

No. 21-1164

In The
Supreme Court of the United States

LARRY STEVEN WILKINS; JANE B. STANTON,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

JOINT APPENDIX

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Relevant Docket Entries

United States District Court
for the District of Montana
Wilkins v. United States
Case No. 9:18-cv-00147-DLC-KLD

Dkt.	Date	Description
1	8/23/2018	Complaint
12	10/24/2018	Answer
24	12/5/2018	Scheduling Order
30	10/11/2019	Motion to Dismiss for Lack of Jurisdiction
31	10/11/2019	Memorandum in Support of Motion to Dismiss for Lack of Jurisdiction
32	10/11/2019	Notice of Filing Exhibits to Motion to Dismiss for Lack of Jurisdiction (Exhibits 1–31)
35	11/15/2019	Response to Motion to Dismiss for Lack of Jurisdiction
36	11/15/2019	Notice of Filing Exhibits to Response to Motion for Lack of Jurisdiction (Exhibits 32–40)

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37	11/15/2019	Notice of Filing Exhibits to Response to Motion for Lack of Jurisdiction (Exhibits 41–46)
38	11/15/2019	Notice of Filing Exhibits to Response to Motion for Lack of Jurisdiction (Exhibits 47–55)
39	11/29/2019	Reply to Response to Motion to Dismiss for Lack of Jurisdiction
41	12/19/2019	Motion for Summary Judgment
42	12/19/2019	Memorandum in Support of Motion for Summary Judgment
43	12/19/2019	Statement of Undisputed Fact re: Motion for Summary Judgment
44	12/19/2019	Notice of Filing Exhibits re: Motion for Summary Judgment (Exhibits 21–23)
45	12/19/2019	Notice of Filing Exhibits re: Motion for Summary Judgment (Exhibits 24–33)

Dkt.	Date	Description
50	1/23/2020	Response to Motion for Summary Judgment
51	1/23/2020	Statement of Undisputed Facts re: Motion for Summary Judgment
53	2/4/2020	Findings and Recommendations re: Motion to Dismiss for Lack of Jurisdiction
54	2/5/2020	Reply to Response to Motion for Summary Judgment
55	2/18/2020	Objection to Findings and Recommendations
56	3/2/2020	Reply to Objection to Findings and Recommendations
57	5/15/2020	Order re: Notice of Filing Exhibits by United States of America [Docket 32]
58	5/18/2020	Notice by United States of America re: Order [Docket 57]
59	5/26/2020	Order rejecting Findings and Recommendations

Dkt.	Date	Description
60	5/26/2020	Clerk's Judgment
61	6/22/2020	Motion to Alter Judgment
62	6/22/2020	Memorandum in Support of Motion to Alter Judgment
65	7/20/2020	Response to Motion to Alter Judgment
66	7/29/2020	Reply to Response to Motion to Alter Judgment
67	8/11/2020	Order denying Motion to Alter Judgment
68	8/26/2020	Notice of Appeal

Chronological List of Relevant Docket Entries

United States Court of Appeals
for the Ninth Circuit
Wilkins v. United States
Case No. 20-35745

Dkt.	Date	Description
11	12/23/2020	Opening Brief
12	12/23/2020	Excerpts of Record
20	2/26/2021	Answering Brief
21	2/26/2021	Supplemental Excerpts of Record
30	4/16/2021	Reply Brief
31	4/16/2021	Further Excerpts of Record
40	9/15/2021	Opinion
41	9/15/2021	Memorandum
42	10/29/2021	Petition for Rehearing En Banc
43	11/23/2021	Order denying Petition for Rehearing En Banc

Ninth Circuit Excerpts of Record 88 filed 12/23/2020

Deposition of Charles Oliver, Oct. 25, 2019

* * * * *

[Page 38:1–25]

Q. And did you offer anything in particular to Mr. Wilkins?

A. No, didn't offer him any specific. What I did – what I recall, and it was one of our later discussions before I left, was that I let him know that we are going to be entering into our travel management process for the Bitterroot Forest, and that would be a great opportunity to offer some input and bring up the discussions about management of that road and location of the road.

Q. Did you discuss with Mr. Wilkins what could have been the outcome of a travel management process with respect to Robbins Gulch Road?

A. Nope, nothing specific on it. I let him know that some of the things that we've done on other roads, not that we necessarily could do there, but that we've done on other roads, we've done some temporary closures, we've done some complete road closures, we've done some road relocations.

There's a lot of things we could do, but every one of those things has to be analyzed site specifically, and there are many issues that have to be considered. So that's why I suggested he work through the travel

management process with the idea team as they were doing their analysis.

* * * * *

Ninth Circuit Excerpts of Record 110–112
Filed 12/23/2020

* * * * *

DECLARATION OF LARRY STEVEN WILKINS

I, Larry Steven “Wil” Wilkins, declare as follows:

1. I am over 18 years of age, I have personal knowledge of the facts set forth in this Declaration. If called, I could and would testify to these facts in court.
2. I am a resident of Ravalli County, Montana.
3. I am a veteran of the Coast Guard and have been diagnosed with post-traumatic stress disorder.
4. In 2004, I purchased property along Robbins Gulch Road.
5. During my time on the road, the Forest Service has temporarily placed road closure signs along Robbins Gulch Road.
6. These road closure signs have never been specific. I only recall the signs saying “road closed ahead” or something to that effect.
7. I interpreted these signs as closing Robbins Gulch Road on the National Forest.
8. In August of 2018, I noticed a “Condon Sign Shop” sticker on the back of a “Public Access Thru Private Lands” sign installed along Robbins Gulch Road.

9. In August of 2018, I contacted the Condon Sign Shop to ask what the sticker meant. I spoke to Russ Kesler, the owner of the shop.

10. Russ told me that he punches the sticker whenever he makes a sign. He told me that the numbers on the sticker reflect the date the sign was manufactured, not the date the sign was installed. He said that, sometimes, signs will lay around Forest Service Shops for years before they are installed.

11. In October of 2019, I called Condon Sign Shop again. I once again spoke with Russ Kesler. He repeated what he said in our previous conversation.

12. On September 29, 2019, I discovered that someone traveling along Robbins Gulch Road shot my cat.

13. I took my cat to the vet. X-rays confirmed that the cat has 30 pieces of shot, most likely from a shotgun blast.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8 day of Nov, 2019, in Conner,
Montana

Respectfully submitted,

/s/ Larry S. Wilkins
Larry Steven "Wil" Wilkins

Ninth Circuit Excerpts of Record 114–116
Filed 12/23/2020

* * * * *

DECLARATION OF MARION DIAL

I, Marion Dial, declare as follows:

1. I am over eighteen years of age, I have personal knowledge of the facts set forth in this Declaration. If called, I could and would testify to these facts in court.

2. I am a resident of Corvallis, Montana.

3. From 1976 to 2019 I owned property along Robbins Gulch Road. I camped there in summers until I built a home in 1995, living there permanently for 24 years.

4. When I purchased my property in 1976, I believed that the public did not have a right to use the road.

5. Several times while living on Robbins Gulch Road, the public's use of the road caused safety problems and interfered with my use and enjoyment of my home.

6. I observed several instances of the public illegally hunting on my private property.

7. Several times during the winter, I discovered snow mobile tracks on my snow covered driveway up to my barn. Someone had come up after dark. Later I

learned from neighbors that it was mountain lion hunters.

8. One year, a man came to my door to ask permission to cross my property to look for his dogs. He had his young son with him, the man told me that the dogs had jumped out of his truck. Two days later, when I returned home, I found a note on my door from same man saying that because I previously let him cross my property to get his dogs, he went ahead and did so again. A few days later, he came again and brought me cookies to thank me for letting him get his dogs. At the time, I had no idea the guy was a mountain lion hunter. A day or two later my neighbor had some mountain lion hunters stop in front of his place and let their dogs out. The dogs took off up his hill. My neighbor came running out to their truck and asked them what they were doing. The hunters said I had given them permission to hunt mountain lions on Robbins Gulch Road. Later, the mountain lion hunter came back and killed a mountain lion just below my house. My closest neighbor observed and heard the shot and called the game warden. The game warden called me to see if I wanted to press charges, and I told him I did.

9. One summer in 2007, someone came up Robbins Gulch Road about a mile and a half and camped. They built a campfire and it got out of control. They fortunately came to a neighbor for help. A fire in the Gulch would have destroyed most of our homes.

10. One time, on my way to town traveling down my driveway I came to Robbins Gulch and turned left heading for HWY 93. As I came around the first corner a Forest Service truck came speeding around the

corner. I was sure we would collide. I went off the road and he slammed on his brakes. He apologized for going too fast. It scared the heck out of me.

11. One year, a neighbor with my permission to hunt on my property came up to my house to tell me there were two gut piles by my barn and one gutted elk on the ground. Apparently, two were freshly shot. One was taken and they apparently were coming back to get the other. I kept the other and harvested it.

12. One year someone shot two windows in my barn. At the time, we had horses. A few days earlier, my husband and I picked up horse treats at the feed store, two big bags of alfalfa cubes. We put them in a garbage can in the tack room to keep the mice out. A few days later my husband came up from the barn and wanted confirmation that we had indeed bought horse treats. Well, they were gone. A week after that my husband was in a fatal motorcycle accident. A nephew and I went down to the barn to get cat food and found the two empty bags of horse treats with 4 deer legs in each. Our thought was who ever took the horse treats used them to chum for deer as it was hunting season. When we went to get our two blinds they were gone and our bottles of water and blankets were thrown in the bushes.

13. Coming home one day I came upon a man, wife and young boy on Robbins Gulch Road. Their license plate was Idaho. The man was skinning a deer; he had just gutted it. I stopped and informed him he was on private property. I let him keep the deer and told him to find another legal hunting spot.

14. During my time living along Robbins Gulch Road, I got to know my neighbors, including Larry “Wil” Wilkins, Jane Stanton, and Lea and Ida Wildung.

15. Lea and Ida Wildung built a home along Robbins Gulch Road shortly after we bought the Robbins Gulch property in 1976.

16. I had a friendly relationship with Ida and we spoke about the traffic on the road. We also spoke about her involvement in negotiating the 1962 easement.

17. Ida told me that they never intended to give a public road to the Forest Service. Instead, she told me that she negotiated an easement that would give the Forest Service easier access for forest management and in dealing with forest fires. She told me that the Forest Service agreed to maintain the road in exchange for an easement.

18. In July of 2007, I sent a letter to the Forest Service, including then-Darby District Ranger Chuck Oliver, that informed the Forest Service of Ida’s recollection of the easement negotiations.

19. Sometime before I sent the letter, Ida Wildung and I met with Mr. Oliver and then-Bitterroot National Forest Supervisor Dave Bull.

20. Ida reiterated that the easement she negotiated was not for public use, but only for limited use by the Forest Service. Mr. Bull responded that he was not present for the negotiations and that is not how he read the easement.

21. Ida was very upset when she spoke to me about the Forest Service's management of the road.

22. In 2002, Ida sold her place and moved to town so she did not have to deal with icy and poor road conditions.

23. After several complaints about the road conditions, and after a meeting with between the residents and Darby District Ranger Eric Withers, the Forest Service temporarily closed the road. Road closed signs were put in place. They read "road closed ahead."

24. Some members of the public ignored the sign parked in a way that blocked the entrance to my driveway. My property bordered the National forest at the second cattle guard, 1 mile from HWY 93. I called the National Forest law enforcement and got an Email from Mr. Withers saying I couldn't keep people from parking there and he told me not to call their police again.

25. During the time Chuck Oliver was the district ranger, the Forest Service installed a sign that read "Public Access thru Private Lands" along Robbins Gulch Road. I do not recall the exact date the sign was installed.

26. I complained numerous times to the Forest Service about the problems on the road. I wrote and met with the Forrest Service personnel for the Darby District. They typically responded that it was not their problem, and not in the budget. Eventually, the Forest Service closed the road after hunting season until June 15.

27. In the past eighteen years before I moved, traffic on Robbins Gulch Road steadily and significantly increased. Due to the increased traffic on Robbins Gulch Road, and increased encroachment on my property, I decided to sell and move in 2019.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15 Day of November, 2019, in Corvallis,
Montana

Respectfully submitted,

<p><u>/s/ Marion Dial</u> Marion Dial</p>

Ninth Circuit Excerpts of Record 149
Filed 12/23/2020

Sample 2

RIGHT-OF-WAY DEED

THIS INDENTURE, MADE this ____ day of ____, 19__, between _____ of the Couty of _____, State of ____, grantor (whether one or more), party of the first part, and the United States of America, party of the second part, WITNESSETH:

That for and in consideration of _____, the receipt of which is hereby acknowledged, the party of the first part does hereby grant, bargain, sell and convey unto the party of the second part and its assigns an easement and right-of-way for highway purposes for a highway to be located, constructed, operated, and maintained under the authority of the Secretary of Agriculture of the United States and knows as the _____, Project Number _____, ___ width on, over, and across the following described premises situated in the County of _____, State of _____:

The said right-of-way to be in conformity with and located upon the ground according to the survey line, the figures, measurements, widths, and other references shown on the plat and design of said highway project hereto attached and made a part hereof.

Provided, however, that if at any time this easement, or any highway constructed thereon, shall be abandoned by the United States of America or its assigns, the rights and privileges hereby granted shall

cease and terminate and the premises traversed thereby shall be freed from said easement as fully and completely as if this indenture had not been made.

IN WITNESS WHEREOF, the said grantor has hereunto subscribed ____ name and affixed ____ seal(s) the day and yere hereinabove written.

Ninth Circuit Excerpts of Record 185
Filed 12/23/2020

WO AMENDMENT 7700-2014-1 7730
EFFECTIVE DATE: 11/20/2014 Page 8 of 45
DURATION: This amendment is effective until
superseded or removed.

FSM 7700 – TRAVEL MANAGEMENT
CHAPTER 7730 – TRANSPORTATION SYSTEM
OPERATION AND MAINTENANCE

Investment Sharing.

1. Provides for acquisition, construction, and maintenance of NFS roads pursuant to an investment sharing agreement or easement to meet mutual needs of the United States and others for access (16 U.S.C. 535; 36 CFR 212.9(a)-(c), (e), and (f));
2. Enters into a cooperative agreement with a commercial hauler who is not a party to an investment sharing agreement for the agency to recoup the commercial hauler's investment share through the commercial hauler's contribution of funds or performance of maintenance or reconstruction required to accommodate the commercial hauler's use (16 U.S.C. 535); or
3. Requires a commercial hauler who is not a party to an investment sharing agreement or a cooperative agreement to reimburse the Forest Service or, in lieu of reimbursement, perform maintenance or reconstruction required to

accommodate the commercial hauler's use, for the commercial hauler's investment share (16 U.S.C. 535; 36 CFR 212.5(c) and 212.9(d)).

Off-Highway Haul. The use of vehicles on a regular basis on NFS roads for hauling products or commodities that exceed the maximum load, weight, length, height, or width restrictions applicable to State or county road systems.

Overload Permit. A type of road use permit authorizing a vehicle that exceeds the maximum legal loads specified by the American Association of State Highway Transportation Officials or a bridge's posted load limit (FSH 7709.56b, sec. 92.3) to cross the bridge under specific restrictions and conditions stated in the permit.

Public Road. A road that is:

1. Available, except during scheduled periods, extreme weather, or emergency conditions;
2. Passable by four-wheel standard passenger cars; and
3. Open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. (23 U.S.C. 101(a)(27); 23 CFR 460.2(c) and 660.103).

Ninth Circuit Excerpts of Record 244
Filed 12/23/2020

United States Department of Agriculture
Forest Service

Medicine Bow-Routt National Forests &
Thunder Basin National Grassland

* * * * *

Road/Area Closures & Delayed Openings

Conditions change quickly, check with the **ranger district office** in the area you plan to visit to get the most current information about National Forest System Roads (NFSRs). District-specific information is listed below in alphabetical order by District.

Closures and Delayed Openings happen for many reasons, some for safety while crews work to remove hazard trees, some due to weather and others due to damage, repairs or maintenance. When you are in the National Forest always watch for falling trees.

Check **MBRTB Special Orders**, for special orders which may pertain to the closures/delayed openings below.

Brush Creek/Hayden Ranger District
as of 06/18/2019

Construction work continues on Forest Road 452, Jack Creek Road, traffic is being allowed through.

Various roads on Brush Creek/Hayden Ranger District will be temporarily closed in 2019 for

hazard tree work. Go to **News release** in left column under News & Events for more information.

Douglas Ranger District
as of 10/25/2019

Laramie Peak campgrounds are first come, first serve and are limited to 14 days. **From 25 Oct 2019 to about 22 May 2020, the campgrounds are can be used as a non-fee area with no trash services or water available but the vault toilets are open during the off season.** Dispersed camping is available for up to 16 days. In most areas, vehicles are limited to pulling off the road up to two car lengths with the restriction no habitat damage occurs and you cannot use closed roads or trails. In select areas, you can camp/game retrieval (see Motor Vehicle Use Map) up to 300' from the roadway with the restriction no habitat damage occurs and you cannot use closed roads or trails. Pack in and Pack out trash, don't leave it in the campground. Leave no trace.

Further restrictions on camping locations are available in the Dispersed camping guidelines.

Visitors are reminded that not all roads/trails on GPS/maps are open for public access. Please consult the Motor Vehicle Use Map for the area you are in to determine public access.

Laramie Peak Unit
as of 10/25/2019

Over a foot of snow is on the ground with blowing and drifting.

Campgrounds are closed as a fee area but available for dispersed camping free of charge until about 22 May 2020.

Snow has covered roads in most of the Laramie Peak area with drifting starting. Beginning 1 Nov 2019, many of the interior County Roads will not be maintained or snow plowed for the winter.

Harris Park Road FS Road 633 from Harris Park to Horseshoe Creek Road is not recommended for low clearance vehicles or cars due to rough road conditions. Severe rutting and washed out shoulders with steep drops are worst just North of the Joe Burney Memorial in the switchbacks leading down to the Horseshoe Creek Area.

Boxelder Canyon via FS Road 629 has several areas that are rough and is not recommended for low clearance vehicles or cars due to rough road conditions.

* * * * *

Ninth Circuit Excerpts of Record 230
Filed 12/23/2020

RI-5460-1 (Revised 12/61)

RIGHT-OF-WAY EASEMENT
(Reference FSH 5463.1)

THIS INDENTURE, MADE this 11th day of May, 1962, between John E. Coultas and Ruth H. Coultas, his wife, owners of record, and Lea J. Wildung and Ida Wildung, his wife, holders of an unrecorded contract for sale dated September 1, 1958. of the County of Ravalli, State of Montana, grantor(s), party of the first part, and the United States of America, grantee, party of the second part, WITNESSETH:

That for and in consideration of \$374.20, the receipt of which is hereby acknowledged, the party of the first part does hereby grant and convey unto the party of the second part and its assigns an easement and right-of-way for a road as now constructed and in place and to be reconstructed, improved, used, operated, patrolled, and maintained and known as the Robbins Gulch road, Project Number 446, 60 foot width on, over, and across the following described premises situated in the County of Ravalli, State of Montana, to wit:

N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 17, T2N,
R2OW, NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 16, T2N, R2OW,
M.P.M.

Containing 7.484 acres more or less.

APPROVED AS TO CONSIDERATION
DESCRIPTION AND CONDITIONS
BY /s/ Harold E. Anderson DATE 9/4/62

The said right-of-way to be in conformity with and located upon the ground according to the survey line, the figures, measurements, widths, and other references shown on the plat hereto attached and made a part hereof.

If the road is located substantially as described herein, the centerline of the road as constructed is hereby deemed accepted by the grantor(s) as the true centerline of the easement granted, together with such reasonable rights of occupancy of the grantor(XX)(s') lands immediately adjacent to said right-of-way as may be necessary for the construction, maintenance, and repair of said road.

Provided, however, that if at any time this easement, or any road constructed thereon, shall be abandoned by the United States of America or its assigns, the rights and privileges hereby granted shall cease and terminate and the premises traversed thereby shall be freed from said easement as fully and completely as if this indenture had not been made.

IN WITNESS WHEREOF, the said grantor(s) have hereunto subscribed their names(s) and affixed their seal(s) the day and year hereinabove written.

/s/ Ruth H. Coultas

Ninth Circuit Excerpts of Record 244 and 245
Filed 12/23/2020

5460
May 21, 1962

Mrs. Ruth H. Coultas
610 Iris Street
Redlands, California

Dear Mrs. Coultas:

We, of the U. S. Forest Service, have been negotiating for a road right-of-way through your property on Robbins Gulch with your son, Mr. John W. Coultas, and Mr. Lea Wildung. As we have reached an agreement with both parties, there now remains the need of signatures by you and your husband, Mr. John E. Coultas, since you appear as record owners on the county records.

I shall attempt to summarize some of the questions you may have:

1. Purpose of the road – timber harvest.
2. Construction – reconstruction of existing road.
3. Location – along existing Robbins Gulch road.
4. Date of construction – probably fiscal year 1963.
5. Acreage involved in right-of-way –
 - a. John W. Coultas – 0.408 acres
 - b. Lea J. Wildung – 7.484 acres

If additional information is needed, we will gladly furnish it upon your request.

Should you find the terms on the enclosed deed agreeable, the following action will be required:

1. We are enclosing two deeds with duplicates of each. The duplicates may be retained for your file. One deed covers the ownership of John W. Coultas – the other that of Lea J. Wildung. On each deed we have entered a penciled X. Please sign here as you name appears on the deed. This signature will have to be made in the presence of a notary public. An acknowledgment for his use is provided with each deed.
2. Enclosed are two copies of withholding tax statements; and as with the deed, the second copy may be retained for your file. Please sign as indicated by the X. This signature need not be notarized.
3. Enclosed are original copies of purchase orders covering payment for the right-of-way and taxes. Please sign as indicated by X. This need not be notarized.

Summary

To be returned to U. S. Forest Service, Hamilton, Montana:

1. Original signed copies of deeds.

2. Original signed copies of withholding tax statements.
3. All copies of purchase orders.

For your file:

1. One copy of each deed.
2. One copy of each withholding tax statement.

We are also forwarding duplicate copies of this material to Mr. John E. Coultas for his signatures.

Hoping this transaction will prove satisfactory to you, I am

Sincerely yours,

HAROLD E. ANDERSEN
Forest Supervisor

GEORGE H. WRIGHT

By /s/ L. M. Powell

Enclosures

Ninth Circuit Excerpts of Record 291
Filed 12/23/2020

Travel Management Planning ~ Proposed Action
A Starting Point

**BITTERROOT NATIONAL FOREST
TRAVEL MANAGEMENT PLANNING
PROPOSED ACTION SCOPING DOCUMENT**

1.0 INTRODUCTION

The Bitterroot National Forest is proposing changes to summer and winter motorized recreational use on specific roads, trails and areas within the non-wilderness portion of the Forest. Figure 1 shows the project area and vicinity map for this planning effort. Changes to the existing motorized recreation use, when implemented, will result in clear, standardized designations of where motorized recreation is appropriate, sustainable and desirable on the Bitterroot National Forest.

**This proposed action is NOT a decision;
it is a STARTING POINT.**

This proposed action is the **first step** in our National Environmental Policy Act (NEPA) environmental analysis process¹. We recognize that not all of the

¹ Some members of the public expressed concern that the release of the proposed action may hamper the collaborative discussions being convened by some quiet users and motorized users. We encourage any parties who are working toward solutions that meet various interests to continue their efforts. Solutions that incorporate the interests of the diverse parties will be given strong consideration by the Forest.

issues expressed to date have been resolved with this proposal and that many people have not provided input yet. Issues that are unresolved, or that emerge as a result of public review of this document will be addressed by modifying this proposal and through the development of alternatives that will be analyzed and compared in an Environmental Impact Statement. We look forward to working with you to define future travel management for the Forest. The project's timeline is:

September 2007	Scoping- Request Public Input on Proposed Action
August 2008	Draft Environmental Impact Statement
May 2009	Final Environmental Impact Statement
December 2009	Motor Vehicle Use Map Available for the Public

The motor vehicle use map will be updated and published annually, so travel planning will be ongoing.

For clarity and common understanding we have defined some terms used in this document in a *glossary* located in the last section of this document. These terms have different meanings to different individuals. The definitions in our glossary are strictly to clarify the use of these terms for this specific project. Words found in the glossary are in *green italicized and underlined text* the first time they appear after the introduction.

Ninth Circuit Excerpts of Record 302 Filed 12/23/2020

Travel Management Planning Proposed Action –
 Changes Proposed to Wheeled-Motorized Use
 A Starting Point

Route #	District	Name	Mile Post Approx.		Map Codes*		Explanation of the Needs or Objectives that led to the Proposed Changes Coarse Filters ~ Initial Screening
			Begin	End	Existing	Proposed	
321	2	North Rye Creek	1.3	4.5	3	0	This segment of the North Rye Creek Road is a chronic producer of sediment into a major tributary of a 303(d) listed stream. North Fork of Rye Creek is a westslope cutthroat stream. Effective improvements to the existing road would be very costly. Elimination of motorized traffic would reduce sediment production and delivery. The area

374	2	Trapper Chaffin	2.2	6.7	3	1	accessed by this closure can be accessed by other routes, however driving distance will be increased. Allowing mixed motorized use on this route would provide a loop opportunity for 50" vehicles in conjunction with some short links that already exist on the ground.
374A	2	Hart Bench Loop	0.0	7.5	3	1	Allowing mixed motorized use on this route would provide a loop opportunity for 50" vehicles in conjunction with some short links that already exist on the ground.
374A	2	Hart Bench Loop	7.5	10.8	4	2	Allowing mixed motorized use on this route would provide a loop opportunity for 50" vehicles in conjunction with some short links that already exist on the ground.

446	2	Robbins Gulch	1.5	3.1	3	0	This road contributes sediment to a tributary of a 303(d) listed stream. It is in a bad location sitting lower than the creek and in the stream channel in places causing serious sedimentation problems. Though the route has a high motorized recreation value we propose closing it to motorized access to reduce sedimentation delivery.
5623	2	South Lick Creek	0.0	3.8	4	4 ¹	Increased the season of motorized use by one month; changed the open season from June 16 – August 31 to June 16 – Oct 14. There is not a resource based reason for this area to be closed to motorized use in September or early October. This change simplifies the motorized use designations by eliminating one of

¹ This seasonal change of one month is not highlighted as a change on the proposed action map.

									the seven seasonal restriction types.
5628 A	2	Trapper Trailhead	0.0	.7	3	4			Propose seasonal use from June 16 – Oct. 14 to provide wildlife security during hunting season and during use of winter range.
13234	2								
13272	2	Timber	0	0.8	3	0			Low motorized recreation opportunity. Short spur road with resource benefits to closing.
13272 A	2	Timber Road	0	0.2	3	0			Low motorized recreation opportunity. Short spur road with resource benefits to closing.
13273	2	Little Trapper	0	0.5	3	0			Low motorized recreation opportunity. Short spur road with resource benefits to closing.

Ninth Circuit Excerpts of Record 303–304
Filed 12/23/2020

* * * * *

DECLARATION OF DALTON CHRISTOPHERSON

I, Dalton Christopherson, in accordance with the requirements of 28 U.S.C. § 1746 (2007), declare as follows:

1. I submit this Declaration based on my personal knowledge of the facts set forth below.

2. I have lived my entire life, from 1982 to the present, a few miles away from Robbins Gulch Road, and my family has owned property near Robbins Gulch Road since 1958. Since 1994, our cattle have grazed on Forest Service allotments that we access via Robbins Gulch Road from Highway 93. I typically haul my cattle up on June 1 and haul them down at the end of September. Between these dates, I check on my cattle several times a week – on average about 2-3 days per week, but sometimes as frequently as 5 days a week – and do so by driving to and from my grazing allotments using Robbins Gulch Road from Highway 93. I have never had to ask anyone for permission to drive on Robbins Gulch Road, whether to haul my cattle in or out of my allotments, or to check on them throughout the spring and summer.

3. Additionally, for years my family and I have used Robbins Gulch Road to go hunting on the National Forest. The earliest memory I have is from 1991, since that is when my older brother turned 12, and I went with my older brother, dad, and

grandfather. My dad has used Robbins Gulch Road to go hunting since the 1960s. I use Robbins Gulch Road to go elk hunting on the forest every year. I've never had to ask anyone for permission to drive on Robbins Gulch Road to go hunting. On a regular day during the rifle hunting season, I probably will see 3-5 other vehicles on or just off Robbins Gulch Road.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 17 day of September, 2019.

/s/ Dalton Christopherson
Dalton Christopherson
Darby, Montana

Ninth Circuit Excerpts of Record 305–307
Filed 12/23/2020

* * * * *

DECLARATION OF LAURA LINDENLAUB

I, Laura Lindenlaub, in accordance with the requirements of 28 U.S.C. § 1746 (2007), declare as follows:

I submit this Declaration based on my personal knowledge of the facts set forth below.

1. I moved to the Bitterroot Valley in August, 2000. The home in which I live is located just over a quarter mile from Robbins Gulch Road, on the Conner Cutoff Road in Conner, MT.

2. Since moving here, I use Robbins Gulch Road, and the public lands accessible from the road, about two to three times a week in the spring and fall to walk my dogs. I go to this area because it is so quiet and I encounter fewer people compared to Rye Creek Road. It is a beautiful place to see the restoration of the forest after the devastating fires of 2000. I access the area from Highway 93 by driving up the road to a parking spot on the National Forest.

3. I also use Robbins Gulch Road, and the public lands accessible from it, to go horseback riding with friends of mine. These friends, who are elderly ladies, enjoy spending time outside and walking and riding on the road since it is not as steep as some Forest Service trails. This gives us a safe and easily accessible opportunity to reconnect with the Forest.

As a group, we use this area maybe once a week in the spring and fall. We trailer our horses from Highway 93 to a point about 2 miles up the road and ride from there. It is a lovely and safe place to ride.

4. This is one of only two access routes into the Sapphire Mountains from the south end of the Bitterroot Valley. The other access route, Rye Creek Road, has more car traffic and is not as good a place to go horseback riding or walking with dogs or friends.

5. From time to time, I will see other hikers or mountain bikers enjoying the forest. The road does receive heavier use during hunting season. However, I have never encountered partyers or other destructive behaviors on Robbins Gulch road.

6. Neither my friends nor I have ever asked anyone for permission to use Robbins Gulch Road. I believe that from U.S. 93, Robbins Gulch Road has always been a public road and that it is intended to provide public access to the National Forest. This road is seasonally closed by the Forest Service to motorized travel in the winter until late spring and I would be devastated if this road were to be shut down for the remaining months.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 13th day of September, 2019.

/s/ Laura Lindenlaub
Laura Lindenlaub
Conner Montana

Ninth Circuit Excerpts of Record 308–309
Filed 12/23/2020

* * * * *

DECLARATION OF RIC BROWN

I, Ric Brown, in accordance with the requirements of 28 U.S.C. § 1746 (2007), declare as follows:

1. I submit this Declaration based on my personal knowledge of the facts set forth below.

2. I have lived my entire life in the Bitterroot Valley, from 1952 to the present. I currently live in Corvallis, Montana. I am personally familiar with the Bitterroot Valley and in particular with Robbins Gulch Road.

3. I have been using Robbins Gulch Road since the 1960s or early 1970s to access the National Forest. I use Robbins Gulch Road nearly year-round and have never asked anyone for permission to use Robbins Gulch Road. I have always considered it a road open to the public.

4. I have used Robbins Gulch Road to go hunting, driving, snowmobiling, and horseback riding. I have hunted off of Robbins Gulch Road since the 1970s and always make a point of going bow or rifle hunting in the area at least once or twice a year. For a few years in the 1990s, a friend and I would drive up Robbins Gulch Road to the Forest Service corrals that are a few miles from U.S. 93, park our vehicles there, and then go snowmobiling on the public land looking for animal tracks. I have also gone up Robbins Gulch Road to go

horseback riding and, a very long time ago, my older brother and I moved some cows around while on horseback, which we got to by using Robbins Gulch Road. I also know that for the last several decades the Christopherson family has had cows up on the Forest from Robbins Gulch Road. On any given trip using Robbins Gulch Road, I might see five to seven other vehicles.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 8th day of September, 2019.

/s/ Ric Brown
Ric Brown
Corvallis, Montana

Ninth Circuit Excerpts of Record 310–311
Filed 12/23/2020

* * * * *

DECLARATION OF DAVID COULTAS

I, David Coultas, in accordance with the requirements of 28 U.S.C. § 1746 (2007), declare as follows:

1. I submit this Declaration based on my personal knowledge of the facts set forth below.

2. My parents were John W. Coultas and J. Jean Coultas, and my paternal grandparents were John (“Jack”) E. Coultas and Ruth Coultas.

3. I grew up on my family’s ranch that included Robbins Gulch Road, from the time I was born until I was 20 (1952-1972). My grandparents are the individuals who sold the easement along Robbins Gulch Road to Forest Service. I am personally familiar with Robbins Gulch Road and the easement.

4. The easement for Robbins Gulch Road is intended to allow regular members of the public to use the road, without having to ask anyone for permission.

5. For example, growing up on Robbins Gulch Road, everyone, including but not limited to my family and I, went hunting up Robbins Gulch Road. These were just regular members of the public, and not people my family or I had invited to use the road. The easement on Robbins Gulch Road was just an open

easement, which allowed the public to go in and hunt elk or otherwise access the National Forest.

6. I also recall high school kids driving up the road and holding beer parties up on the National Forest.

7. I have family who still own property along Robbins Gulch Road and both me and these family members are shocked to hear that Plaintiffs are trying to deny the public access to Robbins Gulch Road.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 11 day of September, 2019.

/s/ David Coultas
David Coultas
Roundup, Montana

Ninth Circuit Excerpts of Record 312–325
Filed 12/23/2020

* * * * *

DECLARATION OF LORI CONNER

I, Lori Conner, in accordance with the requirements of 28 U.S.C. § 1746 (2007), declare as follows:

1. I submit this Declaration based on my personal knowledge of the facts set forth below.

2. I have lived in the Bitterroot Valley since around 1967, when I would have been 8 years old. My father was a Montana native and the town of Conner, Montana, which is approximately one mile north of Robbins Gulch Road, is named after my great-grandfather, Aaron Conner.

3. Between around 1967 and 1970, my parents and I split our time between the Bitterroot and California, initially spending summers and the winter holidays in Montana. In 1970, my parents and I moved to Montana full-time. The family home, in which I spent these summers and winters, grew up as a kid, and where I would visit my parents while living in Missoula or elsewhere, is located just over a mile from Robbins Gulch Road, at 5329 Highway 93, Conner, Montana. This home has been in the family from around 1967 until 2019.

4. Additionally, I was the prior owner of a 15.61-acre parcel of land on Robbins Gulch Road, a portion

of which is what is now the 9.18-acre parcel identified in paragraph 8 of Plaintiffs' complaint (Doc. 1 at ¶ 8).

5. Specifically, the property I owned contained both Plaintiff's 9.18-acre parcel and additional land to its North. I co-owned this property from 1980 until 1993. This property is described below.

6. I currently live in Stevensville, Montana and I am personally familiar with the Bitterroot Valley and in particular with Robbins Gulch Road.

7. My earliest memories of Robbins Gulch Road are from when I was a kid and I would spend summers and winter holidays in Montana. Back then, the rest of the year was spent in California and so I distinctly and fondly remember the time we spent in Montana. Robbins Gulch Road was the closest access to the National Forest from my family home and, beginning in the late 1960s, my family and I would use it to recreate deep into the Forest. We would access Robbins Gulch Road from Highway 93 at least a couple times per month, typically on mini-bikes or on horseback. Additionally, we would use Robbins Gulch Road to go picking for chokecherries. In the winter, we would use Robbins Gulch Road to go cross-county skiing or go sledding. We never had to ask anyone for permission, since it was a public road. We also would see other public users on the road and forest.

8. I was previously married to David Stube and I was formerly known as Lori C. Stube:

- a. On October 3, 1980, my ex-husband and I acquired the property from Donald K. Meech. Attached hereto as Exhibit A

(USA_Rev_0194) is copy of the Warranty Deed transferring the property to my ex-husband and me. The property is identified in this Warranty Deed as Parcel F, and reference is made to Book 132 Deeds, page 914.

- b. Around 1985, David Stube and I got divorced, and thereafter the property was transferred to me and my parents, Bruce Conner and Deloryse L. Conner.
- c. On September 9, 1993, my parents and I sold the property to Gary G. Hursh. Attached hereto as Exhibit B (USA_Rev_0197-0198) is a copy of the Warranty Deed transferring the property to Gary G. Hursh. The property is identified in this Warranty Deed as Parcel F, Tracts 1 and 2.
- d. Attached hereto as Exhibit C (USA_Rev_0182-0185) is the document filed in Book 132 Deeds, page 914, and in which Parcel F, and Tracts 1 and 2, are described and depicted in an accompanying survey.

9. I believe that the access from Highway U.S. 93 to Robbins Gulch Road, and the entire length of Robbins Gulch Road as it goes deep into the forest, has always been intended to provide public access to National Forest Lands.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 10 day of October, 2019.

/s/ Lori Conner
Lori Conner
Stevensville, Montana

Exhibit A

BOOK 196 PAGE 876

Warranty Deed (Joint Tenancy) 353011

THIS INDENTURE Made this 3rd day of OCTOBER, 1980 between DONALD K. MEECH of 703 N. Teton, Shelby, Montana 59474, the party of the FIRST PART, and DAVID B. STUBE and LORI C. STUBE, husband and wife, of Box 657, Conner, Montana 59827, the parties of the SECOND PART; WITNESSETH That the party of the FIRST PART, for an in consideration of the sum of TEN AND NO/100ths Dollars OR 10.00 to him in hand paid by the parties of the SECOND PART, AS JOINT TENANTS AND TO THE SURVIVORS OF EACH NAMED JOINT TENANTS (and not as tenants in common), and to the heirs and assigns of each survivor forever, all that tract or parcel of and lying and being in the County of Ravalli, State of Montana, to-wit:

PARCEL F:

A tract of land located in the NW1/4SE1/4, Section 17, Township 2 North, Range 20 West, P.M.M., Ravalli, County, Montana, described as follows:

Beginning at the center of 1/4 corner of Section 17, Township 2 North, Range 20 West, P.M.M.; thence, S0°18'20"W, 583.5 feet to the easterly right of way of U.S. Highway 93 on a non-tangent curve having a radius of 1382.4 feet, a length of 260.17 feet, and a long chord bearing S58°22'10"E; thence, along an offset spiral having a long chord with the westerly right of way of Robbins Gulch Road; thence, along said right of way N48°24'E., 469.88 feet, 293.11 feet along a curve to the left having a radius of 270 feet, and N13°48'W, 265.04 feet to the intersection of the east-west mid section line; thence, N89°09'W, 929.18 feet to the point of beginning. Containing 15.61 acres more or less.

Recording Reference: Book 132 Deeds, page 914

SUBJECT to reservations of record and easements and rights-of-way of record and evident on the premises.

* * * * *

Exhibit B

STATE OF MONTANA COUNTY OF RAVALLI
409761

RECORDED JULY 25, 1996 2:43PM BOOK 218
DEEDS PAGE 727

/s/ Betty T. Lund CLERK AND RECORDER
BY /s/ R. L. McChristian DEPUTY \$12.00

WARRANTY DEED

FOR A VALUABLE CONSIDERATION, the receipt of which is acknowledged, the undersigned, BRUCE CONNER, DELORYSE L. CONNER and LORI L. CONNER, as joint tenants with the right of survivorship, of Box 304, Conner, Montana 59827, hereby grant unto GARY G. HURSH, of Box 174, Darby, Montana 59829, real property in Ravalli County, Montana, described as follows:

See Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD unto the Grantee, the survivor thereof, and to he heirs and assigns, forever, SUBJECT TO THE FOLLOWING:

(a) Visible easements, easements of record and rights of way.

(b) Taxes and assessments for 1993 and subsequent years.

EXCEPT with reference to the items referred to in paragraphs (a) and (b), this deed is given with the usual covenants expressed in Mont. Code Ann. § 30-11-110.

Dated: This 9th day of September, 1993.

/s/ Bruce Conner
BRUCE CONNER

/s/ Deloryse L. Conner
DELORYSE L. CONNER

/s/ Lori L. Conner
LORI L. CONNER

* * * * *

EXHIBIT "A"

A tract of land located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 17, Township 2 North, Range 20 West, P.M.M., Ravalli County, Montana, and being more particularly described as follows:

PARCEL F:

Beginning at the center $\frac{1}{4}$ corner of Section 17, Township 2 North, Range 20 West, P.M.M.; thence, S.0°18'20"W., 583.5 feet to the easterly right of way of U.S. Highway 93; thence, along the easterly right of way U.S. Highway 93 on a non tangent curve having a radius of 1382.4 feet, a length of 260.17 feet, and having a long chord bearing S.58°22'10"E.; thence, along an offset spiral having a long chord bearing S.69°06'50"E., 363.62 feet more or less to the intersection with the westerly right of way of Robbins Gulch Road; thence, along said right of way N.48°24'E., 469.88 feet, 293.11 feet along a curve to the left having a radius of 270 feet, and N.13°48'W., 265.04 feet to the intersection of the east-west mid section line; thence, N.89°09'W., 929.18 feet to the point of beginning.

TRACT 1:

Beginning at the C $\frac{1}{4}$ corner of Section 17, Township 2 North, Range 20 West, P.M.M.; thence, S.54°06'41"E., 1030.13 feet; to the point of intersection with the westerly right of way of Robbins Gulch Road; thence, along said right of way N.48°24'E., 100.0 feet, 293.11 feet along a curve to the left having a radius of 270 feet, and N.13°48'W., 265.04 feet to the intersection of

the east-west mid section line; thence, N.89°09'W., 929.18 feet to the point of beginning.

TRACT 2:

Beginning at the center $\frac{1}{4}$ corner of Section 17, Township 2 North, Range 20 West, P.M.M.; thence, S.0°18'20"W., 583.5 feet to the easterly right of way of U.S. Highway 93; thence along the easterly right of way of U.S. Highway 93 on a non tangent curve having a radius of 1382.4 feet, a length of 260.17 feet, and a long chord bearing S.58°22'10"E.; thence, along an offset spiral having a long chord bearing S.69°06'50"E., 363.62 feet more or less to the intersection with the westerly right of way of Robbins Gulch Road; thence, along said right of way N.48°24'E., 369.88 feet; thence, N.54°06'4"W., 1030.13 feet to the point of beginning.

Recording Reference: Book 156 of Deeds, page 859 and Certificate of Survey No. 40.

SUBJECT TO an easement and right-of-way in favor of the United States of America as recorded in Book 119 of Deeds, page 243.

SUBJECT TO Highway 93, affecting the southerly portion of captioned property, as disclosed by Ravalli County Clerk and Recorder road records.

Exhibit C

Book 132 Page 914 (4 pages)

State of Montana)
)
County of Ravalli)

[unintelligible text] RECORD ___ this 21st DAY OF
May 1973 at 1:21 O’CLOCK p.m. AND RECORDING
IN VOL 132 ON PAGE 914

/s/

COUNTY CLERK & RECORDER

FEE 8.00

RETURN TO [unintelligible text] Mont Title Box 513
Hamilton, Mt

NOTICE OF PURCHASERS’ INTEREST

The undersigned hereby given notice that DONALD K. MEECH and DORIS R. MEECH, his wife, as joint tenants with the right of survivorship and not as tenants in common, are the purchasers of the real property described in Exhibit “A” attached hereto and by this reference made a part hereof, under the terms of an unrecorded Contract for Deed dated August 14, 1972, escrowed at Farmers State Bank, Victor, Montana, the contract Sellers being John W. Coultas and Jean Coultas, his wife.

The undersigned Buyers whose address is Simms, Montana, will provide a full and complete copy of the above-described contract for deed without cost upon request.

DATED this 14th day of August, 1972.

/s/ Donald K. Meech
Donald K. Meech

/s/ Doris R. Meech
Doris R. Meech

/s/ John W. Coultas
John W. Coultas

/s/ Jean Coultas
Jean Coultas

* * * * *

EXHIBIT "A"

The following described tracts of land situated in Ravalli County, Montana, to-wit:

(1) PARCEL E

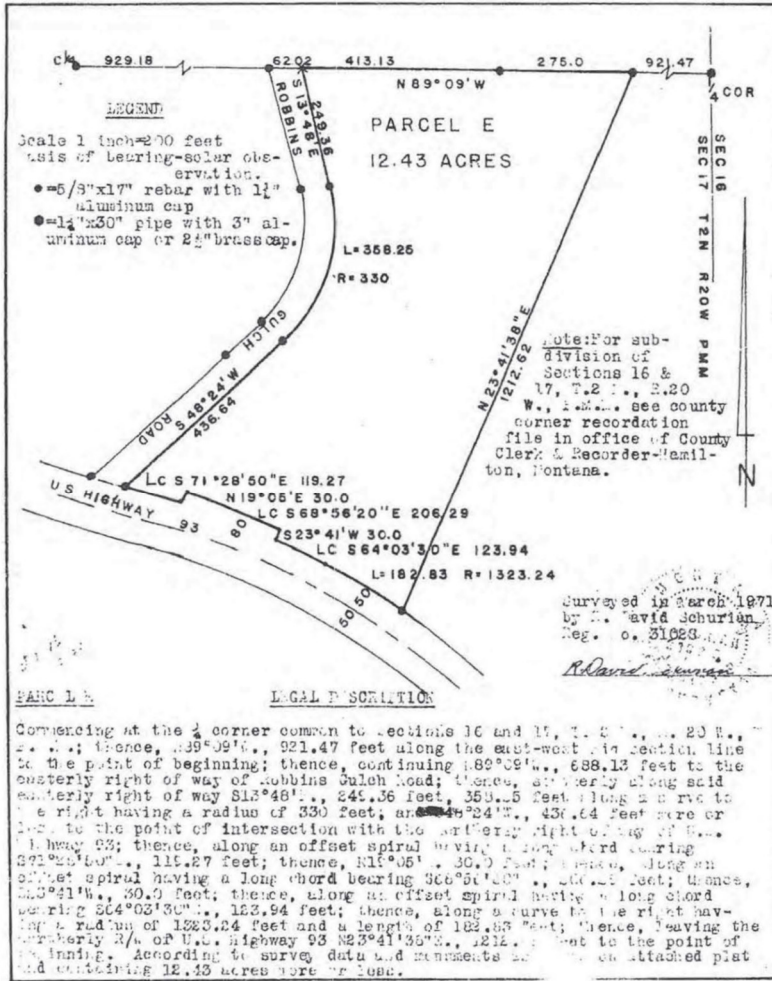
Commencing at the $\frac{1}{4}$ corner common to Sections 16 and 17, T. 2 N., R. 20 W., P.M.M.; thence, N89°09'W., 921.47 feet along the east-west mid section line to the point of beginning; thence, continuing N89°09'W., 688.13 feet to the easterly right of way of Robbins Gulch Road; thence, southerly along said easterly right of way S13°48'E., 249.36 feet; 358.25 feet along a curve to the right having a radius of 330 feet; thence, along an offset and S48°24'W., 436.64 feet more or less to the point of intersection with the northerly right of way of U. S. Highway 93; thence, along an offset spiral having a long chord bearing S71°28'50"E.; 119.27 feet; thence, N19°05'E. 30.0 feet; thence, along an offset

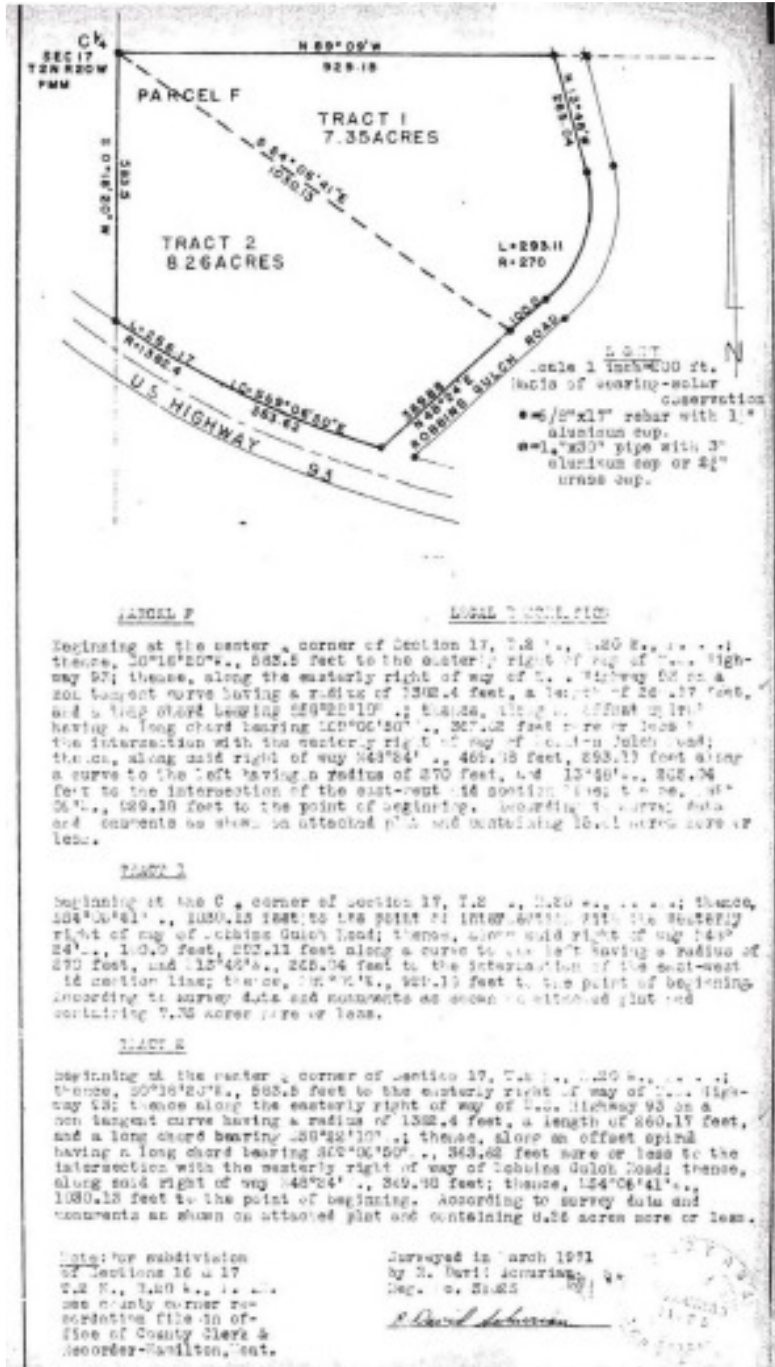
spiral having a long chord bearing S68°56'20"E., 206.29 feet; thence, S23°41'W., 30.0 feet; thence, along an offset spiral having a long chord bearing S64°03'30"E., 123.94 feet; thence, along a curve to the right having a radius of 1323.24 feet and a length of 182.83 feet; thence, leaving the northerly R/W of U. S. Highway 93 N23°41'38"E., 1212.62 feet to the point of beginning, containing 12.43 acres more or less.

(2) PARCEL F

Beginning at the center $\frac{1}{4}$ corner of Section 17, T.2N., R.20W., P.M. M.; thence, S0°18'20"W., 583.5 feet to the easterly right of way of U. S. Highway 93; thence, along the easterly right of way of U. S. Highway 93 on a non tangent curve having a radius of 1382.4 feet, a length of 260.17 feet, and a long chord bearing S58°22'10"E.; thence, along an offset spiral having a long chord bearing S69°06'SO"E., 363.62 feet more or less to the intersection with the westerly right of way of Robbins Gulch Road; thence, along said right of way N48°24'E., 469.88 feet, 293.11 feet along a curve to the left having a radius of 270 feet, and N13°48'W., 265.04 feet to the intersection of the east-west mid section line; thence, N89°09'W., 929.18 feet to the point of beginning, containing 15.61 acres more or less.

Subject to easements and rights of way of record or visible on the premises.





Ninth Circuit Excerpts of Record 331
Filed 12/23/2020

Deposition of Larry Steven Wilkins

[Pages 18:21–21:10]

Q. So was it Molly Grief that organized the title search?

A. I'm sure it would have been her assistant, the lady that I dealt with

Q. And did Molly or anybody working for her tell you what the results of the title search were?

A. No.

Q. Did Molly tell you about the easement for the road during your negotiations or purchase of the property?

A. No, she did not.

Q. When did you first learn about that easement?

A. What I was told – I asked about the road. And they say, well, it's an old Forest Service road. It gets occasional use. In the fall of a year you might have some hunters go up here. So I never – I don't know when I actually became totally aware of the easement document, unless it was sometime in 2008 or '09, something like that, maybe, after I had some conversation with Chuck Oliver about the sediment coming down Robbins Gulch Road. So I don't even – you know, when you get these document, there's pages

and pages and pages. And I don't know that I ever read any or all of that. But I think I had to go to the courthouse to actually find a copy of that easement.

Q. Do you remember what year you did that?

A. I do not.

Q. And did you discover at that point the width of the easement, how wide it is?

A. At some point between – most of my knowledge about that easement occurred in like 2017.

Q. 2017?

A. 2017.

Q. Yeah. Okay.

A. After when I started doing research on the road. It was –

Q. Okay. Did you learn at that point that the width of the road – Did you learn the width of the road in 2017 – or the width of the easement – I'm sorry – the width of the easement in 2017?

A. I would say, yes, I think it's in that easement.

Q. Do you know, as you sit here today, how wide the easement is?

A. I think it's 60 feet, I think.

Q. Okay. And did you know how that's measured?

A. 30 – From what I gathered from it, it's measured like based on where the road is now to each side.

Q. Okay.

A. Like the center of the road would be where the road is now.

Q. Right.

A. And then part of it would be on that side and 30 feet would be on that side.

Q. So 30 feet on your side and then –

A. From the center of the road where it's at.

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Deposition of Larry Steven Wilkins

[Page 28:9–20]

Q. Well, do you think that you can block any portion of that 30 feet that goes onto your property?

A. Yes.

Q. You do?

A. Yes.

Q. Okay.

A. Because I was told by Chuck Oliver when all of this stuff started back in 2007, 2008, one much my neighbors asked him about it. Can we put up a gate? And he says you can put up a gate, providing you do not lock it.

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Deposition of Larry Steven Wilkins

[Pages 66:1–77:2]

Q. Okay. And so you had no experience with the Robbins Gulch Road area before that?

A. None whatsoever. I didn't even know it existed.

Q. Okay. Did you know anybody that lived in that area?

A. No.

Q. Were there – Other than Painted Rocks and Molly Grief, were there any other real estate agents involved in your purchase of the Robbins Gulch Road property?

A. No, just the lady that I said was Molly Grief's representative, her real estate office.

Q. Do you know her name?

A. I'm trying to think of it. I can see her face. She's an artist. It's on my contract that I bought it, and she was the real estate agent.

Q. Okay.

A. I may be able to recall it here shortly.

Q. Okay. Were there any brokers that you know about associated with the transaction with the transaction that we haven't talked about yet?

A. No. I think Molly Grief may have been a broker or her company was.

Q. Were there any appraisers that were associated with the transaction?

A. No.

Q. Were there any surveyors that were associated with the transaction?

A. Not that I recall.

Q. And did you deal with any bankers in association with the acquisition of this property?

A. I think – I mean, I had to get it financed. So there was probably a finance company. I think – Well, I know there was. There was a house inspection – I think that's what it's referred to as – just to make sure that I knew that this wasn't finished, that wasn't finished. This was probably not safe, which I fixed a lot of those things after I got it. But I bought it as-is.

Q. Do you know what the name of that company was?

A. No, but I have the documents.

Q. Okay. And again, if you could produce those documents, that would be really helpful.

A. Okay. Which is the home inspection, right?

Q. Yep. And any documents associated with the financing of the acquisition of that property would be appreciated.

A. Okay. I can do that for sure. The mortgage company.

Q. Yeah. That would be great. That information would be helpful.

A. Okay.

Q. Do you currently live on the Robbins Gulch Road property? You're a resident there?

A. Yes.

Q. And do you live there year round?

A. I do.

Q. And have you been a year round resident there from the time you first purchased the property?

A. I have been.

Q. And have you lived there continuously from the time that you bought it? In other words, have you taken any sabbaticals or breaks and gone out of the country or anything like that?

A. I've always maintained that as my full-time residence. I mean, I've traveled to Belize. I've traveled to British Columbia. I've never taken it and rented it to somebody or anything like that. It's been my personal, full-time residence.

Q. And when you have gone to Belize or British Columbia, have those trips ever gone for more than a month?

A. No. It was a fishing trips.

Q. Okay. Do you live with anyone else at the premises?

A. I do not.

Q. Have you previously lived with anyone else at the premises?

A. Well, you know, girlfriends come and go.

Q. Okay. I'm going to have to get into weeds a little bit there. Who lived with you there and when?

A. I would say Crystalline Jackson was a girlfriend.

Q. Is that two words, Crystal Lynn?

A. That's one word.

Q. Crystalline? And what years did she live there?

A. This past year.

Q. Okay. Anybody else?

A. No.

Q. Is your house and the windows in your house set up in a way that you can observe traffic coming up Robbins Gulch Road?

A. Yes.

Q. Do you or have you historically observed traffic coming up the road?

A. I have.

Q. Have you seen public vehicles using that road?

A. Yes, I have.

Q. And have you observed those vehicles – Well, let me ask this first.

When you first moved into Robbins Gulch, that was '04, I think you said?

A. Correct.

Q. Who were your neighbors at that time?

A. Jane Stanton, Marion and John Dial. And then there was a part-time lady that lived in the old Wildung house. She had bought it to fix it up. She lived in Arizona and would come up and work on it and then go back and come back. She was part-time. She wasn't a full-time resident.

Q. Do you remember her name?

A. I refer to her as the crazy woman.
(Laughter.)

A. But I could – She only had the property for a while. I can find her name.

Q. (BY MR. SMITH) Okay. I guess my point is did you become familiar with your neighbors vehicles?

A. Yes.

Q. So that you could recognize who your neighbors were and who was a stranger?

A. For the most part.

Q. Okay.

A. I mean, they were always trading vehicles and such and had grandkids living there and driving vehicles and stuff. But, yes, I was pretty familiar with them.

Q. Okay. So in 2004, then, how many public users – And it's going to be however best you can characterize it. How many public vehicles on average would drive up or down Robbins Gulch Road? And you can break that up however you want, like per week, per day, whatever you think is the best to encapsulate that information.

A. There were occasional users of the road. And in the fall, when it would be – the traffic would increase because of hunting season.

Q. What would you say the average would be during hunting season.

A. Per day?

Q. Sure.

A. Maybe four, five.

Q. Okay.

A. And they would typically come in in the early morning, so anywhere from 3:30 to 4:00.

Q. In the a.m.?

A. In the a.m. And so, I mean, I didn't see a lot of them, but I would see people driving in and out, basically just road hunting, poaching.

Q. Were they wearing orange? Could you tell that they were hunting because they were wearing orange or just because of the time of the year?

A. Well, the time of the year. A lot of them, you could see – That's a good question, because a lot of times you could see – When it was daylight and I could see it, you could see they would have on orange vests or – you know, you could tell they were hunters.

Q. Right.

A. They weren't driving sedans. They were driving big, four-wheel power wagons and Jeeps and stuff like that.

Q. Right. So other times of the year you said it was occasional. I mean, would you say like three or four per week?

A. Yes.

Q. Okay. And then would you say that that rate of use remained similar in 2005?

A. Yes.

Q. And then how about 2006?

A. Well, it just kept getting more and more and more and more.

Q. Okay. Pretty incremental over time per year more and more people?

A. Yes.

Q. So like if you were try and establish average rates of use like in 2018, the most recent year that we can included a hunting season year, what would you say the rate of use was then?

A. Excessively high.

Q. And I've got to try and ask you, if you can, to give me some hard numbers here. During hunting season how many per day would you say nowadays?

A. There's probably – There's less hunters now than there was in that mid section of like 2004, '05, '06, because the game regulations have changed. And it's permit area.

Q. Okay.

A. So you don't get near the number of hunters that you used to get, because you have to have a tag.

And the mule deer are protected there. So you have to have a tag to hunt the mule deer.

Q. Okay.

A. So there's less hunters, more daily road traffic.

Q. I see. Okay. So it sounds to me like you're saying '05, '06, '07 was the highest rate of hunting usage?

A. If you was to – I would say.

Q. Okay. And then it sounds like what you're saying is the other recreational access increased over the time until now in 2018 and 2019. What would you say the average rate of use – non-hunting use is now?

A. I would be scared to put a number on it. You get a lot of people coming – I call it rubbernecking, people driving down the highway, seeing a road, wanting to know where it goes, will drive up a road, turn around and leave, up and down past the road.

Q. So in '04 it was three or four per week. In '18 it's how many per week, or do you want to go by per day? Do you want to say per day? Would that be easier?

A. Some days there's no traffic on it.

Q. Okay.

A. Other days, weekends, you will get a string of four-wheelers. I mean, that would be hard to guess. But I think they put up traffic counters, but those

traffic counter, I don't think, are – the report is – I don't think that the traffic counters are accurate because they put the traffic counters up right when there was three construction sites going on up there.

Q. I'm more interested in what you observed, what you've been seeing.

A. Am I including those?

Q. Yeah? The four-wheelers?

A. No. No. The construction sites, the dump trucks and – I mean, that's kind of separate.

Q. Yeah?

A. But I don't know. I mean, there's days that you will get three or four a day. And there will be days you don't get any. But it would be hard for me. I've gotten to where I really – I can't say. I don't know. To put a number on it would be difficult.

Q. Okay. Well, it sounds like it went from three to per four per week in 2004 to three to four per day sometimes in 2018; is that accurate?

A. No, because not every day is there two or three cars up there.

Q. Okay.

A. If we were to compare weeks to weeks, I would say it was probably three or four a week. And now there's probably – I would be scared to say – six, eight.

Q. Six to eight public uses per week?

A. Sometimes. Other times there's been weeks where there hasn't been anybody up there. So it's hard for me to say. And I don't see every vehicle that goes up and down on the road. I'm speculating and guessing in search for a number for you.

Q. And so your earliest memories of the Robbins Gulch Road, I assume, are from 2004 like we've been discussing, right?

A. My first observances would have been in 2004.

Q. And when you first saw the road and drove up there, do you remember seeing any signs on the road at that time?

A. Not on our section of the road.

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Ninth Circuit Excerpts of Record 352–353
Filed 12/23/2020

Deposition of Larry Steven Wilkins

[Pages 104:3–109:24]

Q. Okay. 602 is a special closure from the Bitterroot National Forest. And this is what it states. It's signed by Barry Poulson for David T. Bull, and it's dated the 3rd day of May 2006.

Have you ever seen this document before?

A. 2006? There's been documents like this. I can't say I have ever seen this one.

Q. Okay.

A. And it says here – It's about the closing of the road, right?

Q. Correct.

A. And it says persons with a permit issued by Forest Service officials. I was never given a permit.

Q. Okay. Go ahead.

A. I'm assuming that it goes back to what I was saying, that they closed the road from the forest boundary, but they never closed this.

Q. So let's look at the description of up above where it says area description. I will read to you there. It says National Forest System Road Number 446,

parens, Robbins Gulch Road, closed parens, beginning at State Highway Number 93.

A. Correct.

Q. And National Forest System Number 446, Robbins Gulch Road, in southeast, northwest, Section 17, Township 2 north, Range 20 west, PMM, and heading northeast and ending at the intersection with National Forest Service Road Number 5612A and southeast, southwest Section 17.

A. Correct.

Q. Township 2 north, Range 20 west, PMM. Did I read that correctly?

A. Yes, you did.

Q. And the area that's described there would include the road that is – goes in front of your house, is that correct, Robbins Gulch Road, where it goes in front of your house?

A. Yes, it would include that. But Mr. Winthers has informed us that he cannot close that road on the private property. He will not enforce it. And he said that —

And it stops right here. It's kind of like the Forest Service uses the beginning and the ending of 446 – and excuse me for this – but to suit their needs. In other words, when they don't want to assume responsibility, oh, we've got nothing to do with that. But if they want to exercise the ownership of the easement, it includes that. So it's kind of a flip-flop

thing that there's no consistency for 446 because it's totally designated different. This is in private property. This is in the national forest. So, but when they want to use it, they do. But when they don't want to accept ownership or patrol it or do anything, they say we've got nothing to do with that road. And then there's times they say, oh, yes, that's our road.

Q. So in May of 2006 you don't recall – Do you recall seeing this order?

A. No.

Q. Do you recall seeing any barriers on Robbins Gulch Road?

A. Yes, but I don't know what years.

Q. And where were those barriers located when you saw them?

A. At the beginning of the highway – beginning right here with the intersection of 93 and 446.

Q. And was there just barriers or were there signs on the barriers?

A. Something there was barriers. There was – I remember they had a sign that used to say road closed ahead.

Q. Uh-huh.

A. So people would just come up our road, go through Tolars' mud bog, tear up the road, go up, find the gate closed, turn around, come back down through, tear up the road, create more silt.

Q. Do you remember if they had anything like this posted on the barriers? And when I say this – I'm sorry – I'm referring to Exhibit 602.

A. It seems to me like there was part of this maybe at some point – I don't know whether it was 2007, '08, '09, '10. Sometimes there would be just a little sawhorse down there that said road closed ahead. But people never paid any attention to the anyway. They still kept going up there.

Q. Please turn back to page 606. This is another closure order. This one dated April 11th, 2008, and it's assigned by Sue —

A. Where would I find that?

Q. I'm sorry. Page —

A. I'm sorry.

Q. My fault.

A. 606?

Q. Yes.

A. What about this document?

Q. So this is another closure order signed by Sue Heald on April 11th, 2008. She's signing on behalf of Dave Bull.

A. I understand.

Q. And the road description again says National Forest System Road 446, beginning at junction with

State Highway 93 and National Forest System Road 446, Robbins Gulch Road. And again, it describe Section 17 ending at the intersection with National Forest Service Road 5612A. This is in 2008.

Do you remember this closure order specific to 2008?

A. I do not remember this specific document. No, I do not – I don't know how many times they have done it. They would put a closure down there, but it would say closed ahead.

Q. Yeah.

A. This may have been stapled on there or taped or something. It may have disappeared.

Q. Yeah. So turn to page 607, please.

A. Yes, sir.

Q. And there's this map there. And it depicts a blocked area using these sort of black —

A. Yes.

Q. — square?

A. Yes.

Q. And it says Robbins Gulch Rad closure area map.

A. Yes.

Q. Did you ever see this before?

A. Never. I have never seen anything indicating the section of road from the highway to the Robbins – to the Forest boundary. I have never seen that at all ever.

Q. Did you ever go check in the district office to follow up on any of these area closures in 2006 or 2008 to see any records associated with that?

A. No, I did not.

Q. Do you recall seeing this or anything like this posted at the barriers in 2006 or 2008? And I'm referring to the map here, 607. Sorry.

A. You're referring to the map? No, I've never seen this posted there.

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Ninth Circuit Excerpts of Record 357
Filed 12/23/2020

Deposition of Larry Steven Wilkins

[Pages 122:1–124:18]

Q. Do you know whether the public historically used Robbins Gulch Road before you acquired it?

A. Yes. Yeah, they did, because they were using it when I bought it.

Q. Do you know when that use began?

A. I do not.

Q. Would it be fair to say that public use was ongoing for decades before you bought the property, or do you know?

MR. BLEVINS: Objection, calls for speculation.

Go ahead.

A. I don't know. I wasn't there. And so I don't know.

Q. (BY MR. SMITH) Okay. Has any member of the public ever asked you permission to use Robbins Gulch Road?

A. No.

Q. There are no signs on the road that suggest landowner permission is needed to use the road; is that correct?

A. That's correct.

Q. Has any rancher grazing lessee – I guess it's just the Christophersons.

A. Christophersons, yeah.

Q. Have they ever asked your permission to use the road?

A. No.

Q. Have you ever seen logging drivers on the road?

A. No.

Q. Have any hunters or outfitters ever asked your permission to drive up Robbins Gulch Road?

A. Historic maps depicting it? Yes.

Q. Can you recall what years those maps were?

A. I think there was maps showing a lot of these roads. As a matter of fact, right here is one. And it shows this here road coming up, and it comes up to the Forest Service. And it's been closed. Medicine Tree came up to the Forest Service and it has been closed. (Indicating throughout.)

Q. So just for the record, Mr. Wilkins, is referring to Exhibit 81, the motor vehicle use map and is referring to various roads on there.

A. And I think these roads were all designated the same if you go back far enough on same of the – I think they were called Bitterroot National Forest road maps or something like that.

Q. Okay.

A. I think they were a public thing.

Q. So you have seen the road depicted on historic maps. Do you remember what years?

A. No.

Q. I'm just trying to think of any other way that we might be able to identify which map you were looking at.

A. They —

Q. Any ideas?

A. They were historical road maps. I think they were like public information or something.

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Ninth Circuit Excerpts of Record 359
Filed 12/23/2020

Deposition of Larry Steven Wilkins

[Pages 132:19–133:24]

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Q. Some areas of concern that you noted in your complaint suggest parking on the road is an issue that bothers you; is that accurate?

A. It bothers the other people more than it does me, but it does bother me that they park on the road and then they poach on our property. They poach on my property. There's photos of cat hunters turning their dogs loose on my property hunting across my property, gathering their dogs up on the other side of my property, hunting right by my house, within 50 yards of my house.

Q. And are these the – Your complaint references illegal hunting and trespassing. And I assume that's what you're talking about now?

A. That is correct.

Q. Okay.

A. And the public has come up the road, and they have stolen. I had an elk rack on my front porch. They have come on my property, come up on my porch and stolen my elk rack.

Q. And your complaint talks about misconduct. And is that what you're referring to there?

A. Well, theft. And some misconduct would probably be referred to when Greg Tolar – Some people parked right in his driveway and started hunting on his property. They actually shot grouse right on the road from their vehicle. He confronted them. And they told him to eff off (indicating), and that this is – this is Forest Service land. He says you're standing in my yard.

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Ninth Circuit Excerpts of Record 401–402
Filed 12/23/2020

Deposition of Jane B. Stanton

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[Pages 42:9–46:8]

Q. (BY MR. SMITH) Your memory is better than mine.

Is your house or are the windows on your house set up so that you can see traffic on the road?

A. No. Sometimes in the winter I – if the apple trees are not in leaf or anything, I can see Wil, whether he’s home or not.

Q. Okay. But that line of sight goes over the top of the road so that you wouldn’t see vehicles?

A. No, I don’t see much vehicles.

Q. Okay. So have you historically – I mean, are you in a position to observe traffic on the road when you’re at your house? Or how often do you observe traffic on the road historically?

A. Noise.

Q. Noise? Okay.

A. Gun shots – well, once in a while – Or if it’s a big truck.

Now, the new people had the Dials' drive redone. And they were hauling in lots of gravel, so you could hear those.

Q. Okay. What's your earliest memory of the Robbins Gulch Road parcel?

A. I don't know. I just liked it. We just enjoyed it. There was a lot of stonework, a lot of old wood.

Q. I'm sort of interested –

A. I don't know what you mean.

Q. Yeah. Okay. Well, so I'm driving at what your first recollection is of going up that road.

A. Oh, I see what you're saying.

Q. What's your memory of that?

A. I remember we went up there with the realtor – two realtors. And the people that owned Schwartzs' were there. And I remember that a lot of times the owners are not there when you look at a house.

Q. Okay. Now, before you get there –

A. Yes.

Q. When you turn off Highway 93 –

A. Oh, okay, the road, you mean.

Q. — and you're going up the road, do you see any signs?

A. No.

Q. No signs?

A. There used to be a sign that said Robbins Gulch, like a little, brown sign. But it disappeared.

Q. Okay. And that would have been from 1990?

A. Yes. And there was no one there. Gary wasn't there, and Wil wasn't there.

Q. When you say Gary, do you mean Gary Hursh?

A. Yes. Please don't put "Indian Gary" in there because that's not nice. Anyhow, he goes up there in a tipi.

Q. And back in 1990, this was actually – So there was nobody on Wil's parcel right now?

A. That's right.

Q. What neighbors were there back in 1990?

A. There was no building there.

Q. I mean other neighbors as you go up the road?

A. Just Wildungs. And Marion was there, but they were building their house. There weren't in the house at that point. They lived there in good weather when they were building the house. And they lived in a trailer while they were building the house.

Q. And at that time in 1990, were you aware of the public using the road when you first arrived – or at any time that year?

A. Probably, yes. Like I'm saying, I think a lot of that was kids, et cetera, going up there to party and do whatever.

Q. Like teenagers from Darby?

A. Yes, wherever.

Q. Okay.

A. Hunters would go up.

Q. Okay. So more specifically, like did you – I mean, you talked about how you knew that the kids were going up there and partying, because they would leave trash behind, correct?

A. Right.

Q. What about the hunters? How did you know the hunters were going up?

A. You could hear them shooting rifles, et cetera, because they would just – There are some people, you know, that shoot right from their vehicle. They don't get out and walk around, et cetera.

Q. Which is illegal.

A. Some people have permission to do that if they're handicapped.

Q. That's true.

A. But I wouldn't know which of those were.

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Ninth Circuit Excerpts of Record 410
Filed 12/23/2020

Deposition of Jane B. Stanton

[Pages 78:24–79:20]

Q. A couple of allegations in the complaint that I want to kind of understand where you're coming from on. You talk about serious traffic hazards in the complaint. Does that correlate to anything specifically that you experienced that you —

A. I think – Well, a lot of the brush has grown over the road, and it's curvy. So you can't see if somebody is coming down or going up, you know. So I think that's a hazard. I think that should be trimmed back. That's not on my part of the road, but it's just up from me. Once you go over the first cattle guard it gets really closed in.

Q. Okay.

A. And the road is rumpy.

Q. Rumpy road? So you did talk in the complaint —

A. Washboard.

Q. — yeah, about road damage. And that's what you're talking about is the washboard?

A. Uh-huh.

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Ninth Circuit Excerpts of Record 411–412
Filed 12/23/2020

Deposition of Jane B. Stanton

[Pages 85:23–86:20]

Q. (BY MR. SCHIFF) Okay. Mr. Smith, I believe, was asking you questions earlier about this closure order that's dated May of 2006. Prior to today have you ever seen this order?

A. This particular one?

Q. Yes.

A. No.

Q. Okay. Thank you. And then I will direct your attention to Exhibit 25 and the first page of that exhibit, USA revised 3190 With respect to the public access through private lands next one mile sign 446, is it your testimony that that was placed on your property by the Forest Service with your permission?

A. Yes.

Q. And is it your testimony that the sign was placed around the time of your husband's death?

A. I'm just guessing.

Q. Okay. So you don't have a good recollection as to when that was?

A. No. It hasn't been tons of years or anything.

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Ninth Circuit Excerpts of Record 432–433
Filed 12/23/2020

Deposition of Eric Winthers

[Pages 13:16–15:17]

Q. Okay. So let's go back to this December 4th, 2017 meeting, what was discussed at the meeting?

A. The intent I went there for was to discuss the Darby Lumber Lands Phase II project.

Q. And what is the Darby Lumber Lands Phase II project?

A. Darby Lumber Lands refers to land we acquired 10, 15 years ago where – from the Darby Lumber Company, and this project was to do some transportation management and road management associated with those lands that we had acquired. And it's generally referred to as the Darby Lumber Lands project, it includes timber sale, it included some roadwork in Robbins Gulch.

Q. Do you know a lot about the Darby Lumber Company?

A. I don't.

Q. Anyway, you had this meeting about the Phase II Darby Lumber project. Did the landowners have concerns that they wanted to bring to your attention?

A. Not about the lumber lands project.

Q. Okay. What about, then?

A. They were concerned about the road and the traffic.

Q. What were they concerned – you said – besides traffic, what else were they concerned about?

A. Maintenance of the road.

Q. And do you remember any specific maintenance concerns by the landowners?

A. Marion Dial had mentioned she drives a Volkswagen Jetta and had been complaining about the small ruts in the road that might affect her ability to drive up the road in her Volkswagen Jetta to her driveway, which is off of the Robbins Gulch Road.

Q. What did you say to her then in response to these concerns?

A. From the road condition that I observed, I mentioned that it was to our standards, that it had been maintained to our standards. I didn't expect that we would improve it much.

Q. And do you – Is it your management decision to only maintain Robbins Gulch Road to whatever the Forest Service decides?

A. Yeah, it was our management decision from the 2016 travel plan that manages it to a level 3, management level 3.

Q. And what was it prior to 2016?

A. I don't know.

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Ninth Circuit Excerpts of Record 471–472
Filed 12/23/2020

Deposition of David Bull

[Pages 30:3–37:22]

Q. (BY MR. SCHIFF) Let me rephrase the question. Do you recall why the 2006 order referenced 261.50(b) dealing with trails rather than 261.50(a) referencing – dealing with areas, which was referenced in the prior closure order?

MR. SMITH: I'm going to just have a continuing objection to anything pertaining to these regulatory subsections and their interpretation and application. Sorry, you can answer the question.

A. The difference, in my mind, is that (a) references an area that our helicopter – the closure order in 2002 referenced an area using paragraph (a), because that's where the helicopter yarding was going to take place, within an area adjacent to a road, so it included both area and road, whereas the 2006 order referenced paragraph (b) because it's talking about a national – restricted use of any national forest system road. So that, in my mind, is the difference.

Q. (BY MR. SCHIFF) With reference to the 2006 order, you'll see at the bottom of that order there is a notification that says, A copy of this order shall be posted as prescribed under 36 CFR 261.51.

A. Uh-huh.

Q. Do you recall what CFR 261.51 provides?

A. You know. I do not.

Q. Do you recall if you ever knew?

A. Yes, I would have known.

Q. Would you have known what it meant when this order was issued?

A. I could tell you the way I understood it at the time. Now, whether that is the same as what's in 261.51, I can't answer affirmatively if it was indeed following 261.51, but I know how we did post it.

Q. How did you post closure orders?

A. We would post them on site, we would typically put up a road barricade and then have it on a post there on the road barricade itself, and then it would be posted at the ranger district office and in a binder of special orders, and then we would post it in the national forest supervisor's office in a similar binder.

Q. Well, I can say, just for your own satisfaction, that is basically what 261.51 says, so you were definitely acting correctly.

A. Okay.

Q. But with respect to the posting of the order at the road —

A. Uh-huh.

Q. — would that have been a true copy of the order itself?

A. It would have been this, yes, this would be posted like this.

Q. And you're referring to the document 0602?

A. Yes, I'm referring to 0602, this document would've been posted on site as well as in our district and forest supervisor offices.

Q. Would any other signage have been put up?

A. Specific to this case, I do not know.

Q. Generally speaking, would additional signage have been put up?

A. Typically there would be a Road Closed, you know, a regular highway type – you know what I mean by meeting the MUTCD standards with the appropriate lettering that could be seen from a distance saying Road Closed, and then there would be a board that had this sign, this order on it, in addition to the Road Closed sign that would be posted on the barricade.

Q. Typically how long would it take for the orders to be posted on site after the order was approved?

A. Again, you're talking typically?

Q. Generally speaking.

A. Okay. Generally speaking, it was once they got my signature, they immediately took it to the copy machine, the law enforcement people, and they would immediately run it out there and put on it the site, so

it was – we were trying to be as timely as we could with the signing and the posting.

Q. Do you recall how quickly the posting of this 2006 order happened?

A. No.

Q. If you'll turn to page – two pages to 0604, there is what appears to be a rescission order issued under your signature for the 2006 order. Do you recognize that document?

A. Yes.

Q. And am I correct that that document was signed by you on May 11th, 2006?

A. Yes.

Q. Now, that is eight days after the closure order was signed. Is such a brief closure typical?

A. Our general operating procedure was to minimize the impact of closures on the public. So typically we would evaluate on a daily or every-couple-of-days basis to see if it's time to pull the order. So, it could be that that was the point at which road conditions were no longer unsafe or causing resource concerns.

Q. And who would be the person who would make that determination of whether the hazardous road conditions had abated?

A. It typically would be a consultation between the district ranger, the road manager and the law

enforcement personnel, and then they would recommend to me to rescind the order.

Q. Going back to the first page of that 2006 order, you'll see there that there are three exemptions to the order listed in about the middle of the page. The first one pertains to persons with a permit issued by a forest officers. The second to any federal, state or local officer or member of an organized rescue or firefighting force. And the third, forest administrative personnel. And I'll represent that I'm paraphrasing somewhat, but those are three exclusively mentioned exemptions.

Do you recall how those particular exemptions were decided upon?

A. Are you asking about the 1, 2, 3 in total, how those 1, 2, 3 items were decided or how we would implement 1 or implement 2 or implement number 3?

Q. Well, let me ask the question more specifically. Do you recall how it was decided that exemption number 1 should be included in this particular order?

A. My recollection is that these three exemptions were fairly standard for our orders, so that item number 1, typically 2, and typically 3 were included in all of our special orders.

Now, your question, again, was how would I or how would a forest officer allow a person – how would the forest officer issue a permit to a person?

Q. Actually, I think you answered my question. And please correct me if I'm wrong, but I take your answer to be that the standard operating procedure was that when a closure order was issued, something like these three standard exemptions would be included?

A. Yes.

Q. With respect to exemption number 1 in particular, the one that refers to persons with a permit, do you recall what types of qualifying permits those would be?

A. The type of permit or the type of use or the person?

Q. The type of use permit.

A. My understanding, again, I did not issue any exemption permits, typically the ranger or the law enforcement would issue those and they'd be in a letter form, typically saying, so-and-so has permission to be on this closed portion of the road, signed – well, it would have to be signed by the district ranger, the law enforcement didn't have authority to exempt, so the ranger would, or I would, but I didn't sign any exemptions, but the ranger, I assume, would have, but I'm not aware if he did in this particular case.

Q. Speaking generally, not with respect to this particular exemption order, but generally, based upon your experience as the forest supervisor, when this exemption was included, when number 1 here was included in a forest road closure order, if I were a member of the general public and simply wanted to

use that otherwise closed road, could I obtain a permit to use it pursuant to this exemption number 1?

A. You could try, as a member of the public, by making a case to the district ranger about why it's important for you to be on a road that's closed, but there would have to be a very specific purpose. Typically these were issued for people that either owned land along the road or had a contract to do work with the Forest Service. But a general member of the public, just because they want to go on that road, I would say I can't recall that we would ever issue an exemption for that.

Q. If one were a homeowner along such a closed road, would one obtain a permit through this exemption number 1 to access one's home legally?

A. Again, I'm not familiar specifically with this case if we did, but typically, yes, if you were a landowner and you needed access to your land by crossing this portion of the closed road, then the ranger would very likely issue an authorization.

* * * * *

Ninth Circuit Excerpts of Record 501
Filed 12/23/2020

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Page 1 of 1

BITTERROOT NATIONAL FOREST
1801 N. First Street
Hamilton, MT 59840
Forest Supervisor's Order

Pursuant to Title 36 Code of Federal Regulation 261.50(b), the following acts are prohibited on National Forest System Road (NFSR) # 446 (Robbins Gulch Road), on the Darby Ranger District of the Bitterroot National Forest. These prohibitions are in addition to those enumerated in Subpart A, Part 261, Title 36, Code of Federal Regulations and will remain in effect until rescinded.

36 CFR 261.53 – Special Closures

It is prohibited to enter or be upon any area which is closed for the protection of “Public Health and Safety” (Title 36 CFR 261.53(e)).

The purposes of this order is for public safety and minimize hazardous road conditions on a section of National Forest System Road #446 (Robbins Gulch Road).

Area Description:

National Forest System Road # 446 (Robbins Gulch Road) beginning at State Highway # 93 and NFSR # 446 Robbins Gulch in SENW Section 17, T2N, R20W, PMM and heading Northeast and

ending at the intersection with National Forest Service Road # 5612A in SESW Section 17, T2N, R20W, PMM.

Exemptions:

Pursuant to Title 36 CFR 261.50(e), the following are exempt from this restriction:

1. Persons with a permit issued by a forest officer specifically authorizing the otherwise prohibited act or omission.
2. Any Federal, State, or local officer or member of an organized rescue or fire fighting force in the performance of an official duty.
3. Forest Administrative personnel.

Done at Hamilton, Montana this 3 day of May, 2006.

By: s/Barry Paulson for

DAVID T. BULL
Forest Supervisor
Bitterroot National Forest

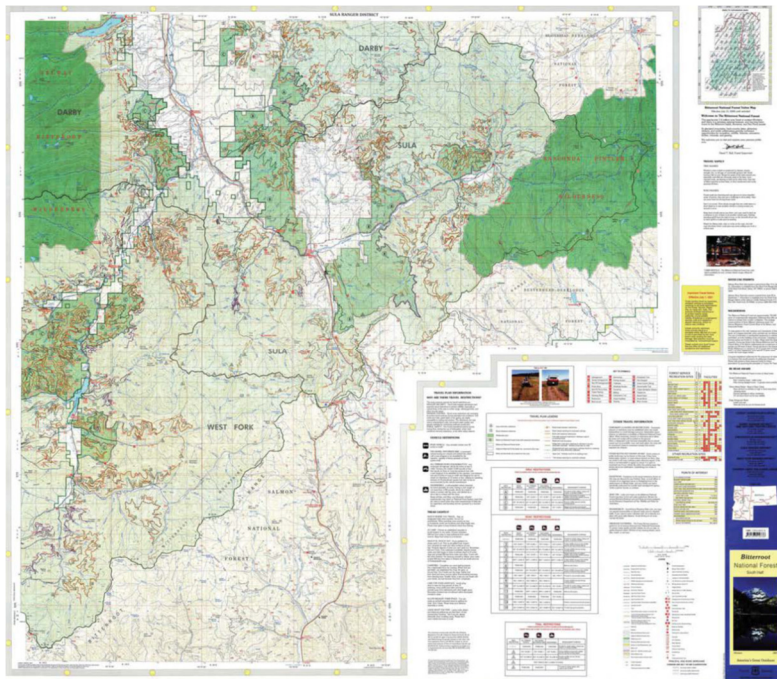
Penalty

Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, or imprisonment for not more than six (6) months, or both (16 USC 551 and 18 USC 3559 and 3571).

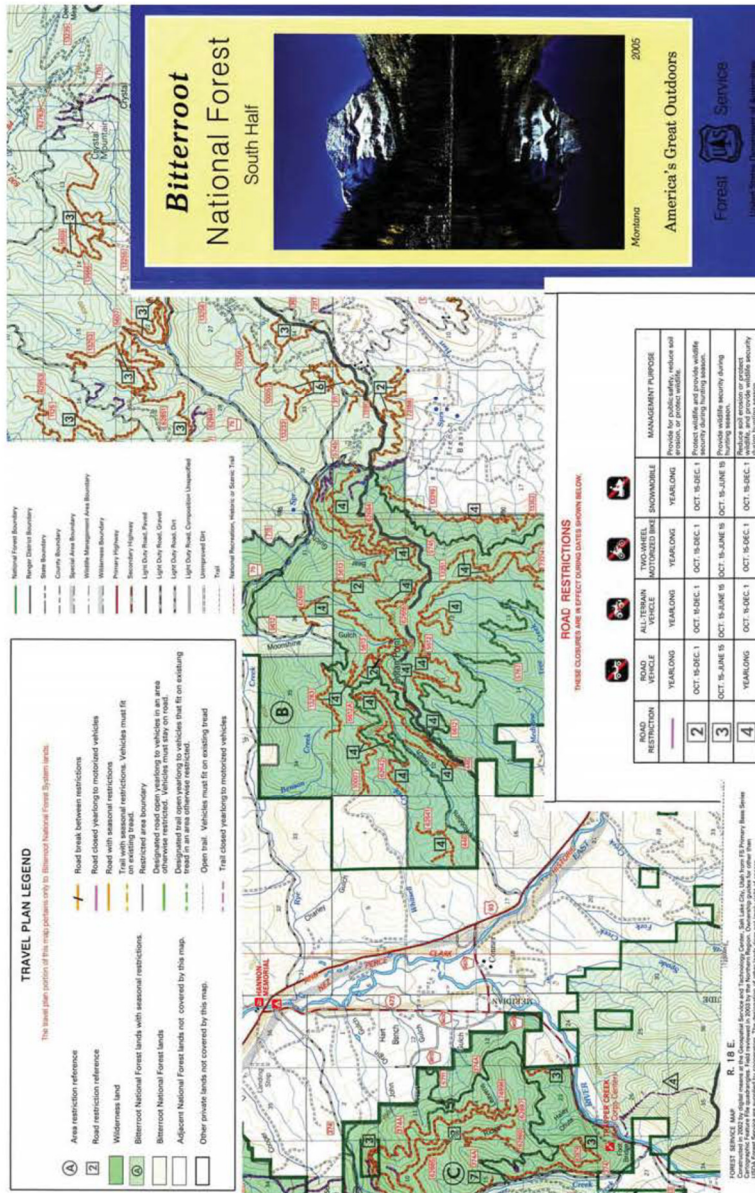
Notification

A copy of this order shall be posted as prescribed under 36 CFR 261.51.

Ninth Circuit Excerpts of Record 502
Filed 12/23/2020



Ninth Circuit Excerpts of Record 503
 Filed 12/23/2020



Ninth Circuit Excerpts of Record 516
Filed 12/23/2020



Ninth Circuit Excerpts of Record 518
Filed 12/23/2020



Ninth Circuit Excerpts of Record 540, 544–545
Filed 12/23/2020

* * * * *

UNITED STATES' ANSWER TO COMPLAINT

* * * * *

26. The United States denies paragraph 26, except to admit the May 23, 1962 letter from the Forest Supervisor to Mr. J.E. Coultas contains the quoted language.

27. The United States denies paragraph 27.

28. The United States denies paragraph 28.

29. The United States admits the first sentence of paragraph 29. Deny the second sentence, except to admit that plaintiffs were informed the Forest Service did not view the 1962 easement as limited to timber harvesting.

30. Defendants incorporate their responses to paragraphs 1-29 above.

31. Plaintiffs recite their requested relief in paragraph 31; admit plaintiffs seek such relief. Deny plaintiffs are entitled to such relief.

32.-34. The United States denies paragraphs 32-34.

35. Defendants incorporate their responses to paragraphs 1-29 above.

36. The United States denies paragraph 36, except to admit the 1962 easement provides for the road to be patrolled and maintained.

37. The United States admits paragraph 37.

38. The United States denies paragraph 38.

The remainder of the complaint consists of plaintiffs' prayer for relief which requires no response. Defendants deny that plaintiffs are entitled to the relief requested.

GENERAL DENIAL

To the extent any allegation in the complaint requires a response under Fed. R. Civ. P. 8(b) and is not effectively responded to above, the United States hereby denies such allegation.

AFFIRMATIVE DEFENSES

1. Plaintiffs lack standing to bring these claims.
2. Plaintiffs' claims are barred by the statute of limitations.
3. The court lacks jurisdiction over plaintiffs' claims.

DATED this 24th day of October, 2018.

KURT ALME
United States Attorney
/s/ MARK STEGER SMITH
Assistant U.S. Attorney
Attorney for Defendant

Ninth Circuit Excerpts of Record 548–563
Filed 12/23/2020

* * * * *

COMPLAINT

INTRODUCTION

1. The Plaintiffs, Larry Steven (“Wil”) Wilkins and Jane B. Stanton, ask this Court to quiet title to an easement as described herein, acquired by the United States of America (“United States”), in 1962, administered by the U.S. Forest Service, and which traverses private lands owned by Mr. Wilkins and Ms. Stanton. For this Complaint against the United States, the Plaintiffs allege as follows:

JURISDICTION AND VENUE

2. The claims asserted herein arise under the Quiet Title Act, 28 U.S.C. § 2409a.

3. This court has jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (when the United States is a defendant), 28 U.S.C. § 2409a and 28 U.S.C. § 1346(f) (Quiet Title Act), as the case involves Plaintiffs’ claim to limit the scope of an easement granted to the United States in 1962 by Plaintiffs’ predecessor in title.

4. Venue is proper under 28 U.S.C. § 1391(e), as the subject lands are located in Ravalli County, Montana.

PARTIES

5. Mr. Wilkins is a citizen of the United States and resident of Ravalli County, Montana, residing on his property at issue in this case located at 5108 Highway 93, Conner, Montana 59827, as further described below.

6. Ms. Stanton is a citizen of the United States and resident of Ravalli County, Montana, residing on her property at issue in this case located at 5134 Highway 93, Conner, Montana 59827, as further described below.

7. Defendant United States of America owns the 1962 easement for the Robbins Gulch Road, an unpaved road which crosses the Wilkins and Stanton properties and provides a limited means of access to the Bitterroot National Forest.

STATEMENT OF FACTS

8. Mr. Wilkins is a private property owner of land comprising approximately 9.18 acres, described as Tract A, Certificate of Survey No. 5594-R, located in the SE 1/4 Section 17, T.2N., R.20.W., P.M.M., near the Bitterroot National Forest along the Robbins Gulch Road, also referred to as U.S. Forest Service Road #446. Mr. Wilkins acquired his ownership of the property by a warranty deed dated May 11, 2004, recorded by the Ravalli County Clerk and Recorder on May 19, 2004, as Document No. 535597.

9. Ms. Stanton is a private property owner of land comprising approximately 12.43 acres, described as Parcel E, Certificate of Survey Number 38, located

in Section 17, T.2.N., R.20.E., P.M.M., near the Bitterroot National Forest along the Robbins Gulch Road, also referred to as U.S. Forest Service Road #446. Ms. Stanton first acquired ownership of the property (as joint tenant with her late husband, Harold F. Stanton) in 1991 and she became full owner of the property by a quitclaim deed dated September 2, 2016, recorded by the Ravalli County Clerk and Recorder on September 14, 2016; as Document No. 702188.

10. Mr. Wilkins and Ms. Stanton object to the current and ongoing excessive use of the Robbins Gulch Road by a wide range of parties, and the failure of the U.S. Forest Service to manage, patrol, and maintain this road in accordance with the intended limited use of the road for U.S. Forest Service administrative purposes.

11. The 1962 easement for the Robbins Gulch Road was granted by the predecessors in title of Mr. Wilkins and Ms. Stanton through two conveyances dated April 30, 1962 and May 11, 1962, to the United States for use only by the United States “and its assigns.”

12. The 1962 easement was not granted to the United States for general public use.

13. In recent years, the Forest Service’s management of the road has enabled the road to be utilized for general public access purposes, and encouraged public use with signs such that the use of the road has become excessive and disruptive to the Plaintiffs’ enjoyment of their private property. The increasing excessive use of the Robbins Gulch Road

has caused serious traffic hazards, road damage, fire threats, noise, and enabled a wide range of people – some known and many unknown – to access the road and engage in misconduct, trespassing, illegal hunting, speeding and disrespectful activities often aimed at the Plaintiffs and other neighboring owners of private lands traversed by the road.

14. The 1962 easement and the contemporaneous Forest Service correspondence concerning that easement demonstrate that the 1962 easement was granted only for restricted purposes for the United States and its assigns. In addition, an express condition of the easement was that the U.S. Forest Service would “patrol” the road, which indicates that the Forest Service would ensure that the use of the road was consistent with the limited purpose granted.

15. The Forest Service’s road superintendent, hydrogeologist and biologist also have had expressed concerns about the adverse effects of the excessive use of, and erosion from, the Robbins Gulch Road. Notwithstanding the restricted nature of the 1962 easement held by the United States to the Robbins Gulch Road, the Forest Service District Ranger, Eric Winthers, recently declared in a March 19, 2018 email sent to another neighboring private landowner, Ms. Marion Dial, that the restricted road easement over the private property is deemed to be “open to the public”:

. . . the Robbins Gulch Road is closed at the Forest Boundary per the travel plan from Dec 1 through June 15.

The road is open to the public from the highway to the forest boundary. Since the easement is 60 feet in width, people may legally park along the edge of the road.
[Emphasis added.]

16. The plain text of the 1962 easement is the starting place for understanding the limited rights granted to the United States of America under this easement. The easement was granted by Mr. Wilkins' predecessors in title, John E. Coultas, and Ruth H. Coultas, John W. Coultas, Jean Coultas, Lea J. Wildung, and Ida Wildung, who then owned the property through two easement conveyances in 1962. One easement is dated May 11, 1962, and covered a portion of Robbins Gulch road containing 7.484 acres more or less, located in Section 16 and Section 17, T.2.N., R.20.W., M.P.M. The consideration for the easement was \$374.20. The landowners were the party of the first part, and the United States was the grantee, party of the second part. The easement provided that "the party of the first part [landowners] does hereby grant and convey unto the party of the second part [*the United States of America*] and its assigns an easement and right-of-way for a road as now constructed and in place and *to be reconstructed, improved, used, operated, patrolled, and maintained* and known as the Robbins Gulch Road, Project Number 446..." (Emphasis added.) Recorded Sept. 4, 1962, Book 119 of Deeds at Page 243, Records of Ravalli County, Montana. The other conveyance creating the easement used substantially identical terms and was dated April 30, 1962. It covered 0.408 acres more or less, located in Section 17, T.2.N., R.20.W., M.P.M., and the consideration paid was

\$100.00. Recorded Sept. 4, 1962, Book 119 of Deeds at Page 246, Records of Ravalli County. The May 11, 1962 easement and the April 30, 1962 easement are together referred to as the 1962 easement unless otherwise specified herein.

17. The text of the 1962 easement is notable in that it grants the easement only to the United States of America and “its assigns.” There is no grant of this easement for general public use and access purposes. The term “assigns” means “those to whom property is, will, or may be assigned.” *Black’s Law Dictionary* at 119 (6th ed. 1990). The term therefore limits the use of the road easement to the United States and specific assignees.

18. The easement also expressly stated as a condition that the existing road is “to be reconstructed,” and “patrolled” and “maintained.” Upon information and belief, the Forest Service did reconstruct the Robbins Gulch Road in the early 1960s, and the Forest Service generally has made some efforts to maintain the road over the years, and the Forest Service acknowledges some of its maintenance practices on this road in the Forest Service’s records. The Forest Service under the 1962 easement has an express obligation to ensure that this road is “*patrolled*.” The term “patrol” means “the action of traversing a district ... for observation or the maintenance of security.” *Webster’s New Collegiate Dictionary* at 834 (1973).

19. Yet, the Forest Service has failed to act in recent years to patrol the road in accordance with the limited grant of this easement to the United States and its assigns. In recent years some Forest Service

enforcement officers have verbally disavowed any willingness to patrol the Robbins Gulch Road to limit the excessive and unauthorized uses of it which have become rampant. Moreover, the District Ranger's March 19, 2018, email reflects a position that the Forest Service is openly allowing and enabling widespread public use of this restricted easement through the private property.

20. The 1962 easement was granted expressly to the "United States of America," as a sovereign governmental entity, not all unspecified citizens and residents of the United States of America. The plain text of the 1962 easement contemplated that the Robbins Gulch Road was to be used solely by agents of the United States and assigned representatives, such as timber contractors, but this text contemplated that there would be actual assignments from the Forest Service to those assignees who were entitled to make use of this easement held by the United States.

21. The 1962 easement text does not permit the United States to declare and allow that all members of the public (without limitations or identification) would have the ability to use this road. Correspondingly, the Forest Service has an express obligation under the 1962 easement to ensure that this road is "patrolled" to ensure that the easement terms and scope are not being violated beyond the limited grant conveyed to the United States.

22. Plaintiffs' interpretation of the plain text of the 1962 easement is consistent with the contemporaneous letter from Forest Supervisor Harold E. Andersen, who transmitted the two conveyance documents which comprise the 1962

easement by letter dated May 23, 1962 to Mr. J.E. Coultas. That transmittal letter stated: “We, of the U.S. Forest Service, have been negotiating for a road right-of-way through your property on Robbins Gulch with your son, Mr. John W. Coultas, and Mr. Lee Wildung. As we have reached an agreement with both parties, there now remains a need for signatures by you and your wife, Mrs. Ruth H. Coultas...” *Id.* The letter then states:

I shall attempt to summarize some of the questions you may have.

1. *Purpose of road – timber harvest.*
2. Construction – reconstruction of existing road.
3. Location – along existing Robbins Gulch Road.
4. Date of construction – probably fiscal year 1963. [Emphasis added.]

The fully executed 1962 easement conveyances were recorded at Book 119 of Deeds at Page 243, Records of Ravalli County on September 4, 1962, and at Book 119 of Deeds at Page 246, on September 4, 1962. An identical letter from the Forest Service stating the same limited purpose (timber harvest) was sent to Ms. Ruth H. Coultas on May 21, 1962.

23. The May 21 and May 23, 1962 letters from the Forest Supervisor were prepared and executed contemporaneously with the execution of the 1962 easement conveyances, must be read as part of the

easement agreement between the parties, and confirm that the purpose of the road was for Forest Service administrative uses associated with specific activities such as timber harvesting, that would be carried out by Forest Service employees and authorized contractors. There is no indication in the 1962 letters or the text of the 1962 easement that the road was contemplated for general public access purposes. To the contrary, the 1962 easement is limited and forecloses that possible interpretation.

24. The 1962 easement is in stark contrast to a 1937 easement recorded in the Ravalli County clerk's office concerning the very same Coultas land at issue, as set forth in a Right Of Way Deed from John and Ruth Coultas granted to Ravalli County, recorded May 11, 1937. That 1937 easement granted to the County and "successors in interest" the following: "*an easement and right of way for the construction of a public or County highway over, across, covering and embracing the following described parcel of land. . . .*" (Emphasis added.) This 1937 text creating a "*public ...highway*" over this same land (but not the Robbins Gulch Road area) bears no similarity to the 1962 easement text.

25. The 1937 referenced "public highway" is now the paved public highway for U.S. Highway 93, bordering the south of Plaintiffs' properties. Yet, documents from the Forest Service's own files demonstrate that Robbins Gulch Road then did *not* historically provide public access to the National Forest lands to the north. An unrecorded prior RIGHT OF WAY AGREEMENT from John and Ruth Coultas, landowners, to the Forest Service, dated, April, 1939,

stated that the Forest Service could only use the Robbins Gulch Road for Forest Service uses. The 1939 agreement stated, in part, that the Forest Service would post a sign stating: "*this road right of way Granted for Forest Service use only.*" (Emphasis added.) The 1939 agreement stated further: "*the Forest Service will not give permission for the use of this road to others.*" (Emphasis added.) Indeed, a 1949 Memorandum of Agreement from the Forest Service's files for the Robbins Gulch Road, confirms: "*U.S. Forest Service will erect and maintain suitable signs on the gates reading as follows: Restricted right-of way, Granted only for Forest Service use, thus replacing the original sign placed by the Forest Service.*" (Emphasis added.)

26. As described above, in the May 23, 1962 letter (from the Forest Service files for the 1962 easement) from the Forest Supervisor sent to Mr. J.E. Coultas, property owner, in response to "*the questions you may have . . .*," the Forest Service stated that the 1962 easement was meant to facilitate the reconstruction of the Road in fiscal year 1963, and described the only purpose of the new Road as follows: "*Purpose of road - - timber harvesting.*" The Forest Service mentioned no other purposes for this easement immediately before the landowners executed and granted the easement to the Forest Service. The intent of the parties at the time of signing in 1962 was to create a limited purpose easement for Forest Service timber harvesting purposes, consistent with the limited purposes as understood by the parties in 1939 and 1949.

27. The 1962 easement for the Robbins Gulch Road was understood by all parties as restricted to

Forest Service timbering purposes, and the continued efforts of the Forest Service today to allow unrestricted use (apart from some seasonal restrictions) of the Robbins Gulch Road by the general public is improper and unlawful.

28. Counsel for Mr. Wilkins sent a letter to the U.S. Forest Service and the U.S. Department of Agriculture's Office of General Counsel on May 14, 2018, asserting that the 1962 easement for the Robbins Gulch Road was limited to use by the United States and specific assigns, such as timber contractors. On July 12, 2018, Mr. Alan Campbell of the U.S. Department of Agriculture Office of the General Counsel responded on behalf of the U.S. Forest Service to the letter of May 14, 2018, submitted on behalf of Mr. Wilkins, stating, in part:

The easement is granted in general and unlimited terms for a road to be "operated" by the Forest Service. Where the National Forest lands are open to the public *the Forest Service may allow the public to utilize the easement* for ingress and egress to the National Forest as *an implied licensee of the agency without the need for recitation in the easement of this use*. [Emphasis added.]

29. On July 31, 2018, counsel for Mr. Wilkins replied to Mr. Campbell's letter of July 12, 2018, stating on behalf of Mr. Wilkins: "While we appreciate your willingness to review the serious issue involving the excessive and unauthorized use of the Robbins Gulch Road easement held by the United States over Mr. Wilkins' private land, we respectfully and firmly disagree with your conclusions. . . . we urge

you to reconsider this matter in the interest of avoiding costly and protracted litigation.” On August 9, 2018, Mr. Campbell, on a conference call with Forest Supervisor Julie King and District Ranger Eric Winthers, orally asserted to Mr. Wilkins and his counsel that the U.S. Forest Service would not change their position that the Robbins Gulch Road would be open to the general public, notwithstanding the 1962 easement text and associated documentation of the limited purpose of the 1962 easement.

FIRST CAUSE OF ACTION
QUIET TITLE TO CONFIRM THE
LIMITED SCOPE OF THE 1962 EASEMENT
FOR THE ROBBINS GULCH ROAD

30. Plaintiffs incorporate herein and reallege each of the foregoing paragraphs 1 through 29.

31. In this action, Plaintiffs seek to quiet title to their land with respect to the 1962 easement for Robbins Gulch Road which traverses Plaintiffs' properties.

32. The United States' recent actions authorizing and encouraging unrestricted public use of the Robbins Gulch Road by the general public, including public parking on the Robbins Gulch Road subject to the 1962 easement, are severely harming and interfering with the Plaintiffs' use and enjoyment of their private properties.

33. The positions of the United States as expressed in communications in 2018 allowing unrestricted public use exceed the scope of the 1962 easement.

34. The Plaintiffs are entitled to an order of this Court quieting title to their land with respect to the Robbins Gulch Road as covered by the 1962 easement traversing the Plaintiffs' properties, as described herein, confirming that the 1962 easement may not be utilized by the general public and that it may only be used by agents of the United States and specific assignees such as timber contractors.

SECOND CAUSE OF ACTION
QUIET TITLE TO CONFIRM AND
ENFORCE THE FOREST SERVICE'S
OBLIGATIONS UNDER THE 1962 EASEMENT
FOR THE ROBBINS GULCH ROAD

35. Plaintiffs incorporate herein and reallege each of the foregoing paragraphs 1 through 29.

36. Under the plain text of the 1962 easement, the United States has an obligation to "patrol[]" the Robbins Gulch Road to ensure that the road is secure and that unauthorized trespasses are not occurring, and to "maintain[]" the road.

37. As the relevant land managing agency, the Forest Service has an obligation to take affirmative steps to patrol and maintain the Robbins Gulch Road under the 1962 easement.

38. The Forest Service is authorizing and facilitating the current ongoing unrestricted use by the general public in violation of the obligation of the United States to patrol and maintain this road.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief against the United States:

1. An order quieting title to their land with respect to the 1962 easement held by the United States and administered by the Forest Service on the Robbins Gulch Road, and declaring that the easement may be utilized only by agents of the United States and specific assignees such as timber contractors, and that public parking is not allowed on the easement;

2. An order declaring that the Forest Service has an obligation to patrol and maintain the Robbins Gulch Road, which is subject to the 1962 easement, in accordance with the 1962 easement;

3. Attorneys' fees and costs incurred by Plaintiffs to the extent permitted by law, including under the Equal Access to Justice Act, 5 U.S.C. § 2412(d)(1); and

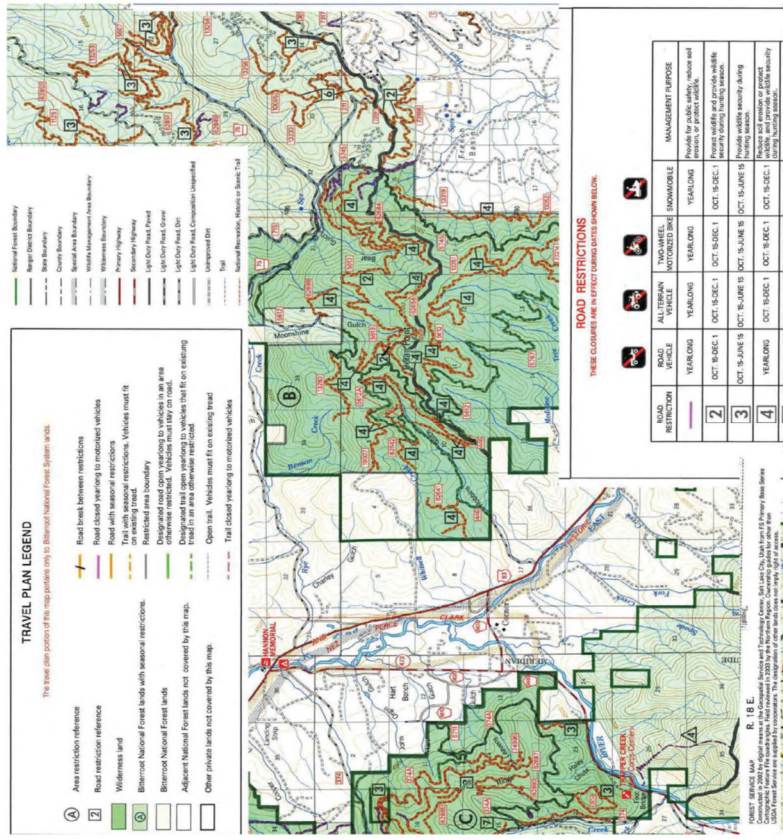
4. An order granting such other and further relief as may be just and appropriate upon the facts and law at issue herein.

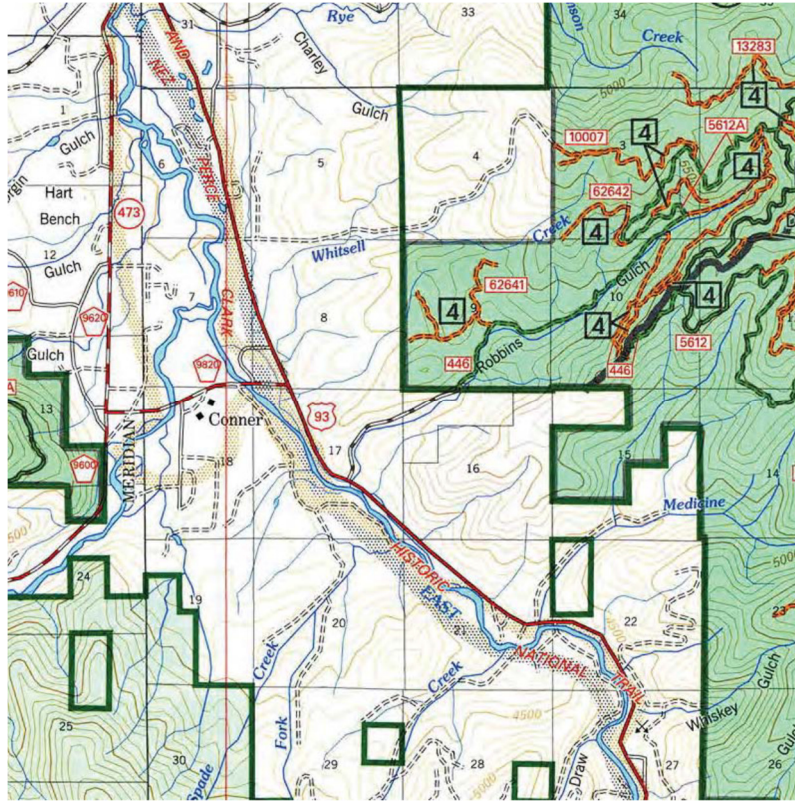
DATED this 23rd day of August, 2018

CROWLEY FLECK PLLP
/S/ Brett L. Kvasnicka
Brett L. Kvasnicka

* * * * *

Ninth Circuit Supplemental Excerpts of Record 25-26, Filed 2/26/2021



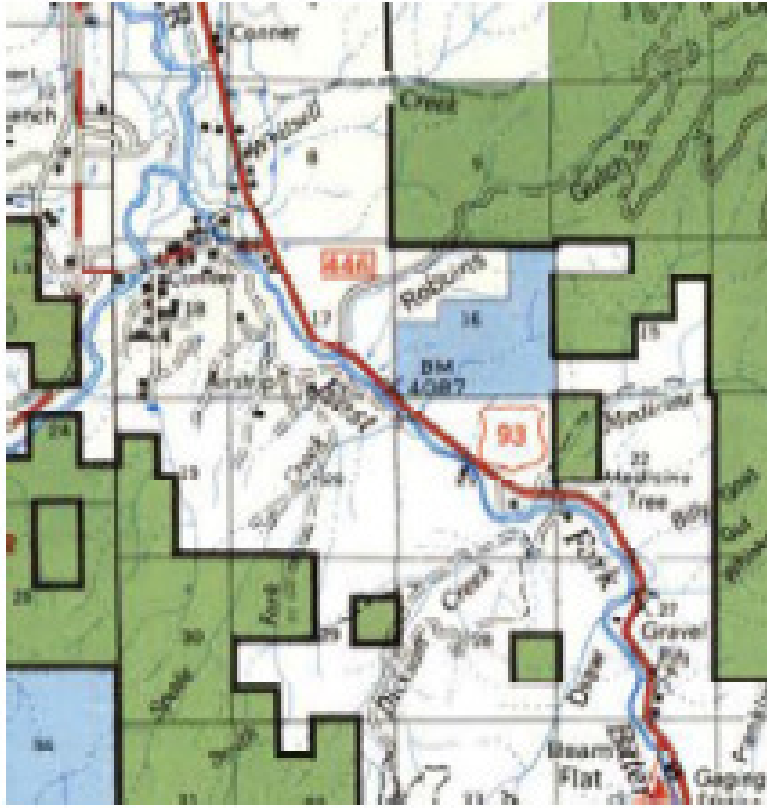


Ninth Circuit Supplemental
Excerpts of Record 27–28, Filed 2/26/2021



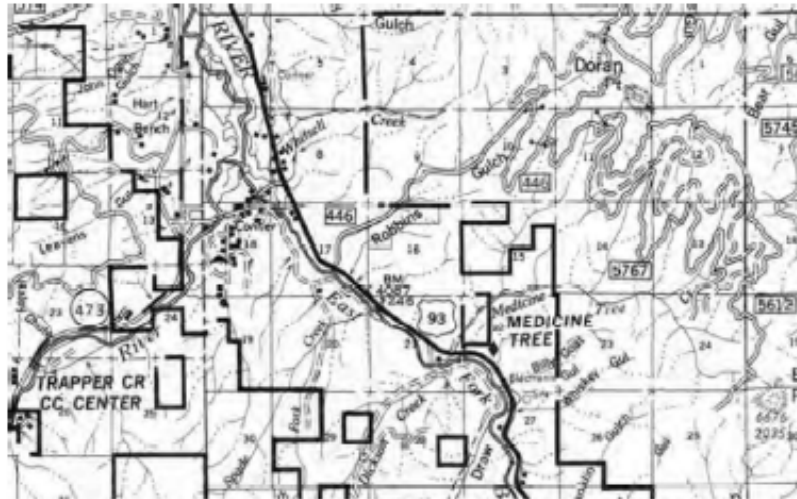
Ninth Circuit Supplemental
 Excerpts of Record 29–30, Filed 2/26/2021





Ninth Circuit Supplemental
 Excerpts of Record 31-32, Filed 2/26/2021



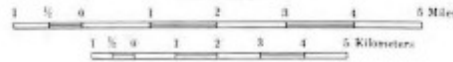


Ninth Circuit Supplemental
 Excerpts of Record 33–34, Filed 2/26/2021

**BITTERROOT NATIONAL FOREST
 MONTANA AND IDAHO
 PRINCIPAL AND BOISE MERIDIANS**

1998

Scale 1:128,728



LEGEND

	Forest Supervisor Office		Horizontal Control Station
	Ranger District Office		Lookout and Horizontal Control Station
	Other Forest Service Facility		Lookout Station
	Interstate		U.S. Mineral or Location Monument
	U.S. Highway		Mine, Quarry or Gravel Pit
	State Highway		Boundary Monument
	County Route		Location or Landmark Object
	Forest Route		Gaging Station
	Primary Access Route-Normally Suitable for Automobile Travel-Travel with Caution		Forest Products
	Primary Highway, Hard Surface		Dam
	Secondary Highway, Hard Surface		House, Cabin or Other Building
	Improved Road, Paved		School and Church
	Primary Access Route to Public Lands		Spring, Water Well
	Improved Road		Recreation Site, Forest Service
	Road with Restrictions-Inquire at Local Forest Service Station		Recreation Site, other than Forest Service
	Primitive Road		Downhill Ski Area
	Trail		Cross Country Ski Area
	Historic or National Recreation Trail		Point of Interest
	Railroad		Sportsman's Access
	Power Transmission Line		Trailhead
	Pipeline or Conduit		Bitterroot National Forest
	National Forest Boundary		Adjacent National Forest
	Adjacent Forest Boundary		Bureau of Land Management
	State Boundary		State
	County Boundary		U.S. Fish & Wildlife Service
	Wilderness Boundary		Plum Creek Timber Co., Inc. (Burlington Northern)
	Wildlife Management Area Boundary		
	National Wm and Recreation River		

