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Nemeth v. Shoshone County Appellant's Reply Brief Dckt. 46118

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IN THE SUPREME COURT OF THE STATE OF IDAHO

PETER NEMETH, and MARY M. NEMETH
(deceased) husband and wife, and PETER
NEMETH, as Trustee of THE PETER AND
MARY NEMETH FAMILY TRUST, dated
April 28, 2009,

Plaintiffs-Appellants,

v.

SHOSHONE COUNTY, a political subdivision
of the State of Idaho, acting through the
SHOSHONE COUNTY BOARD OF
COMMISSIONERS, MIKE FITZGERALD,
JAY HUBER, and JOHN HANSEN, in their
official capacities.

Defendants-Respondents.

Supreme Court Docket No. 46118

APPELLANTS' REPLY BRIEF

APPELLANTS' REPLY BRIEF

Appeal from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Shoshone

* * * * *

Honorable Scott Wayman, District Judge, Presiding

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Plaintiffs-Appellants, PETER NEMETH AND MARY NEMETH (deceased), husband and wife, and PETER NEMETH, as Trustee of THE PETER AND MARY NEMETH FAMILY TRUST, dated April 28, 2009 (collectively, the “Nemeths”), submit this brief in reply to the Response Brief of Defendants-Respondents filed by Defendants-Respondents SHOSHONE COUNTY, a political subdivision of the state of Idaho (“Shoshone County”).

I. ARGUMENT

This reply consists of four parts. Part A responds to Shoshone County’s argument that the federal Quiet Title Act (“QTA”) precludes this litigation. In Part B, the Nemeths explain that Idaho Code § 40-204A(5) unambiguously grants Idaho courts with authority to validate Granite Gulch Road as a Revised Statute 2477 public right-of-way. Part C considers whether the QTA preempts Idaho Code § 40-204A(5) and concludes that it does not. As for Part D, the Nemeths argue that this Court’s opinion in *Sopatyk v. Lemhi County*, 151 Idaho 809, 264 P.3d 916 (2011) applies to and controls the outcome of this case.

A. **Shoshone County misunderstands the Nemeths’ request for declaratory relief.**

Shoshone County argues that only a federal court acting pursuant to the QTA has the authority to determine whether Shoshone County “owns” Granite Gulch Road. Resp. Br. Defs.-Resp’ts 16. It explains that the QTA provides federal courts with exclusive jurisdiction over quiet title actions against the United States, and in turn, “[a] state court does not have jurisdiction to decide quiet title actions [involving federal land].” *Id.* at 17. Because the QTA provides for exclusive federal jurisdiction, Shoshone County contends that Idaho courts lack jurisdiction to

act on the Nemeths' request for declaratory relief. *Id.* at 16–19. The Nemeths respond to this argument as follows.

1. The QTA does not apply to this proceeding because the Nemeths do not seek to quiet title to federal land.

In arguing that the QTA precludes this litigation, Shoshone County misconstrues the nature of this case and the Nemeths' request for declaratory relief. The Nemeths have not filed a quiet title action against the United States in state court, nor have they asked an Idaho court to determine whether Shoshone County “owns” Granite Gulch Road. Clearly a state court lacks jurisdiction to hear a quiet title action against the United States, and the Nemeths (probably) lack standing to bring a quiet title action against the United States in federal court. *See Long v. Area Manager, Bureau of Reclamation*, 236 F.3d 910, 915 (8th Cir. 2001) (stating that the right of a person to use a public road is not a right or interest in property for purposes of the QTA); *County of Shoshone v. United States*, 912 F. Supp. 2d 912, 922 (D. Idaho 2012) (explaining that the interest in using the road vests in the public generally).

Instead of a quiet title action, the Nemeths as members of the public seek local validation of their right to use Granite Gulch Road through the process set forth in Idaho Code § 40-203A. I.C. § 40-204A(5). They submitted a petition to Shoshone County for a public right-of-way validation of Granite Gulch Road, and when Shoshone County refused to act on their petition, the Nemeths pursued other judicial relief in district court. That is, they sought a declaration that Granite Gulch Road is a public right-of-way over federal land such that they as members of the public have a valid right to use it to reach their real property and patented mining claims. I.C. § 40-203A(1); *id.* § 40-204A; *id.* § 40-208(7). In doing so, the Nemeths exercised a right clearly secured by Idaho statute.

Moreover, in its argument, Shoshone County fails to recognize that the relief the Nemeths seek in state court pursuant to Idaho Code § 40-204A(5) is not the same relief the QTA provides litigants in federal court. Put another way, the Nemeths recognize that unlike the QTA, Idaho Code § 40-204A(5) is not a mechanism for quieting title to federal land. Indeed, this Court has stated that Idaho Code § 40-204A does not create new rights; rather, it confirms (or validates) preexisting public rights in state roads through a local process or judicial proceeding. *See Sopatyk*, 151 Idaho 809 at 817, 264 P.3d at 924 (explaining that the “Board did not create new public rights when it validated [Anderson Creek Road] in 2005, as validation proceedings merely confirm preexisting public rights in state roads.”). Consistent with this statement in the *Sopatyk* opinion, the Nemeths, in their prayer for relief, requested the following:

A judicial declaration and holding that a federal land public right-of-way **continues to exist** along Granite Gulch Road as set out in Idaho Code § 40-204A, and said federal land public right-of-way via Granite Gulch Road provides legal access for ingress and egress to the [Nemeths’] real property and patented mining claims[.]

R. 219–20 (emphasis added). The use of “continues to exist” demonstrates that the Nemeths asked the district court to confirm a preexisting public right to use Granite Gulch Road. This request is in accord with Idaho Code § 40-204A, and as well as this Court’s application of Idaho Code § 40-204A to the facts as set forth in the *Sopatyk* case.

In summary, because the Nemeths do not seek to quiet title to Granite Gulch Road, the QTA does not preclude the Nemeths from litigating this matter in state court. In turn, Shoshone County’s argument related to the QTA is irrelevant to this appeal. Likewise, the district court erred when in it dismissed the Nemeths’ declaratory relief claim on the ground that only federal courts have subject matter jurisdiction to hear this case.

2. Shoshone County's reliance on *County of Shoshone v. United States*, 912 F. Supp. 2d 912 (2012) is misplaced.

In support of its argument that the QTA is the only “mechanism” for determining the status of Granite Gulch Road, Shoshone County cites to *County of Shoshone v. United States*, 912 F. Supp. 2d 912 (D. Idaho 2012). Resp. Br. Defs.-Resp'ts 19. In doing so, Shoshone County argues that the federal court's holding in that case prevents the Nemeths from seeking validation of Granite Gulch Road as a Revised Statute 2477 public right-of-way because, in the federal court's opinion, the QTA is the only “mechanism” for resolving disputes concerning whether a road “qualifies as an R.S. 2477 right-of-way.” *Id.* The Nemeths disagree.

First, in their Appellants' Brief, the Nemeths argued that the district court erred when it cited to and relied on *County of Shoshone* to dismiss their request for declaratory relief. Appellants' Br. 19–20. The Nemeths maintain this position. Second, the *County of Shoshone* case was a quiet title action between Shoshone County and the United States. As such, other than a conclusory assertion that Idaho Code § 40-204A “arguably conflicts” with the QTA, the federal court did not examine the QTA in connection with Idaho Code § 40-204A in any depth.¹ Third, the issues presented in *County of Shoshone* and the Nemeths' appeal are distinguishable. The issue in *County of Shoshone* was whether the United States was precluded from challenging Shoshone County's quiet title action given that (a) Shoshone County validated the contested road as a Revised Statute 2477 public right-of-way in 2009 in accordance with state law, and (b) the United States did not contest the validation proceeding in 2009. *County of Shoshone*, 912 F. Supp. 2d at 943. In contrast, the issue presented in the Nemeths' appeal is whether Idaho Code §

¹ It's worth noting that *County of Shoshone* is a 31-page opinion, in which only a paragraph relates to whether the local validation proceeding precluded the United States from challenging the validity of the contested road.

40-204A(5) allows validation of a Revised Statute 2477 public right-of-way on federal land. The preclusive effect of an Idaho Code § 40-204A(5) validation proceeding is not before this Court.

For the above-stated reasons, this Court is not bound by and should not defer to the federal court's conclusory assertions in *County of Shoshone*.

B. The Nemeths have not confused the jurisdictional question with the applicability of Idaho law.

Next, Shoshone County argues that the Nemeths “mistakenly believe” that Idaho law gives “counties and state courts authority to determine title to disputed R.S. 2477 roads in which the federal government claims an interest.” Resp. Br. Defs.-Resp'ts 20. The Nemeths do not hold this belief. First, as mentioned above, the Nemeths do not seek a title determination. Second, as discussed below, the Nemeths believe that they are entitled to seek validation of the legal status of Granite Gulch Road because the plain language of Idaho Code § 40-204A(5) allows them to do so. Third, Shoshone County does not cite to any evidence in the record demonstrating that the United States has affirmatively claimed an interest in Granite Gulch Road.

1. Idaho Code § 40-204A(5) unambiguously grants the district court statutory authority to validate the Nemeths' right to use Granite Gulch Road as a Revised Statute 2477 public right-of-way.

The interpretation of a statute is a question of law over which the Idaho Supreme Court exercises free review. *Hoffer v. City of Boise*, 151 Idaho 400, 402, 257 P.3d 1226, 1228 (2011). If the statutory language is unambiguous, then the Court applies the statute as written. *Waters Garbage v. Shoshone County*, 138 Idaho 648, 650, 67 P.3d 1260, 1262 (2003) (citation omitted). “If it is ambiguous, then [the Court] attempt[s] to ascertain the legislative intent.” *Id.* To determine the legislative intent, the Court “may examine the language used, the reasonableness of proposed interpretations, and the policy behind the statute.” *Id.*

Idaho Code § 40-204A(5) is unambiguous. Subsection (5) states:

Any member of the public, the state of Idaho and any of its political subdivisions, and any agency of the federal government may choose to seek validation of its rights under law to use granted rights-of-way either through a process set forth by the state of Idaho, through processes set forth by any federal agency or by proclamation of user rights granted under the provisions of the original act, Revised Statute 2477.

Persons seeking to have a federal land right-of-way, including those which furnish public access to state and federal public lands and waters, validated as a highway or public right-of-way as part of a county or highway official highway system, shall follow the procedure outlined in section 40-203A, Idaho Code.

Neither the granting of the original right-of-way nor any provision in this or any other state act shall be construed as a relinquishment of either federal ownership or management of the surface estate of the property over which the right-of-way passes.

I.C. § 40-204A(5). Federal land rights-of-way mean:

rights-of-way on federal land within the context of revised statute 2477, codified as 43 U.S.C. 932, and other federal access grants and shall be considered to be any road, trail, access or way upon which construction has been carried out to the standard in which public rights-of-way were built within historic context. These rights-of-way may include, but not be limited to, horse paths, cattle trails, irrigation canals, waterways, ditches, pipelines or other means of water transmission and their attendant access for maintenance, wagon roads, jeep trails, logging roads, homestead roads, mine to market roads and all other ways.

I.C. § 40-107(5) (emphasis added).

When Idaho Code § 40-204A(5) is read with reference to the definition of federal land rights-of-way, it is clear that the plain language of the statute empowers a member of the public to seek validation of his or her right to use granted rights-of-way—including a Revised Statute 2477 right-of-way on federal land—through the process set forth in Idaho Code § 40-203A. Under Idaho Code § 40-203A, a resident or property owner within a county may petition the board of the county or highway district (depending on which entity has jurisdiction) to validate a federal right-of-way. I.C. § 40-203A(1); *id.* § 40-204A(5). That same code section provides the procedures for conducting a validation proceeding. *Id.* § 40-203A(2). At the conclusion of the

validation proceeding, the board of the county issues an order validating a road to be, or not to be, public. *Sopatyk*, 151 Idaho at 818, 264 P.3d at 925 (citing I.C. § 40-203A(3)). If validated as public, the road is added to the official highway system map of the respective county. I.C. § 40-204A(5).

Under the facts of this appeal and when the statutory language is applied as written, Idaho Code § 40-204A(5) grants the Nemeths a right to petition Shoshone County to validate Granite Gulch Road as a Revised Statute 2477 public right-of-way, and Idaho Code § 40-203A establishes the procedures the Nemeths and Shoshone County must adhere to in a validation proceeding. The Nemeths tried to validate Granite Gulch Road as a Revised Statute 2477 public right-of-way by filing a petition with Shoshone County as authorized by statute. Shoshone County refused to act on the petition. Because Shoshone County refused to act, the Nemeths tried to validate Granite Gulch Road as a Revised Statute 2477 public right-of-way by seeking declaratory relief in district court. The district court dismissed their request on the ground that it lacked subject matter jurisdiction. By dismissing the Nemeth's declaratory action, the district court failed to apply the plain language of the statute to these proceedings, and in turn, erred. The plain language of Idaho Code § 40-204A(5) allows Nemeths to seek validation of Granite Gulch Road as a Revised Statute 2477 public right-of-way.

In the event that this Court finds ambiguity in Idaho Code § 40-204A(5), it's worth briefly considering the historical context in which that code section was enacted. The legislative history related to this statute is relatively sparse. Nevertheless, in early 1993, members of the Idaho Legislature learned that the U.S. Bureau of Land Management ("BLM") was compiling a list of all Revised Statute 2477 "assertions of rights of way" within every state. H. State Affairs Comm. Minutes (Idaho Mar. 4, 1993). In Idaho, the BLM sent out notices to "people" but the

county clerks and commissioners did not receive the notice. *Id.* In House Committee minutes, Representative JoAn Wood stated that she and others were “quite disturbed because [the BLM’s actions have] far reaching effects in the state of Idaho as to how people can keep access to public lands open for the public.” *Id.*

Thereafter, on March 16, 1993, Representative Wood introduced House Bill No. 388 to the Idaho Senate Transportation Committee. S. Transp. Comm. Minutes 2 (Idaho Mar. 16, 1993). She explained that House Bill No. 388 was a response to BLM actions. *Id.* Similarly, the Statement of Legislative Intent reiterates the importance of federal land rights-of-way to Idaho citizens. 1993 Idaho Sess. Law 375, 376 (H.B. No. 388). The Idaho Legislature subsequently passed the Bill, thereby creating Idaho Code § 40-204A and the right of each Idahoan to seek validation of a Revised Statute 2477 public right-of-way on federal land. In other words, through Idaho Code § 40-204A(5), the Idaho Legislature gave its citizens a role in identifying Revised Statute 2477 public rights-of-way within the state, and it did this by establishing procedures for validating roads in a local proceeding.

In conclusion, the plain language of Idaho Code § 40-204A(5), coupled with the historical context in which the statute was enacted, supports the Nemeths’ argument that they have a right under Idaho law to seek validation of Granite Gulch Road as a Revised Statute 2477 public right-of-way on federal land.

2. There is no evidence in the record that the United States claims an interest in Granite Gulch Road.

In argument, Shoshone County represents that the United States claims an interest in Granite Gulch Road. Resp. Br. Defs.-Resp’ts 20. Shoshone County does not cite to evidence in the record to support this assertion. Indeed, Shoshone County concedes that such evidence is “irrelevant to the jurisdictional question pressed by the County.” *Id.* at 13. After deeming

evidence of the United States' claimed interest in Granite Gulch Road "irrelevant" and not in the record, Shoshone uses the United States' asserted interest in Granite Gulch Road to argue that an Idaho court cannot determine the status of a Revised Statute 2477 road when title is "disputed." *Id.* at 20. Later in its brief, Shoshone County uses the same representation—that the United States claims an interest in Granite Gulch Road—to distinguish the Nemeths' appeal from the *Sopatyk* opinion. *Id.* at 22–23. Because the record does not show that the United States claims title to Granite Gulch Road, Shoshone County's representations should not be considered by this Court.

C. Idaho Code sections 40-204A(5) is not preempted by the QTA.

Shoshone County contends that the Nemeths are "oblivious to" to the federal supremacy clause and "apparently believe" that Idaho statutes and Idaho courts can "undo the exclusivity of the federal QTA." Resp. Br. Defs.-Resp'ts 20. The Nemeths are well aware of the federal Supremacy Clause and do not believe that Idaho law or courts can override or otherwise preempt federal law. Instead, the Nemeths' position is that validation of a federal land right-of-way as provided for in section 40-204A(5) of the Idaho Code does not conflict with and, therefore, is not preempted by the QTA.

The Idaho Supreme Court exercises free review when determining whether Idaho law is preempted through the operation of the Supremacy Clause of the U.S. Constitution. *In re Estate of Mundell*, 124 Idaho 152, 153, 857 P.2d 631, 632 (1993) (question of law). "The preemption of state law is not to be readily inferred." *Id.* One way state law is preempted by federal law is if the state law conflicts with the federal law.² *Christian v. Mason*, 148 Idaho 149, 152, 219 P.3d 473, 476 (2009) (citations omitted). If there is a conflict, the state law is preempted only to the extent of the conflict. *Id.* To find preemption, the Idaho Supreme Court "must find that a state

² The other way state law may be preempted by federal law is if "Congress has shown the intent to occupy a given field . . ." *Christian*, 148 Idaho at 152, 219 P.3d at 476.

law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Id.* (quoting *Mundell*, 124 Idaho at 153, 857 P.2d at 632 (citation omitted)). In this case, the Court must examine the purposes of both the QTA and Idaho Code § 40-204A to determine whether Idaho Code § 40-204A is an obstacle to the accomplishments of the federal statute. *See Christian*, 148 Idaho at 154, 219 P.3d at 478.³

As Shoshone County points out, the QTA waives sovereign immunity to lawsuits “against the United States ‘to adjudicate title disputes involving real property in which the United States claims an interest.’” *Michel v. United States*, 65 F.3d 130, 131 (9th Cir. 1995) (citing *Block v. North Dakota*, 461 U.S. 273, 275–76, 103 S.Ct. 1811, 1814, 75 L.Ed.2d 840 (1983)). The U.S. Supreme Court has held that “Congress intended the QTA to be the exclusive means by which adverse claimants could challenge the United States’ title to real property.” *Block*, 461 U.S. at 286, 103 S.Ct. at 1819, 75 L.Ed.2d 840 (emphasis added). Moreover, it is likely that only a governmental entity like Shoshone County has standing to challenge the United States’ title to real property. *County of Shoshone*, 912 F. Supp. 2d at 922.

Conversely, Idaho Code § 40-204A(5) does not adjudicate title disputes with the United States. Rather, as summarized above, it validates a member of the public’s pre-existing right to use a public right-of-way on federal land. The legislative history of Idaho Code § 40-204A suggests that the statute has two purposes: (a) to establish a procedure for identifying and confirming previously established federal rights-of-way in order to protect the rights previously vested in the citizens of Idaho, 1993 Idaho Sess. Laws 375, 376, and (b) to invite Idaho citizens to participate in the management of their local highway systems. S. Concurrent Res. 136, 54th

³ In *Christian*, the Court explained that it is necessary to review the goals of the state statute in light of the purposes behind the federal bankruptcy code to determine whether the plaintiff’s state cause of action frustrates the purposes of the federal statute. *Christian*, 148 Idaho at 154, 219 P.3d at 478.

Leg., 2d Reg. Sess. (Idaho 1998) (lines 35–40); Rep. to the S. Transp. Comm. & H. Transp. & Def. 3. Importantly, when enacting this code section, the Idaho legislature recognized that:

[e]xisting federal land [rights-of-way] are extremely important to all of Idaho's citizens. Two-thirds of Idaho's land is under control of the federal government and access to such federal lands is integral to public use. . . .

1993 Idaho Sess. Laws 376 (emphasis added). It seems apparent that the Idaho Legislature wanted to give its citizens a voice in the management of Idaho roadways. It accomplished that by establishing procedures by which a citizen could ask his or her local government (and perhaps even compel a reluctant local government like Shoshone County) to validate a pre-existing public right-of-way, and in particular, a right-of-way on federal land.

Accordingly, the purposes of the QTA and Idaho Code § 40-204A are distinct. The QTA resolves a title dispute as between the United States and an adverse claimant, while Idaho Code § 40-204A enables a member of the public to validate a roadway in a local proceeding. Because the purposes of the QTA and the state statute are distinguishable, the Nemeths ask this Court to give effect to the Idaho Legislature's purpose for Idaho Code § 40-204A and find that the QTA does not preempt Idaho Code § 40-204A.

D. The facts in the *Sopatyk* case are indistinguishable from the Nemeth's appeal.

Shoshone County asserts that the *Halvorson*, *Schneider*, and *Sopatyk* opinions “lend no support to the Nemeths' assertion that state courts may determine title to roads on federal land.” Resp. Br. Defs.-Resp'ts 21–23. According to Shoshone County, *Halvorson* and *Schneider* are inapplicable because the cases do not involve federal land, and *Sopatyk* is inapplicable because the United States supported local validation of the contested road. *Id.* at 22. Thus, in Shoshone County's view the *Sopatyk* case did not address the question of whether a state validation can determine contested federal title. *Id.* at 23.

Once again, in their request for declaratory relief, the Nemeths did not ask the state court to determine title to federal land. Second, while the *Halvorson* and *Schneider* cases do not involve federal land, the opinions are still relevant because they establish an Idaho court's authority to entertain a validation proceeding and the procedures related thereto. *See* Appellants' Br. 21–24. Third, this Court's holding in the *Sopatyk* opinion is directly on point. In *Sopatyk*, this Court confirmed that a county has the authority to validate a public right-of-way on federal land; it did so without consideration of whether the United States contested the claim.⁴ *Sopatyk*, 151 Idaho at 817, 264 P.3d at 924 (“It was therefore within the County’s legal authority to validate [Anderson Creek Road] even if it does invade National Forest Land.”); Appellant’s Br. 17–19. Further, as mentioned above, Shoshone County has not pointed to any evidence in the record demonstrating that the United States has made a claim to Granite Gulch Road such that *Sopatyk* can be distinguished from the Nemeths’ appeal on that ground.

Thus, the Nemeths ask the Court to apply its holding from *Sopatyk* to this case, and find that both Shoshone County and the district court have authority to conduct a validation proceeding of a public right-of-way on federal land pursuant to Idaho Code § 40-204A(5).

II. CONCLUSION.

For the reasons above, the Nemeths ask this Court to reverse the district court’s order of dismissal and award them their costs and attorney fees for this appeal.

DATED this 15th day of March, 2019.

LUKINS & ANNIS, P.S.

By: 
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⁴ The United States’ disclaimer was addressed in the context of whether it was in the public interest to validate the road.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2019, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Shoshone County Prosecuting Attorney
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