

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

2-BAR RANCH LIMITED
PARTNERSHIP, a Montana limited
partnership; BROKEN CIRCLE RANCH
COMPANY, INC., a Montana profit
corporation; R BAR N RANCH, LLC,
a Montana limited liability
corporation,

Plaintiffs-Appellees,

v.

UNITED STATES FOREST SERVICE, an
Agency of the United States
Department of Agriculture; THOMAS
J. VILSACK, in his official capacity as
Secretary of the United States
Department of Agriculture;
VICTORIA CHRISTIANSEN, in her
official capacity as Chief of the
United States Forest Service;
LEANNE MARTEN; CHERI FORD, in
her official capacity as Forest
Supervisor for the Beaverhead-
Deerlodge National Forest;
CAMERON RASOR, in his official
capacity as District Ranger for the
Pintler Ranger District in the
Beaverhead-Deerlodge National
Forest,

Defendants-Appellants.

No. 19-35351

D.C. No.
2:18-cv-00033-
SHE

OPINION

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Argued and Submitted June 4, 2020
Portland, Oregon

Filed May 6, 2021

Before: Marsha S. Berzon and Daniel P. Collins, Circuit
Judges, and Jennifer Choe-Groves,* Judge.

Opinion by Judge Berzon

SUMMARY**

Grazing Permits / Equal Access to Justice Act

The panel reversed the district court’s partial grant of summary judgment to Plaintiff cattle ranchers in their action challenging the U.S. Forest Service’s decision to apply 1995 Riparian Mitigation Measures to the Dry Cottonwood Allotment in the Beaverhead-Deerlodge National Forest, where plaintiffs had grazing permits for their cattle; held that Plaintiffs were not entitled to attorneys’ fees under the Equal Access to Justice Act (“EAJA”) for their administrative

* The Honorable Jennifer Choe-Groves, Judge for the United States Court of International Trade, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

appeal; and remanded with instructions to grant summary judgment to the Service.

In 1995, the Service amended some forest plans, including the 1987 Deerlodge Forest Plan. To implement the Plan's new grazing standard, the Service developed a set of mitigation measures (the "1995 Riparian Mitigation Measures") that applied to specific allotments, including the Dry Cottonwood Allotment. In 2009, the Service replaced the 1987 Deerlodge Forest Plan with the 2009 Forest Plan, and continued to apply the 1995 Riparian Mitigation Measures. The district court held that the Service's application of the 1995 Riparian Mitigation Measures to the Dry Cottonwood Allotment was arbitrary and capricious and violated the National Forest Management Act.

The panel held that the plain language of the 2009 Forest Plan supported the Service's application of the 1995 Riparian Mitigation Measures to the Dry Cottonwood Allotment, and to Plaintiffs' grazing permits. The Service's incorporation of the 1995 measures into Plaintiffs' grazing permits was therefore lawful. Because the 2009 Forest Plan was not ambiguous in any pertinent respect, the panel did not reach the Service's alternative argument that the panel should defer to its regulatory interpretation.

EAJA provides that an agency that conducts an adversary adjudication shall award to a prevailing party fees and other expenses incurred in connection with that proceeding. An agency proceeding is an "adversary adjudication" for EAJA purposes only if it is actually governed by the Administrative Procedures Act ("APA")'s formal adjudication requirements, as opposed to similar requirements of another statute or regulation. 5 U.S.C. § 554 delineates the scope of proceedings governed by the formal

adjudication requirements of the APA. The panel held that the Service’s administrative appeal process was not governed by Section 554. The panel held further that the administrative appeal here was not an “adversary adjudication” for purposes of EAJA. The panel concluded that the Service properly denied Plaintiffs’ request for attorneys’ fees for their administrative appeal.

COUNSEL

Erika B. Kranz (argued) and David Gunter, Attorneys; Eric Grant, Deputy Assistant Attorney General; Environment and Natural Resources Division, United States Department of Justice, Washington, D.C.; Steven Vaden, General Counsel; Elise Foster, Attorney; United States Department of Agriculture, Washington, D.C.; for Defendants-Appellants.

Calli J. Michaels (argued) and John E. Bloomquist, Bloomquist Law Firm P.C., Dillon, Montana, for Plaintiffs-Appellees.

Abigail J. St. Lawrence, Abigail St. Lawrence Law Firm P.C., Helena, Montana, for Amici Curiae Rocky Mountain Stockgrowers Association and Public Lands Council.

OPINION

BERZON, Circuit Judge:

The U.S. Forest Service and other federal defendants (collectively, “the Service”) appeal the judgment entered by the district court after the court’s grant of partial summary judgment to the plaintiff cattle ranchers (collectively, “Plaintiffs”). We conclude that the Service lawfully applied a particular set of standards for protecting stream habitats from the effects of cattle grazing, the 1995 Riparian Mitigation Measures, to Plaintiffs’ grazing permits. Additionally, Plaintiffs were not entitled to attorney’s fees under the Equal Access to Justice Act for their administrative appeal. We therefore reverse the district court’s grant of partial summary judgment to Plaintiffs and remand with instructions to grant summary judgment to the Service.

BACKGROUND

I.

Plaintiffs 2-Bar Ranch Limited Partnership, R Bar N Ranch, LLC, and Broken Circle Ranch Company, Inc. hold or held permits to graze cattle on the Dry Cottonwood Allotment, which is part of the Beaverhead-Deerlodge National Forest in Montana.¹ The U.S. Forest Service manages the forest under the multiple-use, sustained-yield mandate prescribed by the National Forest Management Act (“NFMA”), which requires the Service to balance uses

¹ Broken Circle Ranch no longer holds a permit but asserts an interest in the appeal to the extent it affects its entitlement to attorney’s fees from the administrative proceeding.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.