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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CITY OF PALMDALE, a charter)	
city,)	2:11-cv-01808-GEB-GGH
)	
Plaintiff,)	
)	<u>ORDER</u>
v.)	
)	
CALIFORNIA HIGH-SPEED RAIL)	
AUTHORITY, a public agency;)	
ROELOF VAN ARK, Chief Executive)	
Officer; and DOES 1-10,)	
inclusive,)	
)	
Defendants.)	
_____)	

Subject matter jurisdiction in this case was raised sua sponte in a show cause order filed on August 3, 2011, which states, in pertinent part:

Plaintiff has filed a motion for a preliminary injunction in which it argues that Defendants should be prohibited "from continuing to improperly and illegally use state and/or federal funds to conduct a study of an alignment for the California High-Speed Rail Project." (Pl.'s Mot. for Prelim. Inj. 1:2-5.) However, Plaintiff has not stated the basis of federal court subject matter jurisdiction over this case.

"The party seeking to invoke the court's jurisdiction bears the burden of establishing that jurisdiction exists." Scott v. Breeland, 792 F.2d 925, 927 (9th Cir. 1986). . . . While Plaintiff has cited federal statutes in its complaint, Plaintiff has not shown on what basis the cited statutes provide a "ground[] for the court's jurisdiction[.]" Fed. R. Civ. P. 8(a)(1).

1 Specifically, Plaintiff alleges in paragraph
2 one of its complaint that it "brings this complaint
3 for declaratory and injunctive relief against
4 Defendants for their misappropriation of federal
5 monies specifically earmarked under the American
6 Recovery and Reinvestment Act pursuant to a grant
7 issued by the Federal Railroad Administration in
8 2010[.]" (Compl. ¶ 1.) Further, the second
9 paragraph of the complaint contains the following
10 conclusory allegations: "This Court has subject
11 matter jurisdiction pursuant to 28 U.S.C. §§ 1331
12 (federal question), 2201 (authorizing declaratory
13 relief) and 2202 (authorizing injunctive relief)."
14 Id. ¶ 2.

15 28 U.S.C. § 1331 confers subject matter
16 jurisdiction over "all civil actions arising under
17 the Constitution, laws, or treaties of the United
18 States." Nothing in the complaint indicates this
19 case concerns the Constitution or a treaty of the
20 United States. Moreover, notwithstanding
21 Plaintiff's contrary indication, § 1331 alone does
22 not confer subject matter jurisdiction, since it is
23 a "general federal-question jurisdiction statute
24 [which] is applicable only when the plaintiff sues
25 under a federal statute that creates a right of
26 action in federal court." Williams v. United
27 Airlines, Inc., 500 F.3d 1019, 1022 (9th Cir.
28 2007). Therefore, Plaintiff's conclusory statement
that jurisdiction is based on § 1331 is
insufficient.

17 Further, Plaintiff's citation to 28 U.S.C. §§
18 2201 and 2202 does not establish subject matter
19 jurisdiction, since "the Declaratory Judgment Act[,
20 codified at 28 U.S.C. §§ 2201 and 2202,] does not
21 itself confer federal subject matter jurisdiction
22 but merely provides an additional remedy in cases
23 where jurisdiction is otherwise established." City
24 of Colton v. Am. Promotional Events, Inc., 614 F.3d
25 998, 1006 (9th Cir. 2010) (internal quotation marks
26 omitted).

23 The court raises the issue of subject matter
24 jurisdiction sua sponte, since "courts . . . have
25 an independent obligation to determine whether
26 subject-matter jurisdiction exists, even in the
27 absence of a challenge from any party." Arbaugh v.
28 Y & H Corp., 546 U.S. 500, 514 (2006); see also
Fed. R. Civ. P. 12(h)(3) ("If the court determines
at any time that it lacks subject-matter
jurisdiction, the court must dismiss the action.").
"The existence of subject matter jurisdiction goes
to the very power of the district court to issue .
. . . rulings" on the now pending injunction motion,
since "the district court's order . . . would be

1 meaningless if the district court was without
2 jurisdiction over that [matter] in the first
3 instance." Merritt v. Shuttle, Inc., 187 F.3d 263,
4 269 (2d Cir. 1999). Therefore, failure to determine
5 whether subject matter jurisdiction exists before
6 briefing on the matter and decision could "waste[]
7 the court's time[,]" and that of the parties if the
8 district court is without subject matter
9 jurisdiction. Int'l Union of Operating Eng'rs v.
10 Cnty. Of Plumas, 559 F.3d 1041, 1045 (9th Cir.
11 2009) (reversing and remanding district court's
12 judgment since Ninth Circuit determined the
13 district court lacked subject matter jurisdiction
14 over the case).

15 Therefore, Plaintiff shall explain the basis
16 of subject matter jurisdiction in a filing due on
17 or before August 12, 2011; any response to this
18 filing shall be filed on or before August 22, 2011.

19 (Order to Show Cause Re: Federal Subject Matter Jurisdiction 1:16-4:3.)
20 Responsive briefs have been filed, and the matter was argued on August
21 29, 2011.

22 "If the court determines at any time that it lacks
23 subject-matter jurisdiction, the court must dismiss the action." Fed. R.
24 Civ. P. 12(h)(3). "It is the burden of plaintiffs to persuade the
25 federal courts that subject matter jurisdiction does exist." Hexom v.
26 Oregon Dept. of Transp., 177 F.3d 1134, 1135 (9th Cir. 1999). "It is
27 firmly established . . . that the absence of a valid (as opposed to
28 arguable) cause of action does not implicate subject-matter
jurisdiction, i.e., the courts' statutory or constitutional power to
adjudicate the case." Steel Co. v. Citizens for a Better Env't, 523 U.S.
83, 89 (1998). "Dismissal for lack of subject-matter jurisdiction
because of the inadequacy of the federal claim is proper only when the
claim is 'so . . . implausible, foreclosed by prior decisions of this
Court, or otherwise completely devoid of merit as not to involve a
federal controversy.'" Id. (quoting Oneida Indian Nation of N.Y. v.
Cnty. of Oneida, 414 U.S. 661, 666 (1974)).

1 Plaintiff's Complaint is comprised of two claims: a claim
2 alleging "Misuse of Federal Grant Funds," and a claim alleging misuse of
3 state bond funds. Plaintiff alleges federal question jurisdiction is
4 premised on their Misuse of Federal Grant Funds claim since Defendants
5 are breaching the terms of a Grant Agreement into which Defendants
6 entered with the federal government. Plaintiffs' claims concern a high-
7 speed rail project in California. Plaintiffs' Complaint includes the
8 allegation:

9 All Californians, including the citizens of
10 Palmdale, a city designated as a station stop hub
11 between two Approved Segments along the Preferred
12 Alignment of the [High-Speed Rail] project, are
13 intended beneficiaries of the Federal Amended Grant
14 awarding federal funding to the [Defendant
15 High-Speed Rail] Authority for Phase 1 of the
16 [High-Speed Rail] project.
17 (Compl. ¶ 54.) The Grant Agreement is attached to Plaintiff's Complaint.

18 Plaintiff argues in its response to the show cause order that
19 subject matter jurisdiction exists over its Misuse of Federal Grant
20 Funds claim because that claim is a federal question under 28 U.S.C. §
21 1331, since the Grant Agreement is a government contract, and "[f]ederal
22 law governs the interpretation of contracts entered into pursuant to
23 federal law and to which the government is a party." (Pl.'s Resp. to
24 Order to Show Cause 4:6-8.) Plaintiff further argues:

25 [Plaintiff's] right to relief necessarily depends
26 on resolution of [whether it is] an intended third
27 party beneficiary [of the Grant Agreement] under
28 federal law. Under the federal common law of
contracts, a third party may recover under a
contract if it can show that the contract was made
for its direct benefit such that it is an intended
beneficiary of the contract.

29 Id. 5:1-6.

30 Defendants counter the court is without subject matter
31 jurisdiction over Plaintiff's Misuse of Federal Grant Funds claim,

1 arguing: "Plaintiff's allegation that it is an intended beneficiary of
2 the Grant Agreement is clearly an unsupported, conclusory assertion of
3 law" that "is irreconcilable" with the language of the Grant Agreement.
4 (Defs.' Opp'n 9:18-19, 21.) Moreover, Defendants dispute Plaintiff's
5 argument that federal law applies to Plaintiff's Misuse of Federal Grant
6 Funds claim, contending "[b]ecause the City has failed to demonstrate 'a
7 significant conflict . . . between an identifiable federal policy or
8 interest and the operation of state law,' this Court lacks federal
9 subject matter jurisdiction." Id. 12:20-23 (quoting Empire Healthchoice
10 Assurance, Inc. v. McVeigh, 547 U.S. 677, 693 (2006)). The merits of the
11 argument concerning whether state or federal law applies to the claim
12 need not be decided, however, since even assuming, *arguendo*, Plaintiff's
13 assertion that federal common law applies to the Misuse of Federal Grant
14 Funds claim, the Court must dismiss this claim for lack of subject
15 matter jurisdiction.

16 Under the federal common law of contracts, "before a third
17 party can recover under a contract, it must show that the contract was
18 made for its direct benefit—that it is an intended beneficiary of the
19 contract." Klamath Water Users Protective Ass'n v. Patterson, 204 F.3d
20 1206, 1210 (9th Cir. 1999).

21 Plaintiff argued at the hearing on the subject matter
22 jurisdiction motion that subject matter jurisdiction exists since the
23 government is a party to the Grant Agreement and Plaintiff, as a
24 designated stop along the proposed route for the high speed train, is a
25 third-party beneficiary of the Grant Agreement under federal common law.
26 However, Plaintiff's designation as a train stop does not establish that
27 it is third-party beneficiary, since:

28 [p]arties that benefit from a government contract
are generally assumed to be incidental

1 beneficiaries, rather than intended ones, and so
2 may not enforce the contract absent a clear intent
3 to the contrary. This clear intent hurdle is not
4 satisfied by a contract's recitation of interested
5 constituencies[;] . . . explicit reference to a
6 third party[;] or even a showing that the contract
7 operates to the [third parties'] benefit and was
8 entered into with [them] in mind.

9 Cnty. of Santa Clara v. Astra USA, Inc., 588 F.3d, 1237, 1244 (9th Cir.
10 2009) (rev'd on other grounds, 131 S. Ct. 1342) (internal citations and
11 quotation marks omitted). Instead, third-party beneficiary status is
12 established under federal law only if the "precise language of [a]
13 contract [shows] a clear intent to rebut the presumption that the [third
14 parties] are merely incidental beneficiaries." Id. Plaintiff has not
15 cited to any such language in the Grant Agreement.

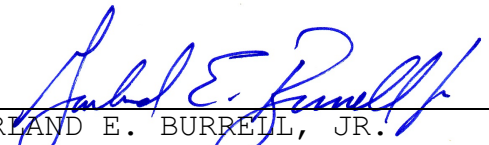
16 Moreover, "[t]o sue as a third-party beneficiary of a
17 contract, the third party must show that the contract reflects the
18 express or implied intention of the parties to the contract to benefit
19 the third party." Klamath, 204 F.3d at 1211. However, the following
20 provision of the Grant Agreement evinces that Defendants and the federal
21 government did not intend to confer third-party beneficiary status on
22 Plaintiff: "Absent FRA's [i.e. the federal government] express written
23 consent . . . FRA shall not be subject to any obligations or liabilities
24 to third party contractors or third party subcontractors or any other
25 person not a party to this Agreement in connection with the performance
26 of the Project." (Compl. Ex. F, at 91 (emphasis added).) Plaintiff
27 conceded during oral argument that the allegations in its Misuse of
28 Federal Grant Funds claim are clearly in connection with the performance
of the Project, but argued the provision does not negate Plaintiff's
position that the Grant Agreement reflects their implied intention to
make Plaintiff a third-party beneficiary of the Grant Agreement. The

1 language in this provision clearly does not support Plaintiff's
2 argument.

3 For the stated reasons, Plaintiff's Misuse of Federal Grant
4 Funds claim is "so . . . implausible, foreclosed by prior decisions of
5 this Court, [and] otherwise completely devoid of merit as not to involve
6 a federal controversy." Steel Co., 523 U.S. at 89. Therefore,
7 Plaintiff's Misuse of Federal Grant Funds claim is dismissed for lack of
8 jurisdiction. Since that claim is dismissed for lack of jurisdiction,
9 Plaintiff's state claim for misuse of state bond funds also is dismissed
10 for lack of jurisdiction.

11 This action shall be closed.

12 Dated: September 14, 2011

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16 GARLAND E. BURRELL, JR.
17 United States District Judge
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