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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

HAZEL GREEN RANCH, LLC, a )  
Delaware limited liability )  
company, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED STATES DEPARTMENT OF THE )  
INTERIOR, DIRK KEMPTHORNE, IN )  
HIS CAPACITY AS SECRETARY OF THE )  
UNITED STATES DEPARTMENT OF THE )  
INTERIOR, NATIONAL PARK SERVICE, )  
MARY A BOMAR, IN HER CAPACITY AS )  
DIRECTOR, NATIONAL PARK SERVICE, )  
MICHAEL J. TOLLEFSON, IN HIS )  
CAPACITY AS SUPERINTENDENT, )  
YOSEMITE NATIONAL PARK, )  
 )  
Defendants. )  
 )  
SIERRA CLUB, et al., )  
 )  
Intervenors. )  
 )  
 )

1:07-cv-0414 OWW SMS  
SCHEDULING CONFERENCE ORDER  
Discovery Cut-Off: 7/15/08  
Non-Dispositive Motion  
Filing Deadline: 7/25/08  
Dispositive Motion Filing  
Deadline: 8/15/08  
Settlement Conference Date:  
7/22/08 10:00 Ctrm. 7  
Pre-Trial Conference  
Date: 10/27/08 11:00 Ctrm.  
3  
Trial Date: 12/9/08 9:00  
Ctrm. 3 (CT-8 days)

I. Date of Scheduling Conference.  
September 6, 2007.  
II. Appearances Of Counsel.  
Fulbright & Jaworski LLP, by Martin L. Pitha, Esq., appeared  
on behalf of Plaintiff.

1 Bruce Bernard, Esq., and Barbara Goodyear, Esq., appeared on  
2 behalf of the Federal Defendants.

3 Gregory C. Loarie, Esq., and George M. Torgun, Esq.,  
4 appeared on behalf of the Intervenors.

5 III. Summary of Pleadings.

6 HGR's Position:

7 1. HGR alleges its right of entry and easement rights  
8 under, *inter alia*, R.S. 2477, the Federal Quiet Title Act, and  
9 other separate and independent grounds in the Coulterville Road  
10 and Crane Flat Road (collectively, the "Roads") which traverse  
11 its property, Hazel Green. That property is located in Mariposa  
12 County on the western border of Yosemite National Park (the  
13 "Park").

14 2. The Roads, which have been mechanically constructed,  
15 have existed and been used historically since the late 1800s to  
16 provide stage coach and motor vehicle access to the Yosemite  
17 Valley Floor and today intersect with the realigned Big Oak Flat  
18 Road in two places shortly after leaving Hazel Green. The  
19 realigned Big Oak Flat Road (also known as Highway 120) is today  
20 the primary northern and western access route into the Park. The  
21 Roads, and particularly the segments as they leave Hazel Green  
22 and intersect with the realigned Big Oak Flat Road, were  
23 constructed pursuant to the authority granted by Congress in R.S.  
24 2477 and before its repeal. See 43 U.S.C. § 932.

25 Defendants' Position:

26 3. Defendants assert that HRG has not alleged facts that  
27 establish its claimed interest in the alleged rights-of-way and  
28 that HGR fails to set forth, with the required particularity, the

1 nature of the right, title, and interest claimed by HGR.  
2 Defendants assert that the locations and the claimed uses for  
3 which interests in the alleged rights-of-way are claimed to have  
4 been perfected are not described with sufficient particularity to  
5 allow the United States to understand with certainty the routes  
6 and uses that HGR is claiming. Defendants allege that the two  
7 claimed routes have not been continuously used since the late  
8 1800s and that the Crane Flat Cut-Off Route was not used for  
9 motorized vehicle travel at any point in time. Defendants allege  
10 that HGR does not have rights under state law to re-establish or  
11 use the claimed routes for motorized travel because the routes  
12 have been abandoned, extinguished, or otherwise lost. Defendants  
13 allege that HGR does not have standing to assert the claimed  
14 interests in alleged rights-of-way under R.S. 2477 or the Quiet  
15 Title Act, that the claims set forth in the Complaint fail to  
16 state a claim upon which relief can be granted, and that the  
17 claims are time-barred under the Quiet Title Act.

18 IV. Orders Re Amendments To Pleadings.

19 HGR's Position:

20 1. HGR does not anticipate amending its Complaint.  
21 Defendants suggest other parties should be joined (see below),  
22 but those other parties have not objected to any claimed interest  
23 in the roads at issue by HGR and, in fact, the U.S.D.A.'s own  
24 maps reflect the Coulterville Road as a county road, not a  
25 federally-owned road. Nonetheless, should events warrant, HGR  
26 reserves its right to amend its Complaint.

27 Defendants' Position:

28 2. Defendants allege that, depending on the locations of

1 the alleged rights-of-way in which HGR claims an interest, HGR  
2 may have failed to join indispensable parties, the U.S.  
3 Department of Agriculture ("U.S.D.A.") and the U.S. Forest  
4 Service ("Forest Service"). While Defendants do not presently  
5 anticipate amending their Answer, if HGR moves to amend its  
6 Complaint to join the U.S.D.A. and the Forest Service, Defendants  
7 will need to amend their Answer.

8 The Court:

9 3. The Federal Defendants contend that the United States  
10 Department of Agriculture and the U.S. Forest Service are the  
11 owners of lands over which the claimed right-of-ways run.  
12 Accordingly, they will assert that Federal Rule of Civil  
13 Procedure 19 requires their joinder. The government takes the  
14 further position that because lands over which rights-of-way are  
15 claimed are owned by the United States, as sovereign, that the  
16 United States, in its sovereign capacity, is a required  
17 Defendant.

18 4. Plaintiff shall have thirty (30) days, through and  
19 including October 9, 2007, to file any amended complaint or to  
20 obtain a stipulation to the filing of the amended complaint to  
21 join any additional parties.

22 V. Factual Summary.

23 A. Admitted and Contested Facts.

24 HGR's Position:

25 1. HGR submits that the historical facts concerning the  
26 Roads, including but not limited to their creation, existence,  
27 and use, are uncontested, and HGR anticipates that it and  
28 Defendants will ultimately be able to agree to all or a

1 substantial portion of said facts. Facts which the Defendants  
2 apparently contest include the condition of the Hazel Green  
3 property, the content of certain discussions between HGR and  
4 government representatives, the exclusivity of certain historical  
5 rights in the Roads, and ownership of the Coulterville Road  
6 (which historically and today includes the Crane Flat segment).

7 Defendants' Position:

8 2. Defendants submit that there are a number of contested  
9 facts concerning the location, period of use, types of use, and  
10 existence of the claimed routes. Defendants, nevertheless,  
11 concur that the parties will likely be able to reach agreement on  
12 some of the relevant facts. Defendants assert that, although  
13 issues concerning prior discussions between HGR and Defendants  
14 are irrelevant, there is disagreement concerning the nature of  
15 prior discussions between representatives of HGR and the  
16 Department of the Interior and National Park Service officials.  
17 Defendants further assert that, if it is determined that the  
18 routes still exist, there is disagreement concerning ownership of  
19 the routes.

20 VI. Legal Issues.

21 A. Uncontested.

22 1. Jurisdiction exists under 28 U.S.C. § 1331.  
23 2. Venue is proper under 28 U.S.C. § 1391.  
24 3. As to supplemental claims, the parties agree that  
25 the substantive law of the State of California provides the rule  
26 of decision.

27 B. Contested.

28 1. HGR's rights-of-way in the Roads.

1           2.    HGR's right to mandamus.

2           3.    Defendants allege that disputed legal issues  
3 include whether HGR has standing to claim its asserted interest  
4 in the alleged rights-of-way.

5           4.    Whether the Court has jurisdiction over the  
6 interests claimed by HGR.

7           5.    The validity of HGR's claims under R.S. 2477 and  
8 under state law.

9 VII. Consent to Magistrate Judge Jurisdiction.

10          1.    The parties have not consented to transfer the  
11 case to the Magistrate Judge for all purposes, including trial.

12 VIII.       Corporate Identification Statement.

13          1.    Any nongovernmental corporate party to any action in  
14 this court shall file a statement identifying all its parent  
15 corporations and listing any entity that owns 10% or more of the  
16 party's equity securities. A party shall file the statement with  
17 its initial pleading filed in this court and shall supplement the  
18 statement within a reasonable time of any change in the  
19 information.

20 IX.   Discovery Plan and Cut-Off Date.

21        A.    Jurisdictional Motions.

22          1.    The parties shall have through and including October  
23 19, 2007, to file motions directed to subject matter or personal  
24 jurisdiction and related dispositive issues which can be decided  
25 without evidence. Any responses shall be filed on or before  
26 November 9, 2007. Any replies shall be filed on or before  
27 November 19, 2007. The motions will be heard on December 10,  
28 2007, at 10:00 a.m. Time for extended oral argument is reserved.

1           2.     The parties are ordered to complete all non-expert  
2 discovery on or before December 17, 2007.

3           3.     Additional motions shall be filed on or before January  
4 28, 2008. Any responses shall be filed on February 25, 2008.  
5 All replies shall be filed on or before March 10, 2008. The  
6 hearing on those motions shall be March 24, 2008, at 10:00 a.m.  
7 with time for extended oral argument reserved.

8           4.     The parties are directed to disclose all initial expert  
9 witnesses, in writing, on or before April 15, 2008. Any  
10 supplemental or rebuttal expert disclosures will be made on or  
11 before May 15, 2008. The parties will comply with the provisions  
12 of Federal Rule of Civil Procedure 26(a)(2) regarding their  
13 expert designations. Local Rule 16-240(a) notwithstanding, the  
14 written designation of experts shall be made pursuant to F. R.  
15 Civ. P. Rule 26(a)(2), (A) and (B) and shall include all  
16 information required thereunder. Failure to designate experts in  
17 compliance with this order may result in the Court excluding the  
18 testimony or other evidence offered through such experts that are  
19 not disclosed pursuant to this order.

20           5.     The parties are ordered to complete all discovery,  
21 including expert discovery, on or before July 15, 2008.

22           6.     The provisions of F. R. Civ. P. 26(b)(4) shall  
23 apply to all discovery relating to experts and their opinions.  
24 Experts may be fully prepared to be examined on all subjects and  
25 opinions included in the designation. Failure to comply will  
26 result in the imposition of sanctions.

27 X.     Pre-Trial Motion Schedule.

28           1.     All Non-Dispositive Pre-Trial Motions, including any

1 discovery motions, will be filed on or before July 25, 2008, and  
2 heard on August 29, 2008, at 9:00 a.m. before Magistrate Judge  
3 Sandra M. Snyder in Courtroom 7.

4 2. In scheduling such motions, the Magistrate  
5 Judge may grant applications for an order shortening time  
6 pursuant to Local Rule 142(d). However, if counsel does not  
7 obtain an order shortening time, the notice of motion must comply  
8 with Local Rule 251.

9 3. All Dispositive Pre-Trial Motions are to be  
10 filed no later than August 15, 2008, and will be heard on  
11 September 22, 2008, at 10:00 a.m. before the Honorable Oliver W.  
12 Wanger, United States District Judge, in Courtroom 3, 7th Floor.  
13 In scheduling such motions, counsel shall comply with Local Rule  
14 230.

15 XI. Pre-Trial Conference Date.

16 1. October 27, 2008, at 11:00 a.m. in Courtroom 3, 7th  
17 Floor, before the Honorable Oliver W. Wanger, United States  
18 District Judge.

19 2. The parties are ordered to file a Joint Pre-  
20 Trial Statement pursuant to Local Rule 281(a)(2).

21 3. Counsel's attention is directed to Rules 281  
22 and 282 of the Local Rules of Practice for the Eastern District  
23 of California, as to the obligations of counsel in preparing for  
24 the pre-trial conference. The Court will insist upon strict  
25 compliance with those rules.

26 XII. Trial Date.

27 1. December 9, 2008, at the hour of 9:00 a.m. in Courtroom  
28 3, 7th Floor, before the Honorable Oliver W. Wanger, United

1 States District Judge.

2 2. This is a non-jury trial.

3 3. Counsels' Estimate Of Trial Time:

4 a. 8 days.

5 4. Counsels' attention is directed to Local Rules  
6 of Practice for the Eastern District of California, Rule 285.  
7 XIII. Settlement Conference.

8 1. A Settlement Conference is scheduled for July 22, 2008,  
9 at 10:00 a.m. in Courtroom 7 before the Honorable Sandra M.  
10 Snyder, United States Magistrate Judge.

11 2. Unless otherwise permitted in advance by the  
12 Court, the attorneys who will try the case shall appear at the  
13 Settlement Conference with the parties and the person or persons  
14 having full authority to negotiate and settle the case on any  
15 terms at the conference.

16 3. Permission for a party [not attorney] to attend  
17 by telephone may be granted upon request, by letter, with a copy  
18 to the other parties, if the party [not attorney] lives and works  
19 outside the Eastern District of California, and attendance in  
20 person would constitute a hardship. If telephone attendance is  
21 allowed, the party must be immediately available throughout the  
22 conference until excused regardless of time zone differences.  
23 Any other special arrangements desired in cases where settlement  
24 authority rests with a governing body, shall also be proposed in  
25 advance by letter copied to all other parties.

26 4. Confidential Settlement Conference Statement.  
27 At least five (5) days prior to the Settlement Conference the  
28 parties shall submit, directly to the Magistrate Judge's

1 chambers, a confidential settlement conference statement. The  
2 statement should not be filed with the Clerk of the Court nor  
3 served on any other party. Each statement shall be clearly  
4 marked "confidential" with the date and time of the Settlement  
5 Conference indicated prominently thereon. Counsel are urged to  
6 request the return of their statements if settlement is not  
7 achieved and if such a request is not made the Court will dispose  
8 of the statement.

9 5. The Confidential Settlement Conference

10 Statement shall include the following:

11 a. A brief statement of the facts of the  
12 case.

13 b. A brief statement of the claims and  
14 defenses, i.e., statutory or other grounds upon which the claims  
15 are founded; a forthright evaluation of the parties' likelihood  
16 of prevailing on the claims and defenses; and a description of  
17 the major issues in dispute.

18 c. A summary of the proceedings to date.

19 d. An estimate of the cost and time to be  
20 expended for further discovery, pre-trial and trial.

21 e. The relief sought.

22 f. The parties' position on settlement,  
23 including present demands and offers and a history of past  
24 settlement discussions, offers and demands.

25 XIV. Request For Bifurcation, Appointment Of Special Master,  
26 Or Other Techniques To Shorten Trial.

27 HGR's Position:

28 1. The trial length may increase if other parties

1 intervene. Otherwise, Plaintiff perceives no bifurcation issues.  
2 Plaintiff does not agree with Defendants' suggested schedule or  
3 approach regarding jurisdictional issues, as set forth further  
4 above, because such issues can and should be resolved earlier in  
5 this litigation.

6 Defendants' Position:

7 2. Defendants do not now request, and do not anticipate  
8 requesting, bifurcation or phasing of trial. Defendants wish to  
9 focus initial discovery and pre-trial motions on jurisdictional  
10 issues so that there may be a round of motions, briefing and  
11 hearing on jurisdictional issues, that could, if necessary, be  
12 followed by a round of other dispositive motions directed towards  
13 the merits of the claims.

14 XV. Related Matters Pending.

15 1. There are two other Quiet Title Act actions concerning  
16 alleged R.S. 2477 rights-of-way pending in the Eastern District:  
17 (1) *County of Inyo v. Department of the Interior, et al.*, civil  
18 action no. 1:06-cv-1502 AWI; and (2) *Friends of the Panamint*  
19 *Valley, et al., v. Dirk Kempthorne, et al.*, civil action no.  
20 1:07-cv-487 LJO. There is another Quiet Title Act action  
21 concerning alleged R.S. 2477 rights-of-way pending in the Central  
22 District of California: *San Bernardino County v. United States*,  
23 civil action no. 06-cv-1179 (Judge Phillips). There are also a  
24 number of Quiet Title Act actions concerning alleged R.S. 2477  
25 rights-of-way pending in the District Courts within the Tenth  
26 Circuit and in the D.C. Circuit. None of these cases involve the  
27 alleged rights-of-way at issue here.

28 ///

1 XVI. Compliance With Federal Procedure.

2 1. The Court requires compliance with the Federal  
3 Rules of Civil Procedure and the Local Rules of Practice for the  
4 Eastern District of California. To aid the court in the  
5 efficient administration of this case, all counsel are directed  
6 to familiarize themselves with the Federal Rules of Civil  
7 Procedure and the Local Rules of Practice of the Eastern District  
8 of California, and keep abreast of any amendments thereto.

9 XVII. Effect Of This Order.

10 1. The foregoing order represents the best  
11 estimate of the court and counsel as to the agenda most suitable  
12 to bring this case to resolution. The trial date reserved is  
13 specifically reserved for this case. If the parties determine at  
14 any time that the schedule outlined in this order cannot be met,  
15 counsel are ordered to notify the court immediately of that fact  
16 so that adjustments may be made, either by stipulation or by  
17 subsequent scheduling conference.

18 2. Stipulations extending the deadlines contained  
19 herein will not be considered unless they are accompanied by  
20 affidavits or declarations, and where appropriate attached  
21 exhibits, which establish good cause for granting the relief  
22 requested.

23 3. Failure to comply with this order may result in  
24 the imposition of sanctions.

25  
26 IT IS SO ORDERED.

27 Dated: September 7, 2007

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE