

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

LACY LAMOIRE,

 Plaintiff,

 v.

WESTERN AREA POWER
ADMINISTRATION, et al.,

 Defendants.

No. 2:19-CV-1285-KJM-DMC

FINDINGS AND RECOMMENDATIONS

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is defendant Western Area Power Administration’s unopposed motion to dismiss and remand (ECF No. 7).

I. BACKGROUND

Plaintiff initiated this case as a small claims action filed in the Shasta County Superior Court. See ECF No. 1-1 (Notice of Removal, Exhibit A). Plaintiff names the following as defendants: (1) Western Area Power Administration (WAPA); (2) Sayers Construction, LLC; and (3) Foothills Energy Services, Inc. See id. Plaintiff alleges defendants are liable for \$10,000.00 in property damages. See id. Specifically, plaintiff claims: “Destruction of property; failure to clean up and restore property to the original condition (emphasis in original).” Id.

1 Defendant Western Area Power Administration removed the action to this court pursuant to 28
2 U.S.C. § 1442(a)(1) because it is a federal agency. See ECF No. 1.

3 4 II. DISCUSSION

5 In its unopposed motion to dismiss, defendant WAPA argues that it must be
6 dismissed under the doctrine of derivative jurisdiction and that the matter should be remanded as
7 to the remaining defendants.

8 In cases removed under 28 U.S.C. § 1442, the federal court’s jurisdiction is
9 derivative of the state court’s jurisdiction. See Cox v. United States Dep’t of Agriculture, 800
10 F.3d 1031, 1032 (9th Cir. 2015); In re Elko City Grand Jury, 109 F.3d 554, 555 (9th Cir. 1997).
11 “If the state court lacks jurisdiction of the subject matter or of the parties, the federal court
12 acquires none.” Lambert Run Coal Co. v. Baltimore & Ohio R.R. Co., 258 U.S. 377, 382 (1922).
13 Thus, if the state court lacked jurisdiction over a given matter, the case was a nullity when filed
14 and the district court could not acquire jurisdiction through removal under § 1442. See F.B.I. v.
15 Superior Court of Cal., 507 F. Supp. 2d 1082, 1090 (N.D. Cal. 2007) (citing Beeman v. Olson,
16 828 F.2d 620, 621 (9th Cir. 1987)). Though Congress eliminated the doctrine of derivative
17 jurisdiction for actions removed under 28 U.S.C. § 1441, see 28 U.S.C. § 1441(f), the doctrine
18 remains applicable to removals under § 1442, see Cox, 800 F.3d at 1032; see also Glass v. Nat’l
19 R.R. Passenger Corp., 570 F. Supp. 2d 1180, 1183 (C.D. Cal. 2008); Munshower v. City of Lodi,
20 2016 WL 6875905 (E.D. Cal. 2016).

21 According to defendant:

22 As discussed, Plaintiff sued WAPA in Shasta County Superior
23 Court for alleged property damage, but the United States has not waived
24 the sovereign immunity of its agencies for such lawsuits in state court.
25 F.D.I.C. v. Meyer, 510 U.S. 471, 475 (1994) (“Absent a waiver, sovereign
26 immunity shields the Federal Government and its agencies from suit.”);
27 Cox, 800 F.3d at 1032 (“Because the record contains no evidence that
28 USDA waived its sovereign immunity to the Coxes’ petition, the Nevada
state court lacked jurisdiction over the action.”). Instead, under the Federal
Tort Claims Act (“FTCA”), federal district courts have “*exclusive*
jurisdiction” over civil actions for property damage against the federal
government. 28 U.S.C. § 1346(b) (emphasis added); Glass, 570 F. Supp.
2d at 1181–82; Munshower, 2016 WL 6875905, at *2 (“The state court
lacked subject matter jurisdiction over [the plaintiff’s] tort claims because

1 district courts have exclusive jurisdiction of FTCA suits.”).

2 Accordingly, because the Shasta County Superior Court lacked
3 jurisdiction over Plaintiff’s claim against WAPA, this Court likewise lacks
4 jurisdiction by operation of the derivative-jurisdiction doctrine. It is
5 irrelevant that WAPA is the party that removed the action to federal court,
6 *Glass*, 570 F. Supp. 2d at 1181-82, or whether Plaintiff could have filed
7 this action in federal court in the first instance. [footnote omitted]. *See*
8 *Beeman*, 828 F.2d at 621. Plaintiff’s claim against WAPA must be
9 dismissed, and her remaining claims against Sayers Construction and
10 Foothills Energy Services must be remanded to state court. *See e.g.*,
11 *Glass*, 570 F. Supp. 2d at 1183 (dismissing claims against the United
12 States pursuant to the derivative jurisdiction doctrine, and remanding
13 claims against the remaining parties to state court); *Munshower*, 2016 WL
14 6875905, at *2 (same).

15 Defendant’s argument, which is unopposed, is persuasive. As defendant correctly
16 notes, under the provisions of the waiver of sovereign immunity contained in the FTCA, the
17 federal district courts have exclusive jurisdiction over claims against WAPA. See 28 U.S.C. §
18 1346(b)(1). Because the federal court’s jurisdiction over plaintiff’s claims against WAPA is
19 exclusive, the state court lacked any jurisdiction over such claims when the action was initiated in
20 that court. Thus, under the doctrine of derivative jurisdiction, this court acquired none when it
21 was removed under 28 U.S.C. § 1442. This remains true even though this court would have had
22 jurisdiction over plaintiff’s claims against WAPA if plaintiff had initiated the action directly in
23 this court. See Minnesota v. United States, 305 U.S. 382, 289 (1938) (discussing derivative
24 jurisdiction doctrine as it applied to removals under 28 U.S.C. § 1441 prior to amendment). As
25 this court never acquired any jurisdiction over plaintiff’s claims against WAPA incident to
26 defendant’s removal from state court, it must be dismissed as a defendant to this action. See
27 Munshower, 2016 WL 6875905, at *2.

28 Here, plaintiff has presented claims against private parties in addition to WAPA.
Specifically, plaintiff has sued Sayers Construction, LLC, and Foothills Energy Services, Inc.
Under 28 U.S.C. § 1367(a), this court may exercise supplemental jurisdiction over all claims
related to claims over which the court has original subject matter jurisdiction. Because, however,
this court never acquired subject matter jurisdiction when the matter was removed, it lacks
jurisdiction at all and cannot exercise supplemental jurisdiction over plaintiff’s claims against the
private parties. Plaintiff’s claims against the private parties should be remanded to state court.

1 Judge Mendez addressed a situation similar to the one presented in this case in
2 Munshower. In that case, Judy Munshower filed suit in state court against the City of Lodi. See
3 2016 WL 6875905. The City of Lodi filed a cross-complaint in state court against the United
4 States Postal Service (USPS). See id. USPS removed the action to federal court under 28
5 U.S.C. § 1442 and moved to dismiss, arguing the derivative jurisdiction doctrine barred the action
6 against it. See id. Judge Mendez agreed and concluded the state court lacked jurisdiction over
7 the City of Lodi's claims against USPS because jurisdiction over such claims is exclusive to the
8 federal court. See id. Judge Mendez also determined that the derivative jurisdiction doctrine
9 applied and held that the federal court acquired no jurisdiction by virtue of the removal under
10 § 1442. See id. Finally, having concluded that the federal court lacked any jurisdiction over the
11 case upon removal, Judge Mendez remanded the remainder of the case back to state court. See
12 id.

13 Plaintiff cannot proceed against WAPA in state court. To the extent plaintiff seeks
14 relief against WAPA (or the United States, which would be the proper party in a FTCA action),
15 he must re-file directly in federal court, which could then exercise supplemental jurisdiction over
16 the private parties. If plaintiff wishes to remain in state court, he may only proceed against the
17 private parties.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. CONCLUSION

Based on the foregoing, the undersigned recommends that:

1. Defendant WAPA's unopposed motion to dismiss (ECF No. 7) be granted;
2. Defendant WAPA be dismissed; and
3. The action be remanded to the Shasta County Superior Court.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 16, 2019



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE