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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Jim Petroff and Marie Petroff, as husband
and wife,

No. CV08-1971-PHX-NVW

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Plaintiffs,

ORDER

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vs.

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Ed Schafer, in his capacity as Secretary of
the United States Department of
Agriculture; the Department of Agriculture
of the United States; the United States
Forest Service, an agency of the
Department of Agriculture of the United
States; Abigail R. Kimbell, in her capacity
as Chief of the United States Forest
Service; Corbin Newman Jr., in his
capacity as Regional Forester, Southwest
Region, United States Forest Service;
Gene Blankenbaker, in his capacity as
Forest Supervisor, Tonto National Forest,
United States Forest Service; Jerome A.)
Mastel, in his capacity as District Ranger,
Pleasant Valley Ranger District, Tonto
National Forest, United States Forest
Service,

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Defendants.

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Plaintiffs Jim and Marie Petroff (collectively, “the Petroffs”) filed this action under
the Quiet Title Act, 28 U.S.C. §§ 1346(f) and 2409a, the Declaratory Judgment Act, 28
U.S.C. § 2201, and the Mandamus Act, 28 U.S.C. § 1361, seeking to establish their right to

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1 use an easement across National Forest lands. (Doc. # 1.) In a previous order, the Court
2 dismissed this action for failure to state a claim under Fed. R. Civ. P. 12(b)(6). (Doc. # 11.)
3 The Petroffs now move for reconsideration of that order. Their motion will be denied.

4 In short, the Petroffs contend that the Government’s motion to dismiss did not go to
5 the merits of their complaint, and that the Court erred in dismissing the complaint on the
6 merits according to the land patent documents submitted with the motion. The Petroffs are
7 mistaken. Both the Government’s statement of facts and its argument invoked the fact that
8 the land patent documents created no estate or property interest in the 30-foot strip of
9 National Forest lands. These assertions hinge on the language and intent of the land patent
10 documents submitted with the Government’s motion, documents to which the Petroffs did
11 not object and which were properly considered at the dismissal stage as explained in this
12 Court’s previous order (doc. # 11).

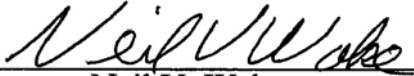
13 The Petroffs contend that they “reasonably construed the Defendant’s argument to
14 be that the Plaintiffs lacked a sufficient property interest in order to pursue an action under
15 the Quiet Title Act, not that the expressed intent and unambiguous language of the 1919
16 Patent precluded any judgment on behalf of the Plaintiffs.” As explained in the Court’s
17 previous order, this is a distinction without a difference. The Government argued that the
18 Petroffs failed to state a claim, which deprived the Court of jurisdiction. The Petroffs
19 responded by arguing that the “originating documentation, special instructions, field
20 notes, plat map, and logs”—documents accompanying the Government’s motion—created
21 an express easement under the 1919 patent. Taking the Petroffs’ claim as nonfrivolous, the
22 Court assumed jurisdiction but agreed with the Government that the documents created no
23 property interest, warranting Rule 12(b)(6) dismissal. The confluence of substantively
24 identical but procedurally distinct modes of dismissal does not excuse the Petroffs’ failure
25 to object to the Government’s documents or to submit or refer to further documents. Indeed,
26 the Petroffs’ response included more documents and addressed the ultimate legal effect of
27 the unambiguous documents submitted by the Government.

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IT IS THEREFORE ORDERED THAT Plaintiffs' Motion for Reconsideration (doc. # 13) is denied.

DATED this 15th day of May, 2009.



Neil V. Wake
United States District Judge