

# Idaho ranch loses legal claims that public trail violates easement

By MATEUSZ PERKOWSKI  
Capital Press

A federal judge has rejected an Idaho ranch's legal claims that a proposed public trail through its property violates the terms of a government easement.

In 2019, Sawtooth Mountain Ranch filed a lawsuit opposing a 4.4-mile public trail planned by the U.S. Forest Service to connect Redfish Lake with the nearby town of Stanley, Idaho.

While the agency owns a conservation easement across a portion of the ranch's 1,780-acre property, the plaintiffs claim the government's "construction activities" are inconsistent with the terms of that 2005 agreement.

Chief U.S. Magistrate Judge Candy Dale in Boise has now rejected those arguments, ruling that the ranch's easement-related claims are time-barred by a 12-year statute of limita-

tions based on when the property's previous owners signed the agreement.

"The statute of limitations is not tolled simply because the Forest Service had not officially proposed until 2014 a trail that could actually be used by the public for bicycle, horse and foot travel within the easement area," the judge said.

The only route between Stanley and the "Redfish recreation complex" has long been a state highway that experiences "high speed traffic and heavy summer traffic volumes," which prompted the Forest Service to consider an alternative trail beginning in the 1990s, according to court documents.

The previous owners of the ranch sold a conservation easement, which prevents development, to the agency for \$1.8 million in May 2005, but they later protested upon learning that some of the easement would



encompass the public trail.

However, that easement included terms that specifically excluded the trail from the ranch's ability to "prevent trespass and control access to the property," the judge said. The Forest Service began planning for the trail despite the previous owner's objections that it would interfere with cattle grazing.

The property was bought in 2016 by David Boren and Lynn Arnone, the current owners of Sawtooth Mountain Ranch, a year before the Forest Service formally approved the trail project in June 2017, the ruling said.

The agency's approval to construct the project didn't expand the public use rights granted to the government in 2005 by the previous owners, regardless of whether the trail is well-hidden or "gravel-paved" and more than six feet wide, the judge said.

"Simply put, the limitations period is triggered when a landowner has reason to know that the government claims some type of adverse interest in that land," she said. "Here, adversity did not arise simply because the Forest Service began 'construction' of the trail. Rather, the adverse interest of permitting or otherwise facilitating public use of a trail within the easement area was known at the time the conservation easement deed was executed and recorded in May of 2005."

While the judge has thrown out legal claims under the Quiet Title Act, which allows the fed-

eral government to be sued for title to real property, the ruling does not end the litigation.

The plaintiffs have also claimed the Forest Service's trail project violated a federal statute that governs the 756,000-acre Sawtooth National Recreation Area, as well as the National Environmental Policy Act, the National Forest Management Act, the Endangered Species Act and the Clean Water Act. The complaint seeks an injunction against the trail as well as compensation for litigation costs.

"The Forest Service failed to take into consideration the environmental impacts of connected, similar and cumulative actions when it failed to consider the impacts of the trail in conjunction with the impacts from the contemplated 'Redfish recreation complex' and transportation network," the complaint said.

## Fresh potato access to more of Mexico delayed

By BRAD CARLSON  
Capital Press

Unanticipated new requirements by the Mexican government will make U.S. fresh potato shippers wait longer to access the entire country, according to National Potato Council CEO Kam Quarles.

Mexico limits U.S. fresh potatoes to an area within 16.15 miles of the U.S. border. The Mexican Supreme Court on April 28 lifted the restriction.

Quarles said in a Feb. 17 memo to state potato organization managers that for table stock, Mexican regulators "are demanding a new requirement that is not in the work plan. That requirement is for additional site visits during the growing season prior to granting access. They have not stated how many or where."

The work plan has a provision for auditing with site visits, he said. But Mexican regulators "are reinterpreting that provision to be a precursor to shipments rather than an audit to deter-



Kam Quarles

mine compliance with a program in operation."

Given the likely timing of the visits, it will be fall or later before shipments can start, Quarles said.

He said Mexican officials, after a December 2021 site visit to Colorado, said that was the last step in the process and full market access would be available starting in January or February of 2022.

Quarles wrote the memo following a webinar with USDA and Mexico regulators.

He said in an interview that whether "site" means potato field or packer-shipper is yet to be determined. But Mexican regulators have said the required additional site visits would not occur until the forthcoming crop is in some stage of the growing process.

Quarles said the work plan that was finished late last year "was largely as expected. What's happened since then is that Mexico is reinterpreting the work plan. They are rewriting it, and it's clear their intention is not to

provide the access that had been agreed to."

It's likely the reinterpretation delays full access for an additional year, he said.

For each year that Mexico delays granting full access for U.S. fresh potatoes, "it is a direct negative economic impact to American growers of \$150 million a year," Quarles said. Of that, 70-75% would go to table stock, the rest to processing plants in Mexico.

Mexico for about 20 years has wanted to ship avocados from more of the country to the U.S., and "USDA has been very strong in saying you need to follow through on commitments on U.S. fresh potato access," he said.

The Mexican Supreme Court decision affirmed the government's right to issue regulations on food imports including fresh potatoes.

Ross Johnson, international marketing director for the Idaho Potato Commission, said that with shipping delays challenging fresh exports to Asia, "we have really shifted a lot of our focus to Mexico and building our market share. ... We have more demand than ever in Mexico."

Allowing U.S. fresh potatoes beyond the border area would open opportunities to build volume, he said.

"I'm hopeful that they can resolve the issues that they are dealing with currently between the United States and Mexico," said Jamey Higham, Idaho Potato Commission president and CEO. "But new issues keep popping up."

## Idaho House endorses increased depredation claim spending

By BRAD CARLSON  
Capital Press

The Idaho House of Representatives has passed legislation that would provide the state Department of Fish and Game with more money to compensate farmers for crop depredation.

The department has a set-aside account for license and tag fees. The account also accesses a big game depredation account, out of which Fish and Game has the authority to spend \$1.1 million annually.

The agency's new budget increases the spending authority to \$2 million this fiscal year and \$1.8 million in Fiscal 2023, which starts July 1.

House Bill 702 would increase the amount of money coming out of the department's depredation fee account from the current \$500,000 to \$750,000.

The legislation also would change the maximum individual claim. It is now limited to 10% of the annual appropriation to the fund. HB 702 would change the limit to \$125,000.

If passed, the law would take effect immediately.

Sal Palazzolo, Fish and Game wildlife habitat program manager, said recent depredation claim totals exceed spending authority, so awards are prorated. The increased spending authority would help.

"We have seen steady increases in both the number and (dollar) amount of the claims that we receive," he said. Higher commodity values, and farm diversification that put higher-value crops into the mix are factors.

Recent activity includes 59 claims for a total of \$754,834 in 2018 and 89 worth nearly \$2.39 million in 2019.

The department handled 85 claims worth nearly \$1.65 million in 2020 and 87 worth more than \$1.72 million in 2021.

So far this year, there have been 39 claims worth \$760,822.

The state Fish and Game Commission March 3 voted to support HB 702. One of the bill's purposes is to roughly equalize spending on depredation and sportsmen's access.

The department does not receive money from the state general fund.

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