

This dispute ~~concerns~~ revolves around the construction of a watershed structure in Monroe County, Iowa [.] on property in which Plaintiffs have an ownership interest (~~hereinafter~~ “Watershed Structure”). First Am. Compl. (~~hereinafter~~ “Compl.”) ¶¶ 14, 18. The United States Department of Agriculture, Natural Resources Conservation Service (~~hereinafter~~ “NRCS”) played a significant role in both planning and supervising the ~~Watershed Structure’s~~ construction of the ~~Watershed Structure~~.

Beginning in 1971, at the request of the State Soil Conservation Committee, NRCS (then named the Soil Conservation Service) assisted county governments and soil conservation districts in planning ~~out~~ and carrying out a watershed protection project in the Iowa counties of Appanoose, Davis, Monroe [.] and Wapello (~~hereinafter~~ “Watershed Project”), ~~pursuant to~~ [under] the Watershed Protection and Flood Prevention Act. Notice of Removal, App. at 166 (Adkins Dep.). The project involves [constructing] the construction of 154 flood water detention dams in upland portions of the designated watershed area (~~hereinafter~~ “Soap Creek Watershed”). *Id.* at 167.

Of particular relevance to the present dispute, Defendants Monroe County Board of Supervisors (~~hereinafter~~ “County Board”) and Monroe County Soil & Conservation District (~~hereinafter~~ “District”), received an easement on Plaintiffs' property, and ~~later~~ ~~subsequently~~ acted through their designated agent, Soap Creek Watershed Board (~~hereinafter~~ “Soap Creek Board”), to direct the construction of the Watershed Project, including the Watershed Structure at the center of this dispute on Plaintiffs' property. Compl. ¶¶ 15–16.

In September 2006, NRCS and the Soap Creek Board entered into Project Agreement 69–6114–6–06, regarding the construction of ~~15~~ ~~fifteen~~ flood-retarding structures within the Soap Creek Watershed, including the Watershed Structure.³ Notice of Removal, App. at 124 (Moltzen Dep.). On or about December 28, 2006, NRCS and the Soap Creek Board entered into an agreement with Grooms & Co. Construction, Inc. (~~hereinafter~~ “Contractor”), ~~wherein~~ ~~requiring~~ the Contractor ~~to~~ ~~would~~ build the Watershed Structure in Monroe County on Plaintiffs' property. Compl. ¶¶ 17–18. The Contractor then subcontracted the construction of the Watershed to Danny's Diggin' N Dozin', Inc. (~~hereinafter~~ “Subcontractor”). *Id.* ¶ 19.

Plaintiffs complain of numerous damages to their property as a result of the construction activities. They allege that the Subcontractor trespassed on the Plaintiffs' property, violating agreements between the Soap Creek Board and Plaintiffs, and [caused] ~~causing~~ damage that included the destruction of trees and crops, a shelter structure, and a well structure. *Id.* ¶¶ 22, 24–25, 36. ~~In addition,~~ Plaintiffs ~~also~~ assert that the manner in which the Watershed was constructed has obstructed their access to portions of the Plaintiffs' property, caused saturation and leakage of water at various parts of the Plaintiffs' property, caused erosion of Plaintiffs' property, and disrupted hunting access to the Plaintiffs' property. [Sentence length] *Id.* ¶¶ 27–28, 35–36. Further, they allege that the Contractor and Subcontractor failed to restore the Plaintiffs' property. *Id.* ¶ 36.

~~As in regard~~ to the United States' liability for these damages, Plaintiffs allege that NRCS employees were physically present on site on a regular basis, overseeing and supervising the construction of the Watershed Structure, and that Plaintiffs' alleged damages may have been caused or aggravated by ~~NRCS's~~ improper and deficient design and/or [avoid] improper and deficient supervision ~~by NRCS~~. *Id.* ¶¶ 23, 37. They also assert that NRCS employees were aware of agreements

between Plaintiffs and the Soap Creek Board regarding what was permissible and what was not permissible ~~under pursuant to~~ the easement on Plaintiffs' property. *Id.* ¶ 22. In addition, Plaintiffs allege that after these damages occurred, NRCS employees changed, or authorized the change, in the plans and scope of the watershed protection project to retroactively ratify and reward the wrongful conduct of the Contractor and Subcontractor that caused the Plaintiffs' damages. *Id.* ¶ 38.

After sustaining these damages, Plaintiffs ~~filed suit against~~ ~~sued~~ the Contractor in the Iowa District Court in and for Monroe County, Iowa, on August 11, 2009 (*Topp v. Grooms & Co. Const., Inc.*, Case No. LALA003522 (D. Monroe County, Iowa)). See Notice of Removal, App. at 1. The action underwent various permutations in state court, including a consolidation with Case No. LALA003547 (D. Monroe County, Iowa). See *id.* at 9–15, 45–47, 53–62, 78–114. After Plaintiffs were granted leave to file a second amended petition adding the federal, county[,] and municipal Defendants, the United States removed the case to federal district court, ~~under pursuant to~~ 28 U.S.C. § 1442, and filed the First Motion to Dismiss, primarily asserting sovereign immunity. Clerk's Nos. 1–3.

Plaintiffs ~~then subsequently~~ filed a “First Amended Complaint” (~~hereinafter “Amended Complaint”~~)[~~But up above, the First Amendment Complaint was cited as First Am. Comp. and was to be shortened to “Compl.”~~], revising the pleading ~~so such~~ that it now states the following state-law claims against the United States ~~and ,as well as against~~ other ~~named~~ Defendants: (1) trespass; (2) nuisance; (3) respondeat superior; (4) negligent failure to properly design, supervise[,] and/or construct; and (5) willful damage to crops, ~~under pursuant to~~ Iowa Code § 717A.3.4 Clerk's No. 7. ~~In By way of~~ response, the United States filed a Second Motion to Dismiss