

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 6 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WILLIAM F. HOLDNER,

Plaintiff-Appellant,

v.

KATY COBA, Director of the Oregon
Department of Agriculture, in her individual
and official capacity; DICK PEDERSON,
Director of the Oregon Department of
Environmental Quality, in his individual and
his official capacity,

Defendants-Appellees.

No. 16-35723

D.C. No. 3:15-cv-02039-AC

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
John V. Acosta, Magistrate Judge, Presiding**

Submitted June 26, 2017***

Before: PAEZ, BEA, and MURGUIA, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

William F. Holdner appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action arising from the alleged improper regulation of Holdner's former cattle ranch. We have jurisdiction under 28 U.S.C. § 1291. We affirm in part, vacate in part, and remand.

In his opening brief, Holdner failed to challenge the district court's grounds for dismissal of his complaint, and therefore Holdner waived any such challenge. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“[W]e will not consider any claims that were not actually argued in appellant's opening brief.”). We affirm the district court's dismissal of Holdner's action but vacate the judgment in part and remand for the district court to dismiss Holdner's action without prejudice.

The magistrate judge properly denied Holdner's motion requesting review by a district court judge because the parties consented to a magistrate judge. *See* 28 U.S.C. § 636(c)(3) (when parties provide consent to magistrate jurisdiction, aggrieved party may appeal directly to court of appeals).

We reject as without merit Holdner's contentions that his action qualifies as a citizen suit under 33 U.S.C. § 1365(a), and that the district court erred in denying discovery, the right to introduce additional evidence, and a requested hearing.

Appellees' motion to take judicial notice (Docket Entry No. 11) is denied as unnecessary.

AFFIRMED in part, VACATED in part, and REMANDED.