No. 25-37

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LARRY STEVEN WILKINS; JANE B. STANTON,

Plaintiffs – Appellants,

v.

UNITED STATES OF AMERICA,

Defendant – Appellee.

On Appeal from the United States District Court
for the District of Montana
No. 9:18-cv-00147-DLC-KLD
Honorable Dana L. Christensen, District Judge

APPELLANT'S REPLY BRIEF

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INTRODUCTION[1]

Larry Steven "Wil" Wilkins and Jane B. Stanton (the Landowners) brought this quiet title action, requesting the District Court interpret a straightforward deed to resolve a property dispute between them and the government about the scope of an easement. In response, the government raised a non-jurisdictional, waivable affirmative defense to avoid resolving that dispute. The District Court broadly interpreted the Quiet Title Act's statute of limitations and entered judgment in favor of the government. But "[a] dismissal pursuant to [the Quiet Title Act's statute of limitations] does not quiet title to the property in the United States. The title dispute remains unresolved." *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 291 (1983). If this Court does not reverse the District Court's overly broad interpretation of the Quiet Title Act's statute of limitations, the Landowners will have an unresolved title dispute with the government with no straightforward mechanism for resolving that dispute.

[1] Mrs. Stanton passed away in June. Mr. Wilkins has moved to substitute the representative of Mrs. Stanton's estate and has sent a copy of the motion to the representative.

The District Court's interpretation of the Quiet Title Act's statute of limitations was overly broad because the limitations period "does not begin to run if 'the United States' claim is ambiguous or vague[.]'" *Waibel Ranches, LLC v. United States*, No. 22-35703, 2024 WL 3384233, at *2 (9th Cir. July 12, 2024) (quoting *Shultz v. Dep't of Army, U.S.*, 886 F.2d 1157, 1160 (9th Cir. 1989)).

Maps the Forest Service admitted do not reflect what rights-of-way the agency owns, 70 Fed. Reg. 68264-01, 68276 (Nov. 9, 2005); vague regulations not incorporated into the relevant deed, 3-ER-323–24; and people breaking the law while using a road, 2-ER-63, do not unambiguously express a position about the scope of the easement at issue here. *See Werner v. United States*, 9 F.3d 1514, 1518 (11th Cir. 1993) (citing *Elk Mountain Safari, Inc. v. U.S., Dep't of Interior, Bureau of Land Mgmt.*, 645 F. Supp. 151 (D. Wyo. 1986)).

Instead, the United States only unambiguously stated its position that the Easement allowed for public access when it installed a sign in September 2006. *See* Opening Brief at 28–34. That was less than twelve years before the Landowners filed their complaint and, thus, this Court should vacate the judgment of the District Court.

ARGUMENT

I. The District Court's Application of the Law of the Case Was Incorrect and Material

The government argues that the District Court correctly applied the law of the case doctrine, and argues that there is a fundamental difference between vacatur and reversal. Answering Brief at 20–23. But in support of that argument, the government only cites cases that dealt with the merits and reversed on one merits ground. *Id.* at 20–21.

There is a difference between a reversal on a merits questions and a reversal on a threshold question. *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1041 (9th Cir. 2010). "Merits questions may be independent of each other; reversal on one merits ground may leave the decisions reached on other grounds intact." But "when the Supreme Court reverses a lower court's decision on a threshold question … it effectively holds the lower court erred by reaching the merits of the case." *Id.*; *In re Bernard L. Madoff Inv. Sec. LLC*, 721 F.3d 54, 68 (2d Cir. 2013) ("The Supreme Court's reversal on the threshold question drained the Second Circuit *Redington* opinion of force on other questions."); *see also Return Mail, Inc. v. United States*, 159 Fed. Cl. 187, 197 (2022), *aff'd*, No. 2022-1898, 2024 WL 562455 (Fed. Cir. Feb. 13, 2024) (stating

that the previous opinion in the case was "null and void, as if they never occurred" because "the Supreme Court reversed the Court of Appeals").

Here, the question of whether the Quiet Title Act's statute of limitations is a jurisdictional requirement is a threshold question. *See Wilkins v. United States*, 598 U.S. 152, 157–58 (2023) (explaining how labeling a statute of limitations as a jurisdictional requirement affects the course of litigation). By holding that the statute of limitations is nonjurisdictional, the Court instructed the District Court on how to answer the question of whether the Landowners timely filed their complaint.

As a result of the Supreme Court's holding, the burden shifted to the government to prove that the case is untimely. *See Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1122 (9th Cir. 2007). The holding also shifted the standard of review on the motions, requiring that all disputed facts be construed in favor of the nonmoving party at the summary judgment stage. *See Texas Partners v. Conrock Co.*, 685 F.2d 1116, 1119 (9th Cir. 1982). Findings made under what the Supreme Court held was the incorrect burden of proof and the incorrect standard of review cannot be the law of the case.

The government also incorrectly argues that the District Court's application of the law of the case is immaterial. The District Court expressly stated that "under the doctrine of the law of the case, the Court finds that Plaintiffs' claims are time barred by the QTA's 12-year claims processing rule." 1-ER-14. The incorrect application of the law of the case doctrine was the reason for the District Court's judgment and prevented an independent review of the evidence at summary judgment. But, as stated in Appellants' Opening Brief, this Court can and should review the summary judgment motions *de novo* without being constrained by the doctrine of the law of the case. Opening Brief at 23.

II. The Landowners' Claims Did Not Begin to Run Until the Forest Service Unambiguously Stated Their View of the Scope of the Easement in September 2006

This Court should vacate the judgment and remand because the record shows that the government failed at the summary judgment stage to meet its burden to prove that the Landowners' claims were filed outside the Quiet Title Act's statute of limitations.

A. The statute of limitations does not begin to run if the government's claim is ambiguous or vague.

Throughout its brief, the government points to the Forest Service's unclear statements and actions to argue that a landowner should have

known the extent of the government's view of the scope of the easement. But the Quiet Title Act's statute of limitations "does not begin to run if 'the United States' claim is ambiguous or vague[.]" *Waibel Ranches, LLC v. United States*, No. 22-35703, 2024 WL 3384233, at *2 (9th Cir. July 12, 2024) (quoting *Shultz*, 886 F.2d at 1160). Here, the United States' claim was ambiguous until it installed a sign in September 2006. *See* Opening Brief at 28–34.

When a quiet title claim involves a non-possessory interest such as an easement, a claim accrues when the government acts adversely to the interests of plaintiffs with respect to the easement. *See Michel v. United States*, 65 F.3d 130, 132 (9th Cir. 1995) (citing *Werner*, 9 F.3d at 1516); *McFarland v. Norton*, 425 F.3d 724, 727 (9th Cir. 2005). This Court has cautioned that courts should not interpret the Quiet Title Act's statute of limitations in a way that would "lead to premature, and often unnecessary, suits." *Michel*, 65 F.3d at 132. The Quiet Title Act does not "compel[]" a landowner "to sue to protect against the possibility, however remote, that the government might someday" disagree with the claimant's view of his or her rights. *Id.*

The 11th Circuit's decision in *Werner*, which this Court favorably cited to in *Michel*, summarizes the case law on how courts should interpret the Quiet Title Act's statute of limitations for disputes over non-possessory interests. *Michel*, 65 F.3d at 132 (citing *Werner*, 9 F.3d at 1516). While *Werner* considered a situation where a person claimed an easement across government property, 9 F.3d at 1516, the court analyzed case law for many different quiet title actions involving non-possessory interests, including a dispute over the scope of a government-owned easement across private property, *id.* at 1518 (citing *Elk Mountain Safari, Inc.*, 645 F. Supp. at 156).

Elk Mountain Safari is most relevant here. There, the BLM claimed the right to allow public traffic on a road crossing private property. 645 F. Supp. at 156. The BLM easement over the road had been granted in 1957, almost 30 years before the landowners filed the quiet title action. *Id.* at 152. The court held that the QTA's limitations period did not begin until the BLM "expressed" "its position that the roadway should be open to the general public." *Id.* at 156. The agency first expressed its position about public use in 1983 or 1984. *id.* The statute of limitations did not begin to run earlier, even though the

homeowners were aware since the mid-1960s of trespassers, *id.* at 154, and even though the 1966 agency memo expressed the opinion that the road was open to the public, *id.* at 156. It was only when the BLM made a statement to the property owners that the property owners' claims accrued.

Additionally, when interpreting the meaning the Quiet Title Act, a court must ensure that its interpretation does not "require[]" plaintiffs "to file a preemptive suit[.]" *Waibel Ranches*, 2024 WL 3384233, at *2 (citing *Michel*, 65 F.3d at 132). This Court has articulated that rule for good reason. "A dismissal pursuant to [the Quiet Title Act's statute of limitations] does not quiet title to the property in the United States. The title dispute remains unresolved." *Block*, 461 U.S. at 291. Interpreting the Quiet Title Act's statute of limitations too broadly contradicts the purpose of the act to allow citizens to resolve property disputes with the federal government. *See* S. Rep. No. 92-575 at 1 (1971). Needlessly dismissing suits on statute of limitations grounds leaves title disputes unresolved with no straightforward mechanism for resolving that dispute.

B. None of the Forest Service's publications unambiguously stated the Forest Service's view of the scope of the Easement

1. The pre-Travel Management maps did not unambiguously state the Forest Service's position about the scope of the Robbins Gulch Easement.

a. The Forest Service stated that pre-Travel Management maps do not reflect what use is allowed.

The government argues that the Travel Management planning process was merely about motor vehicle use, and made no statements about public access generally. Answering Brief at 30–31. That is incorrect.

In responding to comments about the agency-wide Travel Management Rule, the Forest Service directly addressed situations where roads crossed private property. 70 Fed. Reg. at 68276. The agency stated that, "Where access to NFS lands from private property is needed, the Forest Service will seek rights-of-way from willing sellers. If public access cannot be secured, these routes generally will be closed to motor vehicles under the final rule." *Id.*

Thus, the Forest Service recognized that, before the Travel Management Rule, the agency had never had a comprehensive,

unambiguous list of what roads and trails were open to the public. 70 Fed. Reg. at 68264. The agency adopted the Rule to address this confusion.[2]

Consistent with the agency-wide approach to travel management, the Bitterroot National Forest's scoping document proposed no public use of Robbins Gulch Road. 8-ER-1641. Indeed, the scoping document did not even include the portions of the Road that crossed private land. *See* Opening Brief at 44–45 (citing 2-ER-182). Based on the Forest Service's response to comments on the Travel Management Rule, the failure to include portions of Robbins Gulch Road on the scoping document indicates that it did not believe it had a public right-of-way. *Cf.* 70 Fed. Reg. at 68289 (Travel Management Rule mandating that "[m]otor vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands *shall be* designated …." (emphasis added)). At a minimum, the scoping

[2] The webpage from the Medicine Bow-Routt National Forest and Thunder Basin National Grassland further demonstrates the purpose of the Travel Management Rule. 2-ER-141. Although it is from a different National Forest, it is illustrative of the purpose behind the Travel Management Rule.

document does not unambiguously state a position that the Forest Service believes it has a right to public access on the Easement.

In its Answering Brief, the government argues that the pre-Travel Management maps were not ambiguous, because some maps depict gates on certain roads. Answering Brief at 34. But the gates only appear on portions of the Road within the Forest Service boundary. SER-46. It would be reasonable to assume that the Forest Service only noted gates in areas where it owned the underlying land. And, in light of the maps explicitly depicting the primary public access route on another road, it would be reasonable to believe that not depicting a gate on the privately owned portion of Robbins Gulch Road reflects any view about public access on that portion of the Road. *See* Opening Brief at 30–33.

Regardless, the statements made in conjunction with the Travel Management Rule demonstrate that depicting gates is not an unambiguous statement about what roads and trails are open. The Forest Service adopted the Travel Management Rule because too many people—including Forst Service officials, 8-ER-1622, 8-ER-1698—were confused about what the maps meant. As a result, the Forest Service issued newer, unambiguous maps to clarify what use is allowed where.

The pre-Travel Management Plan maps did not unambiguously state the Forest Service's position that the Robbins Gulch Road easement was open to the public. Thus, the publications of those maps did not cause the Quiet Title Act's statute of limitations to run.

b. Landowners argued in the District Court that the pre-Travel Management maps were ambiguous.

In defending the pre-Travel Management maps, the government argues that the Landowners' forfeited their argument that the Forest Service maps were ambiguous and did not cause the Landowners' claims to accrue. Answering Brief at 32. But the Landowners argued below that the Forest Service maps issued before the Travel Management Plan were ambiguous and would not cause the Landowners' claims to accrue. SER-11–13; SER-17. While the Landowners further articulated in greater detail why those maps were ambiguous in their Opening Brief here, Opening Brief at 28–34, that does amount to raising a new argument on appeal. *Cf. Yee v. City of Escondido*, 503 U.S. 519, 534 (1992) ("Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.").

Courts "do not require a party to file comprehensive trial briefs on every argument that might support a position on an issue." *W. Watersheds Project v. U.S. Dep't of the Interior*, 677 F.3d 922, 925 (9th Cir. 2012). "There is no bright-line rule to determine whether a matter has been properly raised," only "[a] workable standard" that it "must be raised sufficiently for the trial court to rule on it." *In re E.R. Fegert, Inc.*, 887 F.2d 955, 957 (9th Cir. 1989).

Below the Landowners argued that the maps were ambiguous. SER-11–13; SER-17. The District Court made findings about the maps and rejected the Landowners' argument. 1-ER-11. And "when a party takes a position and the district court rules on it, the argument is preserved." *CDK Glob. LLC v. Brnovich*, 16 F.4th 1266, 1275 (9th Cir. 2021) (quotations and alterations omitted).

In their Opening Brief, the Landowners once again argued that the maps were ambiguous. Opening Brief at 28–34. In support of their arguments, the Landowners argued why the District Court's findings with respect to the maps were incorrect. Opening Brief at 33–37. The issue of whether the maps were ambiguous was raised below and the District Court ruled on it. SER-11–13; SER-17; 1-ER-11. Thus, the

Landowners did not forfeit any argument about the ambiguity of the maps and this Court can address the arguments the Landowners made in their Opening Brief. "There is no waiver if the issue was raised, the party took a position, and the district court ruled on it." *W. Watersheds Project*, 677 F.3d at 925; *see also Felix v. McCarthy*, 939 F.2d 699, 701 (9th Cir. 1991) (finding no waiver where the appellant's trial brief referenced the issue on appeal, the appellee responded to that issue, and the district court ruled on it), *cert. denied sub nom.*, *Maxie v. Felix*, 502 U.S. 1093 (1992).

2. Regulations not incorporated in the Easement's deed did not put the Landowners' predecessors on notice of the Forest Service's position that the Easement allows for public access.

The government argues that Forest Service regulations cause the Quiet Title Act's statute of limitations to run. That is incorrect.

Again, the approach the court took in *Elk Mountain Safari, Inc.* is relevant here. Even though BLM regulations plainly allowed the agency to regulate travel over its roads, 43 C.F.R. § 8364.1, and even though a BLM Manual expressly stated that the road was open for public use, the *Elk Mountain Safari* court held that the Quiet Title Act's statute of limitations did not run until the BLM expressed the position to the

property owners themselves. 645 F. Supp. at 156. Similarly, a statement in a regulation that purportedly expresses a position that Forest Service Roads are open to the public did not express an opinion about the Robbins Gulch Road Easement to those that live there.[3]

Moreover, the deed containing the Easement neither references nor incorporates any Forest Service regulations. 3-ER-323–24; *cf. Mobil Oil Expl. & Producing Se., Inc. v. United States*, 530 U.S. 604, 615 (2000) (federal oil and gas lease is subject to only those statutes and regulations incorporated therein); *see also id.* at 607–08 ("'When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals.' *United States v. Winstar Corp.*, 518 U.S. 839, 895, 116 S.Ct. 2432, 135 L.Ed2d 964 (1996) (plurality opinion) (internal quotation marks omitted)."). Thus, the Forest Service argues that the Landowners should have been aware of regulations not referenced in the four corners of the

[3] Indeed, in *Elk Mountain Safari*, the agency document expressed an opinion about the road at issue in the case, 645 F. Supp. at 156, which is closer to expressing an opinion about the relevant easement than an agency-wide document.

deed or any document accompanying the deed.[4] A statement in a completely separate document—the Code of Federal Regulations—does not unambiguously express a position on the meaning of a deed.

But even if the Landowners were required to search the code of federal regulations for any possibly relevant regulations, the regulations cited by the government do not unambiguously reflect a position that the Robbins Gulch Easement is open to public use. Indeed, 36 C.F.R. § 212.7 recognizes that there are "Special service roads" that the Forest Service "may designate … and control or regulate the use of" when "the United States controls the right-of-way." 36 C.F.R. § 212.7(b) (1973). And contrary to the government's argument, special service roads only require signage "to the extent the Chief deems it necessary to prescribe rules in addition thereto or in conflict" with "State traffic laws." 36 C.F.R. § 212.7(a)(2) (1973).

And while one subsection contemplates signage in relation to closing roads to "vehicle use or to use by certain classes of vehicles," that

[4] Indeed, the government argues that the grantors and their successors should have been aware of regulations not cited in the deed, but should ignore the cover letter that accompanied the deed that said the "[p]urpose of [the] road" was for "timber harvest." 3-ER-335

does not necessarily reflect who is allowed to use the road under right-of-way agreements. 36 C.F.R. § 212.7(a)(3) (1973).[5] Indeed, the 1978 version of the regulations expressly state that "Rules set forth under 36 CFR Part 261 and this section shall apply to all forest development roads under the jurisdiction of the Forest Service except when in conflict with written agreement." 36 C.F.R. § 212.7(a). A reasonable landowner may interpret those regulations as reflecting a view that the regulations do not apply when a "written agreement," such as an easement, controls the use of the road. In short, these regulations do not unambiguously state that any Forest Service Road without a sign is open to the public.

Under the government's theory, however, the Landowners who live along Robbins Gulch Road would have needed to bring suit under the Quiet Title Act for every conceivable application of every Forest Service regulation codified in the Code of Federal Regulations. Such "someday" suits are precisely the problem anticipated by this Court in *Michel*. 65

[5] And, as stated above, prior to the Travel Management Rule, the Forest Service did not consistently post signs on easements and roads—which caused confusion about what roads were open to the public. *Supra*, Section II-B-1-a. Even under the government's interpretation here that the Travel Management Rule was only about vehicle use, the Forest Service recognized—in promulgating the Travel Management Rule—it did not consistently follow the requirements of 36 C.F.R. § 212.7.

F.3d at 132 ("A contrary holding would lead to premature, and often unnecessary, suits. ... The claimant would be compelled to sue to protect against the possibility, however remote, that the government might someday restrict the claimant's access. The statute should not be read to create such an undesirable result."). The Landowners and their predecessors did not need to bring suit until the Forest Service unambiguously stated its position that public use was allowed on the Road.

3. The 2006 order did not unambiguously state the Forest Service's position on the scope of the Easement.

The May 2006 Order did not cause the Landowners' claims about the scope of the Easement to accrue. Answering Brief at 37–39 (arguing otherwise). Importantly, it is disputed what was posted and where. 8-ER-1576–77 (Depo. Wilkins 104:3–9, 106:13); 8-ER-1530–31 (Depo. Stanton 85:23–86:4); 7 ER-1334. Several landowners only recall seeing a sign that said the Road was closed "ahead." 8-ER-1576 (Depo. Wilkins 103:10–13); 7-ER-1334. Thus, there is a dispute of material fact and the District Court should not have granted the government's motion for summary judgment. Opening Brief at 35.

But even assuming the landowners saw the 2006 Order, the Order merely demonstrates the principle articulated in *McFarland*: Regulation of an easement does not necessarily articulate the extent of the government's claim of ownership of the easement. *McFarland*, 425 F.3d at 727. This is especially true when road closure orders do not adversely affect the landowners' interests. *Werner*, 9 F.3d at 1516; *cf. Applegate v. United States*, 25 F.3d 1579, 1583 (Fed. Cir. 1994) (Federal Tort Claims Act Limitations period was tolled based on the Corps' periodic promises to fix plaintiff's injury); *see also* 7-ER-1334 ¶ 23 (Forest Service closed road after residents complained).

Furthermore, the government's briefing below demonstrates that the 2006 Order does not accurately reflect the Forest Service's position of who can use the Road. 2-ER-208. Below, the government argued that the 2006 Order required residents to get a permit to access the Road. *Id.* But the government also admitted early in the litigation that the 1962 Easement does not empower it to prevent residents from reasonably using the Road to access their private homes. 2-ER-67; 2-ER-144–45. If the 2006 Order is ambiguous enough that Defendant's counsel could not decipher what it purportedly does and does not allow, then the

Landowners themselves cannot be expected to know what the Order did or did not convey about the Forest Service's view of the 1962 Easement.

C. The Forest Service's actions did not unambiguously state the agency's view of the scope of the Easement.

1. A reasonable landowner would not think that the Forest Service allowed people to act illegally on its easement.

The Forest Service's management of the Road prior to the Travel Management Plan did not unambiguously reflect the view that the Forest Service believed the scope of the Easement allowed for public use. And a Quiet Title Act claim does not accrue when "the government's actions … would support the belief that the easement does not include the right of public access." *Waibel Ranches*, 2024 WL 3384233, at *2.

The government argues that the Landowners would have known of the Forest Service's position because members of the public used the Road. Answering Brief at 26–29. But what the government overlooks is that those members of the Road were using the road *illegally*. The alleged statement of material fact that the government relied on was a declaration that said that "local teenagers knew they could use Robbins Gulch Road to access National Forest for 'beer parties.'" 2-ER-63. But it is illegal for teenagers to consume beer. *See* Mont. Code Ann. § 45-5-624;

36 C.F.R. § 261.58(bb). And, thus, it would be unreasonable to believe that someone who was violating the law, and Forest Service regulations, had the Forest Service's permission to use the Easement.

In short, the Forest Service argues on the one hand that the Landowners should have perfect knowledge of the Forest Service Regulations and any possible interpretation of those regulations. Answering Brief at 7–8. But on the other hand, the Forest Service argues that public use of the Road in violation of Montana Law and Forest Service Regulations put the Landowners on notice that the Road was open to the public. Answering Brief at 26–29.

But a landowner does not need to have any knowledge of the Forest Service's regulations to know that underage drinking is illegal. And a reasonable landowner would not believe that those committing illegal acts had the permission of the federal government. Instead, it is reasonable for a property owner to believe that those committing illegal acts were also illegally using the Road. Indeed, in *Elk Mountain Safari*, trespassers using the plaintiffs' property did not cause the statute of limitations to run. 645 F. Supp. at 154.

Moreover, even if someone was authorized to use Robbins Gulch Road, it does not necessarily mean that it was the Forest Service who invited those people on the Road. "A parcel of land may be reciprocally servient and dominant to other parcels of land formerly under common ownership." *O'Keefe v. Mustang Ranches HOA*, 446 P.3d 509, 518 (Mont. 2019). Here, the Robbins Gulch Road residents (especially those up the road from Plaintiffs) are both the servient estate to the Forest Service's Easement and the dominant estate with respect to their neighbors.[6] Because Robbins Gulch Road has multiple easement holders, mere use of the Road would not put a landowner on notice of who, if anyone, is authorizing the use of the Road.

The Quiet Title Act's statute of limitations "does not begin to run if 'the United States' claim is ambiguous or vague[.]'" *Waibel Ranches*, 2024 WL 3384233, at *2 (quoting *Shultz*, 886 F.2d at 1160). At a minimum, illegal use of a road by members of the public reflects an ambiguous position regarding whether those members of the public had

[6] As stated above, government's counsel has admitted that the Residents have a right to use Robbins Gulch Road to access their property. 2-ER-67; 2-ER-144–45. Similarly, Plaintiffs do not dispute that their neighbors have the right to reasonably use Robbins Gulch Road across Plaintiffs' properties.

the Forest Service's permission to use the Road. Thus, usage of the Road did not cause the Landowners' Quiet Title Act claims to accrue.

2. The Forest Service made statements that Mr. Wilkins reasonably interpreted as confirming that the Easement does not allow public use of the Road.

Adding to the ambiguity of the Forest Service's position are the statements the agency's officials made to Mr. Wilkins and others on the Road. If "'the government has apparently abandoned any claim it once asserted, and then it reasserts a claim, the later assertion is a new claim and the statute of limitations for an action based on that claim accrues when it is asserted.'" *Waibel Ranches*, 2024 WL 3384233, at *1 (quoting *Michel*, 65 F.3d at 132 (per curiam)).

As stated above, the scoping document for the Bitterroot Forest Travel Management Plan indicated that the Robbins Gulch Easement did not include public access. 8-ER-1641. Darby District Ranger Chuck Oliver reflected the same sentiment when he told Mr. Wilkins he could "relax" because "Robbins Gulch Road[] is slated to be closed" in the proposed Travel Management Plan. 8-ER-1578 (Depo. Wilkins 113:22–24).

Whether these statements and documents were an apparent abandonment of any claim, or just a continuation of the prior ambiguous statements and documents from the Forest Service, is irrelevant to the statute of limitations analysis. Either way, the Forest Service failed to unambiguously state its position that the easement allowed for public access before September 2006.[7]

D. Only the installation of the sign in September 2006 unambiguously stated the Forest Service's view that the scope of the Easement allowed for public use.

The first time the Forest Service unambiguously expressed its position that the Easement allowed for public use was when it installed "public access thru private lands." 8-ER-1615–17. This sign was installed no earlier than September 2006, *id.*, eleven years and eleven months before the litigation was filed.

In *Park County, Montana v. United States*, 626 F.2d 718 (9th Cir. 1980), this Court, in a dispute over the use of a Forest Service road, held that the Quiet Title Act's statute of limitations only began to run in 1962,

[7] And, as stated in the opening brief, these statements—made after the 2006 Order—caused Mr. Wilkins to delay filing this suit. Opening Brief at 37–45. Therefore, the government should be equitably estopped from asserting the statute of limitations as a defense.

when a rock barrier and a sign were installed, prohibiting use of the right-of-way by motor vehicles. *Id.* at 721; *see also Narramore v. United States*, 852 F.2d 485, 492 (9th Cir. 1988) (holding that federal ownership was established more than 12 years prior to suit, but limitations period triggered only by government's actions adverse to property owners). This Court held it was this affirmative action that caused the statute of limitations to run, even though the area was established as a Primitive Area—which limits what use is allowed—thirty years earlier. *Id.*

Prior to September 2006, the Forest Service only made ambiguous statements about the use of the Road. But the statute of limitations does not begin to run if the government's claim is ambiguous or vague. *Waibel Ranches*, 2024 WL 3384233, at *2 (citing *Shultz*, 886 F.2d at 1160). It was only when the Forest Service unambiguously stated that there was "public access thru private lands" in September 2006 that the Landowners' claims accrued. That was less than twelve years before this suit was filed, and this Court should vacate the judgment of the District Court.

III. Both of the Landowners' Claims Accrued Separately

The government argues that the Landowners do not have separate claims because if they succeed on their claim that the public cannot use the Easement, then they would necessarily succeed on their other claim. Answering Brief at 54–58.

The Second Cause of Action, however, alleges that the government has obligations to mitigate excessive and unrestricted use of the Easement, even by those otherwise authorized to use it. 8-ER-1714; 8-ER-1724. The Landowners have experienced problems beyond mere public use of the Road. Among those alleged unauthorized uses are "trespassing, illegal hunting, speeding and disrespectful activities often aimed at the Plaintiffs and other neighboring owners of private lands traversed by the road." 8-ER-1714. They also alleged that unregulated use of the Easement has caused increased erosion that affects their properties. 8-ER-1715.

Furthermore, even though the Landowners believe the Easement is limited in scope, they also believe that the government has an obligation to limit excessive use of the Easement regardless of who is allowed to use the Road. The Landowners do not dispute that the United

States can use the Robbins Gulch Road Easement and that it can allow certain people to use the Road. 8-ER-1717. Namely, the Landowners believe the Easement allows those with Forest Service permits and licenses to use the Road to access the National Forest. *Id.* They also believe that the government still has obligations with respect to those permit and license holders. Just because only a few people can use the Easement does not mean that those people can use the Easement however they want. Thus, if the Landowners succeed on their first claim for relief, they still need to succeed on their second claim for relief to ensure that those allowed to use the Road do not use the Road in an excessive or unreasonable manner.

And if the Landowners do not succeed on their first claim for relief, the question of who may use the Road is still a separate question from the government's obligations to ensure proper use of the Road. Even if the public can use the Road, some of their actions may be "excessive and unauthorized." 8-ER-1717. The Complaint clearly identifies different claims regarding the lawful use of the Easement and the government's obligations under the Easement. 8-ER-1723–24. The District Court

should have separately analyzed when those claims accrued. *See* Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice.").

CONCLUSION

This Court should reverse the judgment of the District Court and remand for a decision on the scope of the Easement and the government's obligations under the Easement. In the alternative, this Court should vacate the judgment of the District Court and remand for a trial on whether Mr. Wilkins and Mrs. Stanton timely filed their claims.

DATED: September 5, 2025.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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