Statutes: Filing of Environmental Assessment Does Not Constitute Notice of Adverse Claim Under Quiet Title Act; Record Shows That Public Road Was Abandoned

County of Shoshone v. United States of America, No. 13-35078 (9th Cir. Oct. 31, 2014).

Despite avoiding dismissal on statute of limitations grounds because the filing of an "environmental assessment" is not sufficient notice of an adverse claim, an Idaho county could not prevent the closing of a National Forest road due to lack of sustained use more than a century ago.

In 1997, the United States closed four miles of Eagle Creek Road in the Idaho Panhandle National Forest in Shoshone County, Idaho. The county sought to challenge the federal government's ability to do so by bringing a claim under the Quiet Title Act of 1972, which is the exclusive remedy to quiet title against the federal government. In order to win the claim the case turned on an esoteric issue: whether the thoroughfare was a public road based on at least five years of regular public years between 1884 and 1893.

In 1866 Congress allowed for an open-ended grant for the right-of-way for highway construction through public lands, commonly known as R.S. 2477, which is how many roads in the West were initially established. Eagle Creek Road was a route created under this congressional enactment. As the District Court determined based on historic facts entered in the record, the road was created during the gold rush of 1883 and 1884, when merchant businessmen set up the route to sell goods to eager gold seekers. However, the court also found, that by the spring of 1885 a different route was constructed that made the original Eagle Creek Road obsolete. As a result the lower court found that, within about three to four years the road became just a trail. Shoshone countered this by arguing that "mining activities of the tenacious old-timers who carried on after the exodus in 1884" made the road regularly used by the public. The District Court ruled for the United States and Shoshone appealed.

HELD: The Ninth Circuit affirmed the District Court.

DISCUSSION: Before reaching the merits, the Ninth Circuit addressed the United States' threshold argument that jurisdiction was absent given Shoshone's failure to bring the case within the applicable statute of limitations. The Quiet Title Act of 1972 requires any action under it be taken within twelve years of its accrual date--the date upon which the plaintiff knew or should have known of the claim of the United States. The United States argued the Watershed Environmental Assessment issued in April 1997, or at latest, its supplement environmental assessment issued in July 1997, put Shoshone on notice. The Circuit Court rejected these arguments, holding that an environmental assessment is not a "decisional document. The assessment did not clearly put the County on notice of the federal government's adverse position and therefore did not begin running the statute-of-limitations clock under the Quite Title Act.

Having determined it had jurisdiction, the Court moved on to the merits, which required employing Idaho law. Though R.S. 2477, which have created the road at issue, is a federal law, to determine what is actually a right-of-way in each state requires courts to "borrow" state law

principles. Idaho Supreme Court precedent mandated that pursuant to the applicable Idaho law, Rev. St. Idaho Terr. §§ 850-851 (1887), the creation of a highway over public land required that "a road, street, alley or bridge" be "erected or laid out by the public, and [be] used for a period of five years." Moreover, the Idaho court held that the "use must be regular public use and not casual or desultory."

Evaluating the historical record, the lower court held the use of Eagle Creek Road after the initial couple years of the gold rush was "casual and desultory." Shoshone argued that "old-timers" used it regularly, thus creating a "public road." The reviewing court agreed with the District Court based on its "thorough review of the circumstantial evidence." Since the appeal was reduced to, at its core, a challenge to the fact finding of the lower court, the lowest review standard of clear error was used and under it the Ninth Circuit could not say the District Court's "thorough" review was illogical, implausible, or lacking support from the record.

http://cdn.ca9.uscourts.gov/datastore/memoranda/2014/10/31/13-35078.pdf (last accessed Nov. 5, 2014).