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HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GLW VENTURES, LLC,

Plaintiff,

v.

U.S. DEPARTMENT OF
AGRICULTURE, U.S. FOREST
SERVICE, an agency of the United States,
and SKAMANIA COUNTY,
WASHINGTON, a political subdivision
of the State of Washington,

Defendants.

CASE NO. 3:12-cv-05140-RBL

ORDER DENYING
RECONSIDERATION

(Dkt. # 23)

1 The United States requests reconsideration of the Court’s order denying its motion to
2 dismiss based on a lack of jurisdiction and failure to state a claim. Order, Dkt. #19. Under Local
3 Rule 7(h):

4 Motions for reconsideration are disfavored. The court will ordinarily deny such motions
5 in the absence of a showing of manifest error in the prior ruling or a showing of new facts
6 or legal authority which could not have been brought to its attention earlier with
7 reasonable diligence.

8 The Ninth Circuit has called reconsideration an “extraordinary remedy, to be used sparingly in
9 the interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of*
10 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quoting 12 James Wm. Moore et al., *Moore’s*
11 *Federal Practice* § 59.30[4] (3d ed. 2000). “Indeed, a motion for reconsideration should not be
12 granted, absent highly unusual circumstances, unless the district court is presented with newly
13 discovered evidence, committed clear error, or if there is an intervening change in the controlling
14 law.” *Id.* (quoting *389 Orange Street Partners*, 179 F.3d 656, 665 (9th Cir. 1999)).

15 The United States has not shown grounds for reconsideration. First, the Government
16 asserts that the Court improperly found jurisdiction under the Columbia River Gorge National
17 Scenic Area Act, 16 U.S.C. § 544 *et seq.*, because neither addressed § 544(m)(b)(4), the section
18 on which the Court relied. The Government states: “[T]his Court issued an order in which it
19 concluded, o[n] grounds neither advanced by plaintiff nor addressed by federal defendant, that
20 subject matter jurisdiction exists over plaintiff’s claim under . . . § 544(m)(b)(4).” The
21 Government appears, however, to have overlooked page two of Plaintiff’s response to its motion
22 to dismiss (Pl.’s Resp., Dkt. #14), as well as the large block quote on page seven, and the
23 subsequent paragraphs arguing that jurisdiction exists under § 544(m)(b)(4).

24 Second, the Government argues that it has taken no “final action” under §544(m)(b)(4);
rather, it has simply refused to give its consent. The Government imports a definition of “action”

1 from the Administrative Procedure Act, 5 U.S.C. § 553 *et seq.* (“APA”). Def.’s Mot. for
2 Reconsideration at 3. Under the APA, an agency statement is reviewable action if it announces a
3 rule of law, imposes obligations, determines rights or liabilities, or fixes legal relationships.
4 *See Am. Trucking Assoc. v. U.S.*, 755 F.2d 1292, 1296 (7th Cir. 1985). The Government argues
5 that nothing it has done meets this definition. The Complaint suggests otherwise.

6 Plaintiff states that “Skamania County will not process GLW Ventures’ application
7 because the U.S. Forest Service has informed the County that the Adjusted Tracts violate the
8 Easement Deed.” Compl. ¶ 14. Plaintiff believes that it is not amending the Easement Deed at
9 all, but merely applying for a lot line adjustment as permitted by the Skamania County Code.
10 Pl.’s Resp. to Order to Show Cause at 4, Dkt. #20. It appears to the Court that the Government’s
11 conduct determines Plaintiff’s right to a lot line adjustment.

12 Third, the Government argues that the sovereign-immunity waiver in the Columbia River
13 Gorge Act does not apply because the Forest Service was acting solely as a landowner, not
14 pursuant to statutory authority. “While the [Columbia River Gorge Act] certainly authorized the
15 expenditure of public money to initially acquire either land or interests in land within certain
16 areas of the Gorge, nothing in the statute governs how the Forest Service will administer those
17 interests once acquired.” Def.’s Mot. for Reconsideration at 4, Dkt. #23. In other words, “the
18 Government has enforceable rights by virtue of the Conservation Easement Deed and the
19 inherent authority to enforce those rights by virtue of its status as an owner of an interest in
20 land”—independent of the Columbia River Gorge Act. *Id.* at 5 (citing *Cotton v. U.S.*, 52 U.S.
21 229 (1850)). But, the Complaint asserts that the Forest Service has represented that it *cannot*
22 amend the Easement Deed without congressional action. Compl. ¶ 15. If true, the only possible
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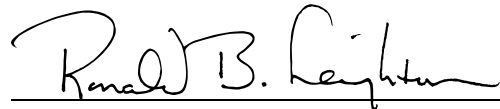
1 restraint would be the Columbia River Gorge Act. Thus, central to the case is the Government
2 *ability*—not merely its willingness—to amend an Easement Deed implemented under § 544.

3 Further, it is not clear to what extent the Easement Deed enables the Government to
4 restrain GLW from adjusting the lot lines between the two easements held by GLW. If there is
5 precedent on the issue, the Government has not brought it to the Court’s attention.

6 The Government may very well be correct in its legal position under both the Columbia
7 River Gorge Act and its rights under the Easement Deed. Its arguments are, however, best
8 considered at summary judgment.

9 Defendant’s motion for reconsideration (Dkt. #23) is **DENIED**.

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11 Dated this 26th day of September, 2012.

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14 Ronald B. Leighton
15 United States District Judge
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