

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GLW VENTURES LLC,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, U.S. FOREST  
SERVICE, et al.

Defendants.

CASE NO. C12-5140-RBL

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

DKT. #70

THIS MATTER is before the Court on Defendant United States Forest Service's Motion for Summary Judgment [Dkt. #70]. This case involves a property-line adjustment dispute between the Forest Service and Plaintiff-landowner GLW Ventures. The Forest Service owns a conservation easement that burdens GLW's property, in exchange for GLW's reserved right to divide its property into two tracts. Yet, the Forest Service has thwarted GLW's attempts to exercise this right, reasoning GLW's proposed adjustments would violate Skamania County's zoning regulations. GLW sued, arguing that by opposing its bargained-for right to create two tracts, the Forest Service violated their agreement. The Court stayed the case, pending resolution of a similar state-court suit between the parties.

1 The Skamania County Superior Court concluded GLW could not divide its property into  
2 two tracts without violating the County’s 80-acre lot-size minimum. The Forest Service and  
3 Intervenor-Defendants Friends of the Gorge and Columbia River Gorge Commission argue that  
4 because the Court therefore cannot offer GLW any effective relief, the case is moot, and ask the  
5 Court to dismiss it for lack of subject matter jurisdiction. GLW argues equitable relief, such as  
6 rescission of the easement, remains available under the Columbia River Gorge National Scenic  
7 Area Act.

## 8 I. BACKGROUND

9 The Act protects and provides for the enhancement of the Columbia River Gorge’s  
10 “scenic, cultural, recreational, and natural resources,” while allowing for limited economic  
11 growth. 16 U.S.C. § 544a. Through it, Sharleen Jones sold the Forest Service a conservation  
12 easement. She reserved the right to reconfigure her four legal lots into two tracts, 43 and 67 acres  
13 in size, subject to zoning regulations. Years later, she offered to sell her remaining interests to  
14 the Forest Service, which declined. Its declination converted the property’s minimum  
15 permissible lot size from 40 acres to 80 acres. GLW purchased Jones’s burdened property.

16 GLW asked Skamania County for permission to modify the tracts slightly from the  
17 easement description, to approximately 52 and 56 acres, adjusting the boundary between them.  
18 Of the four legal lots, the largest would reduce from 96 to 52 acres, and the three smallest would  
19 combine to form one 56 acre parcel. The Forest Service objected to the application as violating  
20 the easement deed, so Skamania County refused to process it. GLW sued the Forest Service and  
21 Skamania County, asking the Court to declare GLW has the right to reconfigure the property and  
22 to order the County to process their application.

1 In the interim, GLW again asked Skamania County for a boundary-line adjustment.  
2 Without the Forest Service’s consent, the Planning Department agreed. The Forest Service  
3 appealed to the Hearing Examiner. GLW and the Forest Service both appealed that decision to  
4 the Columbia River Gorge Commission. GLW appealed to the Skamania County Superior Court.

5 It also filed another federal lawsuit, claiming the Forest Service violated their easement  
6 deed by opposing GLW’s proposal—its reserved right—to divide the property into two tracts.  
7 The Court consolidated both federal cases and stayed them pending resolution of the state-court  
8 litigation.<sup>1</sup>

9 The superior court reached three conclusions. *See GLW Ventures v. Skamania County, et*  
10 *al.*, Case No. 14-2-00071-7 (Dec. 17, 2015). It upheld the Commission’s decision that the  
11 County’s zoning regulations prohibit GLW’s proposed adjustment, because reconfiguring the  
12 property into two tracts requires reducing the largest lot to 52 acres—in violation of the 80-acre  
13 minimum. *See id.* It rejected GLW’s argument that this decision constitutes a taking, deciding  
14 GLW’s inability to divide the property into two tracts does not destroy its right to sell the  
15 property. *See id.* The superior court also held that the conservation easement made the Forest  
16 Service a “property owner” without whose consent the County may not process GLW’s land-use  
17 applications. *See id.*

18 The Forest Service and Friends argue the Court must give preclusive effect to the  
19 superior court’s decisions, which moot the case because no meaningful relief remains available  
20 to GLW. They ask the Court to dismiss it for lack of subject matter jurisdiction. GLW argues the  
21 case is not moot because no court has considered whether the Forest Service violated the  
22 easement deed by repudiating GLW’s bargained-for right to create two tracts. It vaguely asks the

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24 <sup>1</sup> For additional background information, see the Court’s order staying the case, Dkt. #44.

1 Court to compel the Forest Service to comply with the Gorge Act or to rescind the easement  
2 deed. The Forest Service and Friends respond that GLW’s argument has no traction, because  
3 even if the Forest Service violated the deed or Gorge Act, the superior court’s decision precludes  
4 effective injunctive or declaratory relief and the Gorge Act prohibits rescission.

## 5 II. DISCUSSION

### 6 A. Standard of Review.

7 Summary judgment is proper “if the pleadings, the discovery and disclosure materials on  
8 file, and any affidavits show that there is no genuine issue as to any material fact and that the  
9 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In determining whether  
10 an issue of fact exists, the Court must view all evidence in the light most favorable to the  
11 nonmoving party and draw all reasonable inferences in that party’s favor. *See Anderson v.*  
12 *Liberty Lobby, Inc.*, 477 U.S. 242, 248–50, 106 S. Ct. 2505 (1986); *see also Bagdadi v. Nazar*,  
13 84 F.3d 1194, 1197 (9th Cir. 1996). A genuine issue of material fact exists where there is  
14 sufficient evidence for a reasonable factfinder to find for the nonmoving party. *See Anderson*,  
15 477 U.S. at 248. The inquiry is “whether the evidence presents a sufficient disagreement to  
16 require submission to a jury or whether it is so one-sided that one party must prevail as a matter  
17 of law.” *Id.* at 251–52. The moving party bears the initial burden of showing no evidence exists  
18 that supports an element essential to the nonmovant’s claim. *See Celotex Corp. v. Catrett*, 477  
19 U.S. 317, 322, 106 S. Ct. 2548 (1986). Once the movant has met this burden, the nonmoving  
20 party then must show the existence of a genuine issue for trial. *See Anderson*, 477 U.S. at 250. If  
21 the nonmoving party fails to establish the existence of a genuine issue of material fact, “the  
22 moving party is entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323–24.

1 **B. Collateral Estoppel Precludes GLW from Relitigating the Lawfulness of its**  
2 **Boundary-Adjustment Proposal.**

3 The Forest Service and Friends argue collateral estoppel bars GLW from re-litigating  
4 whether it may reconfigure its property into two tracts approximately 52 and 56 acres in size.  
5 GLW responds that it has an independent federal claim under the citizen-suit provision of the  
6 Gorge Act (16 U.S.C. § 544m(b)(2)<sup>2</sup>), undecided by the state court: whether the Forest Service  
7 violated the easement deed by opposing GLW’s boundary-adjustment proposal.

8 Collateral estoppel promotes judicial economy by preventing needless litigation. *See*  
9 *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326, 99 S. Ct. 645 (1979) (citing *Blonder-*  
10 *Tongue Labs., Inc. v. Univ. of Illinois Found.*, 402 U.S. 313, 328–29 (1971)). When a party  
11 enjoyed a full and fair opportunity to litigate, collateral estoppel precludes that party from re-  
12 litigating the same issues. *See Allen v. McCurry*, 449 U.S. 90, 96, 101 S. Ct. 411 (1980). In  
13 determining whether it bars an issue adjudicated in state court, federal courts apply that state’s  
14 collateral estoppel law. *See In re Bugna*, 33 F.3d 1054, 1057 (9th Cir. 1994). Washington bars  
15 relitigation when (1) the issue earlier decided is identical the later proceeding’s issue, (2) the  
16 earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral  
17 estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4)  
18 application of the doctrine will not work an injustice on that party. *See Christensen v. Grant Cty.*  
19 *Hosp. Dist. No. 1*, 152 Wash. 2d 299, 307, 96 P.3d 957, 961 (2004).

20 GLW enjoyed a full and fair opportunity to litigate the lawfulness of its proposed  
21 boundary-line adjustment. The superior court concluded GLW could not reconfigure its property

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22 <sup>2</sup> Section 544m(b)(2) of the Gorge Act authorizes citizen-suit provisions against the  
23 Secretary of Agriculture for alleged violations of the Act or any other action taken under the Act,  
24 such as a violation of a land-use ordinance, or for a failure to perform a non-discretionary duty.  
*See* 16 U.S.C. § 544m(b)(2).

1 into two tracts, because doing so would require reducing an approximately 96-acre parcel below  
2 the County's 80-acre minimum. The Court must give preclusive effect to this decision, which  
3 forecloses the possibility that GLW may adjust the parcel boundaries as proposed. The superior  
4 court did not decide, however, whether the Forest Service acted wrongfully under the Gorge Act.

5 **C. The Superior Court's Decisions foreclose any Meaningful Relief Available to GLW**  
6 **under the Gorge Act.**

7 The Forest Service and Friends argue that even assuming the Forest Service violated the  
8 easement deed or Gorge Act by opposing GLW's proposal, this case is moot because no  
9 effective relief remains available to GLW. They argue the Court cannot go back in time and  
10 enjoin the Forest Service from litigating against GLW's proposal; cannot compel the Forest  
11 Service to consent to GLW's proposal, because the 80-acre minimum would still prohibit the  
12 County from approving it; and cannot declare the proposed boundary-adjustment lawful, in  
13 contradiction to the superior court's decision.

14 GLW argues the Forest Service and Friends ask the Court to place the cart before the  
15 horse. It argues that until the Court has decided whether the Forest Service violated the deed by  
16 working to undermine GLW's reserved property rights, it should not consider what remedies  
17 remain. It also argues the Court either could compel the Forest Service to comply with the Gorge  
18 Act, which it claims includes the option of granting GLW any form of equitable relief, or could  
19 invalidate the easement deed for no longer serving a fruitful purpose.

20 In deciding whether a case is moot, a court considers "whether granting a present  
21 determination of the issues offered ... will have some effect in the real world. When it becomes  
22 impossible for a court to grant effective relief, a live controversy ceases to exist, and the case  
23 becomes moot." *Miller ex rel. S.M. v. Bd. of Educ. of Albuquerque Pub. Sch.*, 565 F.3d 1232,  
24 1250 (10th Cir. 2009) (quoting *Kansas Judicial Review v. Stout*, 562 F.3d 1240, 1245-47 (10th

1 Cir. 2009)); *see also Pub. Utilities Comm'n of State of Cal. v. F.E.R.C.*, 100 F.3d 1451, 1458  
2 (9th Cir. 1996). Federal courts lack subject matter jurisdiction over moot claims. *See Rosemere*  
3 *Neighborhood Ass'n v. U.S. Env'tl. Prot. Agency*, 581 F.3d 1169, 1172–73 (9th Cir. 2009).

4 The preclusive effect of the superior court's decisions makes it impossible for the Court  
5 to grant GLW effective relief. The Gorge Act limits the Court's authority "to compel  
6 compliance" to an order granting "injunctive or mandamus type relief, not damage awards." *See*  
7 *Broughton Lumber Co. v. Yeutter*, 939 F.2d 1547, 1553 (Fed. Cir. 1991) (discussing §  
8 544m(b)(2)'s jurisdictional limits); *see also Lehman v. Nakshian*, 453 U.S. 156, 161, 101 S. Ct.  
9 2698 (1981) ("[L]imitations and conditions upon which the Government consents to be sued  
10 must be strictly observed and exceptions thereto are not to be implied."). The Court cannot  
11 enjoin the Forest Service from litigating claims it has already litigated, cannot declare GLW's  
12 proposal lawful, and cannot compel the Forest Service to sign it.

13 The Court also cannot rescind the parties' deed, which advances the Gorge Act by  
14 limiting GLW's property rights. *See* Dkt. #4, Deed. Rescission would defy the Gorge Act's  
15 objectives, leaving the area's resources vulnerable, and so cannot amount to "compelled  
16 compliance."

17 GLW's inability to articulate how the Court could compel the Forest Service to comply  
18 with the Gorge Act, in a way that both relieves GLW of the Forest Service's repudiation and  
19 jibes with the superior court's decision, evidences the dearth of residual relief. The parties do not  
20 have a live controversy; this case is moot.

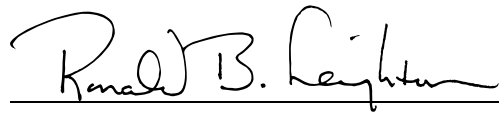
### 21 III. CONCLUSION

22 By opposing GLW's furtherance of its reserved right to reconfigure its property, the  
23 Forest Service at the very least teetered on the edge of its duty to deal fairly and in good faith  
24

1 with GLW to not deny it the fruits of their agreement. But even assuming this behavior violates  
2 the easement deed or the Gorge Act, the superior court's decision that GLW may not adjust its  
3 property as proposed forecloses all forms of meaningful relief this Court could grant under the  
4 Gorge Act. A live case or controversy no longer exists, and this case is moot. The Forest  
5 Service's Motion for Summary Judgment [Dkt. #70] is reluctantly GRANTED, and GLW's  
6 claims are DISMISSED for lack of subject matter jurisdiction.

7 IT IS SO ORDERED.

8 Dated this 17th day of June, 2016.

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11 Ronald B. Leighton  
12 United States District Judge  
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