
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

KANE COUNTY, UTAH (2), (3) and (4),
a Utah political subdivision; and STATE OF
UTAH,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant,

SOUTHERN UTAH WILDERNESS
ALLIANCE, et al.,

Permissive Intervenor-Defendants.

**ORDER RE: REQUEST FOR
HEARING**

Case No. 2:10-cv-01073
Consolidated with: 2:11-cv-1031 and
2:12-cv-476

Judge Clark Waddoups

On July 19, 2024, Plaintiffs Kane County, Utah and the State of Utah filed a Request for Hearing. Although styled as a “request,” the court is treating the request as a Motion for Hearing and other relief. The motion contains briefing on the subject of the motion and sets forth the relief that Plaintiffs are seeking. One request was for the court to set an expedited hearing on an issue pertaining to the K6000 House Rock Valley Road. That request for a hearing has been granted, and a hearing has been set for August 21, 2024, to hear evidence and argument. A second request is for the court to “require the BLM to pay for the excess maintenance and response costs caused by the BLM’s refusal to allow the culverts” to be installed on K6000. Req’t for Hearing, at 11 (ECF No. 786). The court lacks authority to grant that request, and therefore denies it.

The remaining request is for the court to determine whether Kane County may proceed “to install culverts at Buckskin Wash, even on an interim basis and regardless of title to the road” being quieted, to address safety concerns. *Id.* That issue is the subject of the hearing. Plaintiffs should come prepared to address the court’s authority to grant the relief requested.

The United States filed a response asking for clarification about what will be addressed at the hearing. Plaintiffs have moved to quiet title to K6000 on the basis that it is an R.S. 2477 road. On August 9, 2024, the court issued a ruling determining that Plaintiffs have vested title in K6000 as holders of an R.S. 2477 road. Vested title is not the same as perfected title, but unless title is quieted in favor of the United States for K6000, Plaintiffs may continue to exercise their rights as holders of an R.S. 2477 road. Plaintiffs contend safety issues have arisen because the United States has precluded Kane County from installing culverts at Buckskin Wash, contrary to their rights.

While an action is pending under the Quiet Title Act, the Act provides, “[t]he United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree.” 28 U.S.C. § 2409a(b). It further provides “[n]o preliminary injunction shall issue in any action brought under this section.” *Id.* § 2409a(c). The United States has closed a number of roads in Kane County. It is not being disturbed in its possession or control of those roads while this action is pending. For roads that are open, however, such as K6000, the United States is a servient estate to a holder of an R.S. 2477 right-of-way unless title is quieted in its favor. When a holder exercises its rights as a dominant estate, it is not disturbing the United States’ possession and control of its servient estate.

At the hearing, the parties should be prepared to address the safety conditions that exist at Buckskin Wash. The hearing also is to receive evidence about the proposed culverts, the burden the culverts will impose on the servient estate, and how the proposed installation is expected to be accomplished. Plaintiffs should address why they contend the culverts are necessary. The United States should address why it contends the culverts are not necessary. The parties should further address what efforts, if any, have been made to consult about the culverts.

The above does not limit what evidence the parties may elect to put on at the hearing, but it should inform the parties about the subjects that should be addressed. This evidence will be part of the record when summary judgment briefing is done on K6000. The parties should be aware that the court intends to set a briefing schedule for summary judgment on the issue of *title* of K6000 and be prepared to discuss dates for that briefing.

The court further notifies the United States that it is concerned about the course of action the United States has followed for Class B roads. Class B roads existing on a pre-1976 Kane County General Highway Map stand on a different footing than a road simply appearing on a map. As explained in the court's August 9, 2024 memorandum decision, significant effort went into creating each map and ensuring such roads were being maintained by the relevant county. The maps were not done in contemplation of litigation. They were done when R.S. 2477 was still in effect and grants were self-executing. They were done to document county roads that were being maintained.

In light of the unique posture of Class B roads appearing on Kane County General Highway Maps prior to October 21, 1976, and the limits on the United States' authority to interfere with

vested R.S. 2477 rights, the United States should come prepared to address why its refusal, if any, to consult with Plaintiffs about the culverts has been appropriate.

The court provides notice to the United States that it also should be prepared to address whether it has been abusing the rights of an R.S. 2477 holder and the litigation process relative to this K6000 Class B road. To the extent there has been an abuse, the court may require briefing on what action the court may take pursuant to its inherent authority.

SO ORDERED this 13th day of August, 2024.

BY THE COURT:



Clark Waddoups
United States District Court