

This dispute revolves ~~around the construction of~~ around constructing 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 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 the Watershed Protection and Flood Prevention Act. Notice of Removal, App. under the Watershed Protection and Flood Prevention Act. Notice of Removal, App.~~ at 166 (Adkins Dep.). The project involves the construction of 154 flood water detention dams in upland ~~portions~~ parts 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 ~~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 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~~ contracted with Grooms & Co. Construction, Inc. (~~hereinafter~~ “Contractor”), wherein the Contractor 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 many~~ damages to their property ~~as a result of~~ because of the construction activities. They allege that the Subcontractor trespassed on the Plaintiffs' property, violating agreements between the Soap Creek Board and Plaintiffs, and 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 assert that ~~the manner in which the way~~ the Watershed was constructed has obstructed their access to ~~portions~~ parts of the Plaintiffs' property, caused saturation and leakage of water at various parts of the Plaintiffs' property, ~~caused erosion of~~ eroded Plaintiffs' property, and disrupted hunting access to the Plaintiffs' property. *Id.* ¶¶ 27–28, 35–36. Further, they allege that the Contractor and Subcontractor ~~failed to did not~~ restore the Plaintiffs' property. *Id.* ¶ 36.

~~In regard to~~ Regarding the United States' liability for these damages, Plaintiffs allege that NRCS employees were physically present on site ~~on a regular basis~~ regularly, overseeing and supervising the construction of the Watershed Structure, and that Plaintiffs' alleged damages may

have been caused or aggravated by improper and deficient design and/or 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 ~~pursuant to~~ under 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~~ changed petition adding the federal, county and municipal Defendants, the United States removed the case to federal district court, ~~pursuant to 28 U.S.C. under~~ 28 U.S.C. § 1442, and filed the First Motion to Dismiss, primarily asserting sovereign immunity. Clerk's Nos. 1–3.

~~Plaintiffs subsequently~~ Plaintiffs then filed a “First Amended Complaint” (~~hereinafter~~ “Amended Complaint”), revising the pleading such that it now states the following state law claims against the United States, 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, ~~pursuant to Iowa Code under Iowa Code~~ § 717A.3.4 Clerk's No. 7. By way of response, the United States filed a Second Motion to Dismiss