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## Goodrich v. United States, 434 F.3d 1329 (Fed. Cir. 2006)

Kelly L. Snodgrass

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prong, hardship, the court also found the case was ripe for review. The court reasoned that the Industry would face hardship because each permit applicant would have to choose between applying for a permit the Industry challenged or face penalties for failing to do so. Hence, the court held the regulation reviewable as a substantive rule as it required the parties to adjust their conduct immediately.

In conclusion, the court held the Industry's challenge that Tulloch II exceeds the Agencies' statutory authority to promulgate rules under the CWA was ripe for review. The court reversed district court's dismissal and remanded the case.

*Matthew Willson*

### FEDERAL CIRCUIT

**Goodrich v. United States, 434 F.3d 1329 (Fed. Cir. 2006)** (holding the issuance of a Record of Decision and final Environmental Impact Statement is sufficient to constitute a taking of a water right and commence the statute of limitations for a takings claim, regardless of when the water right owner is affected by the consequences of the decisions).

Rancher John B. Goodrich ("Goodrich") grazed and watered cattle on what is now the Whitetail Allotment of the Lewis and Clark National Forest ("Forest"). In 1991, the Forest Service undertook a range analysis of the Forest to determine the adequacy of the allotment management plan ("AMP"), which governed livestock operations on Forest Service Lands. In 1995, the Forest Service published a draft EIS outlining the impact of each alternative, all of which involved moving cattle belonging to Joseph Kennedy ("Kennedy") onto the Whitetail Allotment. The current AMP specified the "current permittee," Goodrich, was entitled to receive any additional grazing use on the Whitetail Allotment. Therefore, Goodrich opposed the proposals, arguing the Forest Service could meet its environmental goals and maintain compliance with the current AMP by moving additional Goodrich cattle to the Whitetail Allotment instead of moving Kennedy's cattle. After considering Goodrich's and other public comments, the Forest Service issued a final EIS and a Record of Decision ("ROD") on February 27, 1997, adopting Alternative 10, stating that one permittee with 108 animal unit months ("AUMs") would be moved to the Whitetail Allotment. The final EIS confirmed Kennedy as the designated permittee.

On April 25, 2000, Goodrich received official notice from the Forest Service of intent to implement Kennedy's permits that grazing season. On July 1, 2000, Kennedy's cattle physically entered the Whitetail Allotment. As a result, Goodrich lost 79 AUMs (down from the original allotment of 108 AUMs). On June 9, 2004, Goodrich filed suit in the United States Court of Federal Claims alleging that, by allowing

another permittee to graze on the Whitetail Allotment, the United States effected a taking of his exclusive water rights in violation of the takings clause of the Fifth Amendment. The United States moved to dismiss the suit as barred by the six year statute of limitations. The trial court granted the motion, finding that the February 28, 1997 issuance of the ROD and final EIS constituted a regulatory taking and signaled the accrual of Goodrich's takings claim. Goodrich appealed to the United States Court of Appeals for the Federal Circuit.

A party must file a claim, if brought in the United States Court of Federal Claims, within six years of its accrual date. However, the claim accrues only if the claimant knew or should have known that the claim existed. Goodrich argued the taking was physical and accrued on July 1, 2000, when Kennedy's cattle physically entered the Whitetail Allotment, putting his claim within the six year period. The court rejected this argument, holding the taking was regulatory and the statute of limitations period accrued upon the Forest Service's adoption of Alternative 10 in the ROD.

In the alternative, Goodrich asserted the 1997 ROD did not constitute a final decision, thus the taking did not "stabilize" until April 25, 2000, when he received official notice from the Forest Service. The court disagreed, finding that, for purposes of the Administrative Procedure Act, a ROD is a final agency decision.

Finally, Goodrich argued an attempt to file a takings claim prior to the implementation of Alternative 10 would have been rejected as unripe because he had not yet suffered any harm.

The court held the obligation to sue arises once the permanent nature of the government action is evident, regardless of whether damages are complete and fully calculable. Because Goodrich was extensively involved in each step of the pre-decision process, the court found no indication that Goodrich was unaware or incapable of filing suit immediately upon accrual of his takings claim. Furthermore, as a practical matter, the court found the initiation of litigation prior to harm preferable because it is easier for the parties to correct the wrong.

Because the ROD and EIS constituted a final decision of the Forest Service, the statute of limitations began to run on February 28, 1997. Goodrich did not file his complaint until June 9, 2004, exceeding the six-year statute of limitations. The court affirmed the trial court's dismissal of the claim as barred by the statute of limitations.

*Kelly L. Snodgrass*