1866, § 8, 14 Stat. 251, 253, formerly § 2477 of the Revised Statutes, later 43 U.S.C. § 932 (1970) (repealed). R.S. 2477 offered a grant of a right-of-way by the "construction" of a "highway" open to, and used by, the public on

public lands that were not reserved at the time of highway construction. See Adams v. United States, 3 F.3d 1254, 1257-58 (9th Cir. 1993). Congress repealed R.S. 2477, and replaced it with modern right-of-way provisions as part of FLPMA's Title V. FLPMA, Pub. L. 94-579, § 706(a), 90 Stat. 2743, 2793 (1976) (repealing R.S. 2477). Under FLPMA, perfected R.S. 2477 rights-of-way in existence on the date of R.S. 2477's repeal remain valid. 43 U.S.C. § 1769. See United States v. Vogler, 859 F.2d 638, 642 n.3 (9th Cir. 1988).

C. The Wilderness Act

The Wilderness Act of 1964 established a "National Wilderness Preservation System" whose purpose is "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness." 16 U.S.C. § 1131(a). As a first step, the Wilderness Act directed the Secretaries of Agriculture and Interior to review specific federal lands under their jurisdiction and determine within ten years which lands qualified for wilderness designation by Congress, the sole body empowered to establish wilderness areas. 16 U.S.C. § 1132(a)-(c). To qualify for wilderness designation, an area must be:

> undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; [and] (3) has at least five thousand acres or land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition ….

Wilderness Act, Sec. 2(c); 16 U.S.C. § 1131(c) (emphasis added). Designated wilderness cannot contain roads. 16 U.S.C. § 1133(c).

D. The Federal Land Policy and Management Act

In 1976, Congress adopted FLPMA as the organic act for the management of the more than 200 million acres of BLM land. 43 U.S.C. §§ 1701-84. FLPMA § 603(a) required the Secretary of Interior to review "roadless areas of five thousands acres or more" to determine whether the roadless lands had "wilderness characteristics described in the Wilderness Act." 43 U.S.C. § 1782(a) (emphasis added). BLM's Wilderness Inventory Handbook, which guided the agency's inventories, repeatedly emphasized that WSAs only include those lands that lack roads. BLM, Wilderness

Inventory Handbook (Sep. 27, 1978) at 3, 6 (describing as a "key factor" a determination that the area is roadless), 11, attached as Exh. 1. See also California State Lands Comm'n, 58 IBLA 213 (Sept. 29, 1981) (describing inventory process). Roadless areas meeting the criteria for wilderness as part of this review became known as Wilderness Study Areas (WSAs). FLPMA further required that all areas found to meet the criteria for wilderness be managed "so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c). See also Wilderness Inventory Handbook (Exh. 1) at 3, 7 (discussing non-impairment mandate); BLM, Interim Management Policy and Guidelines for Land under Wilderness Review, 44 Fed. Reg. 72,014, 72,015 (Dec. 12, 1979) (same). WSA designation thus constitutes a BLM finding that the area is roadless and would qualify for wilderness designation by Congress; that is that the area is "undeveloped," in a natural, unimpaired condition, and lacks "permanent improvements." 16 U.S.C. § 1131(c) (defining wilderness).

FACTUAL BACKGROUND

I. INYO COUNTY'S ALLEGED HIGHWAYS.

Inyo County seeks title to rights-of-way for four "County highways" pursuant to R.S. 2477. Complaint to Quiet Title (Oct. 25, 2006) at ¶¶ 3-5, 34, 38, 55 (describing routes as "County highways"), Dkt. Entry No. 1. The four routes are: the Petro Road (also known as the "Greenwater Canyon" route); the Lost Section Road – South; the Last Chance Road; and the Padre Point Road. Id. at ¶¶ 4, 48.[1] Each of these routes traverses land designated as wilderness and included within Death Valley National Park by Congress through the California Desert Protection Act of 1994. Id. at ¶¶ 64, 72, 80, 87.

The County alleges that each of these County highways was "constructed." Id. at ¶ 59 ("Petro Road was constructed"); ¶ 67 (same for Lost Section Road - South); ¶ 75 (same for Last Chance Road); and ¶ 82 (Padre Point Road "was constructed prior to 1950 and has been continuously maintained"). The County also alleges that each route has been "accepted into the County maintained mileage system." Id. at ¶ 48 (for all roads); ¶ 61 (Petro Road); ¶ 69 (Lost Section

[1] Maps of each of these routes are appended to the County's Complaint. See Dkt. Entry No. 1 at 18-32.

Road); ¶ 77 (Last Chance Road); and ¶ 85 (Padre Point Road). The County further alleges that it maintained some or all of three of the four routes. Id. at ¶ 61 (Petro Road); ¶ 69 (Lost Section Road - South); and ¶ 82 (Padre Point Road).

II. INYO COUNTY'S ALLEGED HIGHWAYS CROSS LANDS BLM DESIGNATED AS WSAs IN 1979.

Prior to their inclusion in Death Valley National Park in 1994, the lands traversed by the four routes at issue here were managed by BLM within the California Desert Conservation Area (CDCA). FLPMA created the CDCA in 1976 to "provide for the immediate and future protection" of the designated lands, and required BLM to complete by September 30, 1980 a management plan for the area. 43 U.S.C. § 1781(b)-(d).

As part of that planning process, BLM inventoried the CDCA for wilderness character in 1978 and 1979. See BLM, First Report to the Congress, California Desert Conservation Area (1978) at 39-40 (describing BLM's then-ongoing wilderness inventory process), attached as Exh. 2 (Inyo Production at 152-60)[2]; California State Lands Comm'n, 58 IBLA 213 (Sep. 29, 1981) (describing wilderness inventory process for the CDCA); BLM, CDCA Wilderness Inventory, Final Descriptive Narrative (Mar. 31, 1979) at ii, 235-45 (hereafter "BLM Final Wilderness Inventory") (same), excerpts attached as Exh. 3. BLM held 17 public meetings statewide to inform the public of the wilderness inventory process it would employ in the CDCA. BLM, First Report to the Congress (Exh. 2) at 39. BLM staff then divided the CDCA "into numbered roadless polygons and conducted on-the-ground checks in each, developing descriptive narratives on findings and rationales." Id. at 40. BLM completed its initial inventory for each CDCA roadless area on November 1, 1978. See BLM, Draft Wilderness Inventory Phase, Descriptive Narratives, CDCA (Nov. 1, 1978), excerpts for WSAs numbered 112, 127, 147 and 148 attached as Exh. 4.

After permitting the public an opportunity to review and comment on the inventories, BLM issued its final wilderness inventory analysis in late March 1979. See BLM Final Wilderness Inventory (Exh. 3). With this analysis, BLM published a map, dated March 31, 1979, that identified

[2] Documents provided by Inyo County on November 17, 2007 in response to Sierra Club's request for production and attached hereto are identified as "Inyo Production" and by page number of the County's production.

the locations of each of the WSAs. BLM Map, California Desert Wilderness Inventory, FINAL (Mar. 31, 1979), excerpts attached as Exh. 5. Virtually contemporaneously, on March 30, 1979, BLM published in the Federal Register notice of its "Designated Wilderness Study Areas" for the CDCA. BLM, California Desert Conservation Area, Designated Wilderness Study Areas, 44 Fed. Reg. 19,044 (Mar. 30, 1979), attached as Exh. 6.; see also California State Lands Comm'n, 58 IBLA 213 (Sep. 29, 1981) ("On March 30, 1979, the California State Director, BLM, published a list of the areas within the CDCA which were designated as WSA's"). The BLM determined that "all, or any portions of, the 138 areas listed herein … meet[] the wilderness criteria of Section 2(c) of" the Wilderness Act. 44 Fed. Reg. 19,044. Further, BLM stated that these areas were "roadless areas containing at least 5,000 acres of contiguous public lands," and that the areas' boundaries were set by "rights-of-way … and existing roads." Id. at 19,045 (emphasis added).

Inyo County admits that each of its claimed highways traverses an area designated by the BLM as a "wilderness study area" in 1979.[3] BLM's March 31, 1979 maps identify as "roadless areas which ... have been determined to possess wilderness values … and have been designated as [WSAs]" the following areas: WSA 112, which is traversed by the County's Last Chance Road claim; WSA 127, which is traversed by the Padre Point Road claim; WSA 147, which is traversed by the Petro Road claim; and WSA 148, which is traversed by the Lost Section Road – South claim. See BLM Map (Exh. 5).[4] The March 30, 1979 Federal Register notice identifies each of these four areas (and many others) by WSA number and acreage. 44 Fed. Reg. at 19,044-45.

[3] See Plaintiff County of Inyo's Response to Defendant-Intervenor Sierra Club's First Set Of Discovery Requests (Nov. 16, 2007) at unnumbered tenth page (admitting that "Lost Section South and Padre Point Road traverse land designated as Wilderness Study Areas in 1979" and that "[p]ortions of Last Chance Road and Petro Road traverse land designated as Wilderness Study Areas in 1979"), attached as Exh. 7.

[4] In 1990, California BLM prepared a report to assist the Interior Secretary in determining whether WSAs should be recommended for protection as wilderness. See BLM, California Statewide Wilderness Study Report (1990), available at http://www.blm.gov/ca/pa/wilderness/wsa/wsa_report_final.html (last viewed May 9, 2008), excerpts attached as Exh. 8. This report contains larger scale maps of each of the relevant, making it easier for one to compare maps to determine that each route claimed by Inyo County is within a WSA. See id.

ARGUMENT

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER INYO COUNTY'S QUIET TITLE ACT CLAIMS BECAUSE THE STATUTE OF LIMITATIONS HAS RUN.

BLM's March 30, 1979 publication in the Federal Register of its "Designated Wilderness Study Areas" for the CDCA started the clock running on the QTA's statute of limitations. 44 Fed. Reg. 19,044. As noted above, that notice stated that all WSAs identified, including the four through which by the County's claims run, were "roadless," "meet[] the wilderness criteria of Section 2(c) of" the Wilderness Act, and that the areas' boundaries were set by "rights-of-way … and existing roads." Id. at 19,044-45 (emphasis added). Federal Register publication put the public on notice that BLM determined and asserted that there were no roads within the any of the listed WSAs, including those crossed by the County's claimed constructed and maintained highways, and that BLM claimed the entirety of each WSA, and claimed it as roadless. In addition, the notice stated that BLM made "rights-of-way" the outer boundaries of WSAs. Id. This indicates that no rights-of-way for public highways (which Inyo County claims here) could be found within the CDCA WSAs.[5]

Further, the entire management framework required by FLPMA and its implementing policy makes impossible the existence of roads, constructed highways, or public highway rights-of-way open to motor vehicles in WSAs. WSAs are designated pursuant to FLPMA's mandate that Interior Department review "roadless areas of five thousands acres or more." 43 U.S.C. § 1782(a) (emphasis added). A WSA is defined by law as an area with wilderness characteristics, one that is eligible for wilderness designation by Congress. Wilderness Act, Sec. 2(c); 16 U.S.C. § 1131(c) (defining wilderness). Consequently, a WSA by definition cannot contain a constructed and maintained County highway. See supra at 4-5.[6]

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[5] BLM's 1979 map (Exh. 5) and the map in its 1990 Wilderness Study Report for the Last Chance Mountain WSA (WSA 112) (see Exh. 8) both show a "cherry stem" – a narrow area excluded from the WSA 112 along the WSA's northern boundary. This cherry stem corresponds to the general location of the northern half-mile of the County's Last Chance Road claim. Sierra Club's motion seeks to dismiss Inyo County's Last Chance Road claim only for those portions of the route within the WSA, and not the cherry-stemmed portion of the route that was not within the WSA.

[6] In addition, under BLM's policy, once the agency designated an area as a WSA, it notified the public that it intended to manage the area to preserve it for potential designation as wilderness,

The legislative history accompanying FLPMA make clear that in determining an area to be "roadless" and to have wilderness character, BLM sought to exclude portions of areas containing open county roads. While FLPMA's wilderness suitability review provisions do not define the term "roadless," the House report accompanying the legislation did:

> The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

H.R. Rep. 94-1163, 94th CONG., 2d SESS. 17 (1976).[7] BLM explicitly adopted this definition in direction on conducting wilderness inventories. See Wilderness Inventory Handbook (Exh. 1) at 5-6; California State Lands Comm'n, 58 IBLA 213 (Sep. 29, 1981) (discussing definition of roadless in FLPMA). Thus, BLM would not have designated as WSAs the lands where the County's claimed highway rights-of-way exist, since the County alleges each was "constructed" and that each was either maintained or part of the County's "maintained mileage system." See supra at 5-6 (quoting County's complaint). The fact that BLM designated the WSAs means BLM determined no such claimed highways burdened the areas.

Finally, the Interior Department Solicitor's office in 1980 – just a year after the four WSAs at issue here were designated – examined the interplay of R.S. 2477 and BLM's wilderness inventory and concluded that R.S. 2477 right-of-ways could not exist within WSAs, because a "constructed" highway for purposes of R.S. 2477 was essentially the same as an "improved and maintained" road for purposes of BLM's wilderness inventory.

> [A]n area containing a highway validly constructed under the offer of R.S. 2477 is of necessity not roadless under section 603 of FLPMA [43 U.S.C. § 1782], because an area containing a valid R.S. 2477 highway can never meet the definition of "roadless" in the House Report [H.R. Rep. 94-1163]. That is, a valid R.S. 2477 right-of-way must be a public highway constructed (or, as the House Report on Section 603 indicates, "improved and maintained by mechanical means") over unreserved public lands, and can, therefore, never be a way established merely by the passage of

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consistent with 43 U.S.C. § 1782(c), and thus to prohibit public roads in the area, and its authority to restrict, and, if needed, terminate motor vehicle use in the area. BLM, Interim Management Policy, 44 Fed. Reg. at 72,023-25. As a result, BLM's WSA designation in 1979 provided public notice of the agency's assertion of regulatory authority inconsistent with the existence of any constructed and maintained public road or highway right-of-way.

[7] The Supreme Court has repeatedly held that "the authoritative source for legislative intent lies in the Committee Reports on the bill." See Eldred v. Ashcroft, 537 U.S. 186, 209 n.16 (2003) (citations omitted).

> vehicles. Read in this way, the two statutes [FLPMA and R.S. 2477] are consistent with each other and with the settled rules of statutory construction that Congress is presumed to be cognizant of prior existing law, and that statutes should be construed consistent with each other where reasonably possible.

Letter of Frederick N. Ferguson, Deputy Solicitor, Dep't of Interior, to James W. Moorman, Assistant Attorney General (Apr. 28, 1980) at 11-12, attached as Exh. 9. Thus, by determining that the areas were roadless WSAs, BLM announced that the areas contained no R.S. 2477 rights-of-way. The Interior Department Solicitor's office interpretation here is owed some deference, given the specialized experience of the Interior Department in addressing both FLPMA and R.S. 2477. See United States v. Mead Corp., 533 U.S. 218, 234 (2001) ("an agency's interpretation may merit some deference whatever its form, given the specialized experience and broader investigations and information available to the agency" (quotations and citation omitted)).

In sum, BLM's March 1979 designation of the lands traversed by the four routes as WSAs was a plain statement by the United States that no constructed and maintained highways existed in each area, and that each area was roadless, and had wilderness character. As such, the County "should have known" that the United States was claiming an interest adverse to that of any County claim that a constructed and maintained County highway existed in each of the WSAs. United States v. Mottaz, 476 U.S. at 843-44. The QTA statute of limitations thus started running in 1979 and ran out in 1991, fifteen years before Inyo County filed this case.

The County cannot complain that it did not have notice of the United States' determination that these lands were roadless and contained no highways. Federal courts have held that publication in the Federal Register of a United States claim of interest is sufficient to start the clock on the QTA's twelve-year statute of limitations. See Govt. of Guam v. United States, 744 F.2d 699, 701 (9th Cir. 1984) (executive order published in the Federal Register constituted formal notice for QTA limitations period); Southwest Four Wheel Drive Ass'n v. Bureau of Land Management, 271 F. Supp. 2d 1308, 1312 (D.N.M. 2003), aff'd, 363 F. 3d 1069 (10th Cir. 2004) (designation of WSA published in the Federal Register constituted formal notice for QTA limitations period). See also Shiny Rock Mining Corp. v. United States, 906 F.2d 1362, 1364 (9th Cir. 1990) (Federal Register publication "is legally sufficient notice … regardless of actual knowledge" (citations omitted)).

Indeed, Inyo County was intimately familiar with the wilderness inventory process and received actual notice of the WSA designations. BLM policy required public involvement throughout the WSA determination process. BLM, Wilderness Inventory Handbook (Exh. 1) at 11, 14. BLM reports state that agency staff "conducted continuing consultation and coordination" with numerous local governments, including the Inyo County Board of Supervisors and Planning Commission, and that BLM staff held at least three public meetings as well as workshops in Lone Pine in Inyo County. See BLM Final Wilderness Inventory (Exh. 3) at 237-41. During this process, the County acknowledged that the wilderness inventory and designation process could impact the County's road system. See Inyo County Resolution 78-111, A Resolution on California Desert Conservation Area Inventory and Study Program (Sep. 5, 1978) at 1 (expressing the County's "grave concerns" regarding BLM's inventory and study under FLPMA and the Wilderness Act, and urging that BLM "insure … that the County road system as well as Public roads in the area are clearly recognized and preserved for the use of the General Public"), attached as Exh. 10 (Inyo Production 135-36). Inyo County appears to have actually received the Federal Register notice announcing the WSA determinations, and to have received notification of the same directly from BLM. See BLM, California Desert Conservation Area, Designated Wilderness Study Areas, 44 Fed. Reg. 19,044 (Mar. 30, 1979), attached as Exh. 11 (Inyo Production 161-62); letter of E. Hastey, BLM State Director to R. McDonald, Inyo County Bd. of Supervisors (Apr. 10, 1979) (stating wilderness inventory is "complete," that a map of the WSAs is enclosed, and discussing the March 30, 1979 Federal Register notice), attached as Exh. 12 (Inyo Production 166).[8]

[8] Inyo County files contain numerous other documents indicating the County's awareness of and participation in BLM's wilderness inventory process as it occurred. See BLM, First Report to the Congress (Exh. 2) at 39-40 (describing BLM's then-ongoing wilderness inventory process) (Inyo Production at 152-60); letter of R. McDonald, Inyo County Supervisor to C. Record, Calif. Desert Advisory Comm. (Oct. 19, 1978) at 1 (expressing "surprise[]" and "dismay[]" at BLM's approach "in distinguishing potential roadless wilderness areas"), attached as Exh. 13 (Inyo Production 142-43); letter of G. Budlong, Inyo County Planning Dept. (Oct. 25, 1978) (notifying committee members of BLM public meeting to review "Draft Wilderness Inventory Map and Text"), attached as Exh. 14 (Inyo Production 144); letter of C. Record, Calif. Desert Advisory Comm. to R. McDonald, Inyo County Supervisor (Nov. 7, 1978) at 2 (stating that BLM sent County Supervisors a packet on Oct. 31, 1978 containing "the draft wilderness inventory maps and narratives"), attached as Exh. 15 (Inyo Production 145-46); memo. from Inyo County Planning Comm'n to Inyo County Board of Supervisors (Nov. 28, 1978) (discussing planning commission's review of BLM's inventory of potential wilderness areas), attached as Exh. 16 (Inyo Production 150).

The County had constructive and actual notice of the United States' claim that the WSAs crossed by the four alleged highway rights-of-way contained no constructed or maintained routes. This provided the County notice that "the government claim[ed] some interest adverse" to the County's claim that public highways crossed these areas. See Knapp, 636 F.2d at 283. The QTA statute of limitations clock thus began running in March 1979, and ran out long before Inyo County filed this case.

Federal caselaw supports this result. See Southwest Four Wheel Drive Ass'n, 271 F. Supp. 2d at 1311-14. In Southwest, plaintiffs sought title to R.S. 2477 rights-of-way within a WSA in New Mexico, hoping to overturn a 1998 BLM decision closing routes there to motor vehicle use. The court summarized BLM's arguments:

> Defendants argue that Plaintiffs knew or should have known in 1980, when the WSA was designated, that the United States claimed there were no "public roads" within the Robledo WSA. They contend that by definition a WSA designation means the United States asserts that the area is roadless. Further, they argue that the 1980 WSA designation would not have been valid if there were "public roads" within the WSA that had been constructed and maintained prior to 1976. Defendants argue that the 1980 publication in the Federal Register of notice of the BLM's "Final Intensive Wilderness Inventory Decisions" triggered the QTA's statute of limitations.

Id. at 1311. The Court ruled that the QTA's statute of limitations had run out, adopting BLM's analysis:

> As noted above, on November 14, 1980, the BLM designated 11,640 acres as the Robledo Mountains Wilderness Study Area. See 45 Fed. Reg. 75,590. I agree with Defendants' argument that this publication provided notice that triggered the QTA's statute of limitations…. This designation put Plaintiffs and the public on notice in 1980 that BLM claimed all of the [wilderness study] area and did not recognize any alleged rights-of-way, thus triggering the 12 year limitations period for challenging that finding.

Id. at 1312. Here, as in Southwest, the routes at issue are within lands designated as WSAs. Here, as in Southwest, publication of WSA designation in the Federal Regiseter put the plaintiff on notice that the United States claimed that all lands in the WSAs were roadless, and thus that the United States did not recognize any public highway rights-of-way within the WSAs. Here, as in Southwest, the plaintiff's QTA claims should be dismissed, since Inyo County failed to bring suit by 1991, twelve years after the WSA designation.

CONCLUSION

In 1979, BLM designated as WSAs the areas traversed by each of Inyo County's claimed highways. Inyo County should have known that the BLM's determination that these areas were roadless and had wilderness character represented a United States claim adverse to the County's interest in a constructed and maintained County highway. This Court, therefore, only would have had jurisdiction over a County claim to a property right in a highway in such areas if the claim had been filed by 1991. Because the County waited an additional 15 years – until 2006 – to file its claims, the Court must dismiss the County's QTA claims for lack of jurisdiction.

DATED: May 9, 2008

Respectfully submitted,

s/ Edward B. Zukoski
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TABLE OF EXHIBITS

Exhibit 1.	BLM, Wilderness Inventory Handbook (Sep. 27, 1978)
Exhibit 2.	BLM, First Report to the Congress, California Desert Conservation Area (1978)
Exhibit 3.	BLM, CDCA Wilderness Inventory, Final Descriptive Narrative (Mar. 31, 1979) (excerpts)
Exhibit 4.	BLM, Draft Wilderness Inventory Phase, Descriptive Narratives, CDCA (Nov. 1, 1978) (excerpts)
Exhibit 5.	BLM Map, California Desert Wilderness Inventory, FINAL (Mar. 31, 1979) (excerpts)
Exhibit 6.	BLM, California Desert Conservation Area, Designated Wilderness Study Areas, 44 Fed. Reg. 19,044 (Mar. 30, 1979)
Exhibit 7.	Plaintiff County of Inyo's Response to Defendant-Intervenor Sierra Club's First Set Of Discovery Requests (Nov. 16, 2007)
Exhibit 8.	BLM, California Statewide Wilderness Study Report (1990) (excerpts)
Exhibit 9.	Letter of Frederick N. Ferguson, Deputy Solicitor, Dep't of Interior, to James W. Moorman, Assistant Attorney General (Apr. 28, 1980)
Exhibit 10.	Inyo County Resolution 78-111, A Resolution on California Desert Conservation Area Inventory and Study Program (Sep. 5, 1978) (from Inyo County files)
Exhibit 11.	BLM, California Desert Conservation Area, Designated Wilderness Study Areas, 44 Fed. Reg. 19,044 (Mar. 30, 1979) (from Inyo County files)
Exhibit 12.	Letter of E. Hastey, BLM State Director to R. McDonald, Inyo County Bd. Of Supervisors (Apr. 10, 1979) (from Inyo County files)
Exhibit 13.	Letter of R. McDonald, Inyo County Supervisor to C. Record, Calif. Desert Advisory Comm. (Oct. 19, 1978) (from Inyo County files)
Exhibit 14.	Letter of G. Budlong, Inyo County Planning Dept. (Oct. 25, 1978) (from Inyo County files)
Exhibit 15.	Letter of C. Record, Calif. Desert Advisory Comm. to R. McDonald, Inyo County Supervisor (Nov. 7, 1978) (from Inyo County files)
Exhibit 16.	Memo. from Inyo County Planning Comm'n to Inyo County Board of Supervisors (Nov. 28, 1978) (from Inyo County files)