

261 F.Supp.3d 1098  
 United States District Court,  
 W.D. 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  
 |  
 Signed 06/17/2016

### Synopsis

**Background:** Owner of property over which United States Forest Service (USFS) had a conservation easement brought action against USFS, alleging it violated the easement deed, which reserved to owner the right to develop two legal, buildable lots on the property, as well as the Columbia River Gorge National Scenic Area Act. USFS moved for summary judgment.

**Holdings:** The District Court, [Ronald B. Leighton, J.](#), held that:

[1] state court decision that owner could not reconfigure property into two tracts without violating zoning ordinance collaterally estopped owner from relitigating whether it could reconfigure its property into two tracts, and

[2] preclusive effect of state court's decision rendered owner's claim under the Act moot.

Motion granted.

West Headnotes (14)

[1] **Federal Civil Procedure**  
 🔑 Presumptions

In determining whether an issue of fact exists which would preclude summary judgment, the

court must view all evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. [Fed. R. Civ. P. 56\(a\)](#).

[Cases that cite this headnote](#)

[2] **Federal Civil Procedure**  
 🔑 Absence of genuine issue of fact in general

A genuine issue of material fact exists, and thus precludes summary judgment, where there is sufficient evidence for a reasonable factfinder to find for the nonmoving party. [Fed. R. Civ. P. 56\(a\)](#).

[Cases that cite this headnote](#)

[3] **Federal Civil Procedure**  
 🔑 Issues of law

The inquiry into whether a genuine issue of material fact exists to preclude summary judgment, is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. [Fed. R. Civ. P. 56\(a\)](#).

[Cases that cite this headnote](#)

[4] **Federal Civil Procedure**  
 🔑 Burden of proof

The party moving for summary judgment bears the initial burden of showing no evidence exists that supports an element essential to the nonmovant's claim; once the movant has met this burden, the nonmoving party then must show the existence of a genuine issue for trial. [Fed. R. Civ. P. 56\(a\)](#).

[Cases that cite this headnote](#)

[5] **Federal Civil Procedure**  
 🔑 Right to judgment as matter of law

If the nonmoving party fails to establish the existence of a genuine issue of material fact in opposition to a summary judgment motion,

the moving party is entitled to judgment as a matter of law. [Fed. R. Civ. P. 56\(a\)](#).

[Cases that cite this headnote](#)

## [6] Judgment

🔑 [Identity of parties and issues in general](#)

Under Washington law, prior proceeding in which state court concluded property owner could not reconfigure its property into two tracts, because doing so would require reducing an approximately 96-acre parcel below county zoning ordinance's 80-acre minimum lot size, collaterally estopped owner from relitigating whether it could reconfigure its property into two tracts, in its action alleging United States Forest Service (USFS) violated terms of deed granting it a conservation easement over the property by thwarting owner's reserved right under the deed to develop two legal, buildable lots on the property; owner enjoyed a full and fair opportunity in state court to litigate the lawfulness of its proposed boundary-line adjustment.

[Cases that cite this headnote](#)

## [7] Judgment

🔑 [Nature and requisites of former adjudication as ground of estoppel in general](#)

Collateral estoppel promotes judicial economy by preventing needless litigation.

[Cases that cite this headnote](#)

## [8] Judgment

🔑 [Scope and Extent of Estoppel in General](#)

When a party enjoyed a full and fair opportunity to litigate, collateral estoppel precludes that party from re-litigating the same issues.

[Cases that cite this headnote](#)

## [9] Federal Courts

🔑 [Conclusiveness; res judicata and collateral estoppel](#)

In determining whether collateral estoppel bars an issue adjudicated in state court, federal courts apply that state's collateral estoppel law.

[Cases that cite this headnote](#)

## [10] Judgment

🔑 [Nature and requisites of former adjudication as ground of estoppel in general](#)

Washington bars relitigation under collateral estoppel doctrine when: (1) the issue earlier decided is identical the later proceeding's issue; (2) the earlier proceeding ended in a judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding; and (4) application of the doctrine will not work an injustice on that party.

[Cases that cite this headnote](#)

## [11] Environmental Law

🔑 [Mootness](#)

### Judgment

🔑 [Identity of parties and issues in general](#)

Even if United States Forest Service (USFS) had violated terms of deed granting it conservation easement by thwarting property owner's reserved right under the deed to develop two legal, buildable lots on the property, preclusive effect of state court's decision, that owner could not divide property into two tracts without violating zoning ordinance requiring 80-acre lot-size minimum, made it impossible for district court to grant owner effective relief under Columbia River Gorge National Scenic Area Act, and thus, owner's claim that USFS had violated the Act was moot; the Act limited court's authority to compel compliance to an order granting injunctive or mandamus type relief, not damage awards, court also could not enjoin USFS from litigating claims it had already litigated, could not declare owner's proposal to develop the lot lawful, could not compel USFS to agree to the proposal, and

could not rescind the deed. [16 U.S.C.A. § 544m\(b\)\(2\)](#).

[Cases that cite this headnote](#)

**[12] Federal Courts**

 [Available and effective relief](#)

In deciding whether a case is moot, a court considers whether granting a present determination of the issues offered will have some effect in the real world.

[Cases that cite this headnote](#)

**[13] Federal Courts**

 [Available and effective relief](#)

When it becomes impossible for a court to grant effective relief, a live controversy ceases to exist, and the case becomes moot.

[Cases that cite this headnote](#)

**[14] Federal Courts**

 [Mootness](#)

Federal courts lack subject matter jurisdiction over moot claims.

[Cases that cite this headnote](#)

**Attorneys and Law Firms**

**\*1100** [Joseph Vance](#), [Leanne Bremer](#), Miller Nash Graham & Dunn LLP, Vancouver, WA, for Plaintiff.

[Brian C. Kipnis](#), US Attorney's Office, Seattle, WA, for Defendants.

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

DKT. # 70

[Ronald B. Leighton](#), United States District Judge

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 **\*1101** case, pending resolution of a similar state-court suit between the parties.

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

**I. BACKGROUND**

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

GLW asked Skamania County for permission to modify the tracts slightly from the easement description, to approximately 52 and 56 acres, adjusting the boundary between them. Of the four legal lots, the largest would reduce from 96 to 52 acres, and the three smallest would combine to form one 56 acre parcel. The Forest Service objected to the application as violating the easement deed,

so Skamania County refused to process it. GLW sued the Forest Service and Skamania County, asking the Court to declare GLW has the right to reconfigure the property and to order the County to process their application.

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

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

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

The Forest Service and Friends argue the Court must give preclusive effect to the superior court's decisions, which moot the case because no meaningful relief remains available to GLW. They ask the \*1102 Court to dismiss it for lack of subject matter jurisdiction. GLW argues the case is not moot because no court has considered whether the Forest Service violated the easement deed by repudiating GLW's bargained-for right to create two tracts. It vaguely asks the Court to compel the Forest Service to comply with the Gorge Act or to rescind the easement deed. The Forest Service and Friends respond that GLW's argument has no traction, because even if the Forest Service violated the deed or Gorge Act, the

superior court's decision precludes effective injunctive or declaratory relief and the Gorge Act prohibits rescission.

## II. DISCUSSION

### A. Standard of Review.

[1] [2] [3] [4] [5] Summary judgment is proper “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *Fed. R. Civ. P. 56(a)*. In determining whether an issue of fact exists, the Court must view all evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see also Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). A genuine issue of material fact exists where there is sufficient evidence for a reasonable factfinder to find for the nonmoving party. *See Anderson*, 477 U.S. at 248, 106 S.Ct. 2505. The inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251–52, 106 S.Ct. 2505. The moving party bears the initial burden of showing no evidence exists that supports an element essential to the nonmovant's claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant has met this burden, the nonmoving party then must show the existence of a genuine issue for trial. *See Anderson*, 477 U.S. at 250, 106 S.Ct. 2505. If the nonmoving party fails to establish the existence of a genuine issue of material fact, “the moving party is entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323–24, 106 S.Ct. 2548.

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

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

[7] [8] [9] [10] Collateral estoppel promotes judicial economy by preventing needless litigation. See *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979) (citing *Blonder-Tongue Labs., Inc. v. Univ. of Illinois Found.*, 402 U.S. 313, 328–29, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971)). When a party enjoyed a full and fair opportunity to litigate, collateral estoppel precludes that party from re-litigating the same issues. See *Allen v. McCurry*, 449 U.S. 90, 96, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). In determining whether it bars an issue adjudicated in state court, federal courts apply that state's collateral estoppel law. See *In re Bugna*, 33 F.3d 1054, 1057 (9th Cir. 1994). Washington bars relitigation when (1) the issue earlier decided is identical to the later proceeding's issue, (2) the earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4) application of the doctrine will not work an injustice on that party. See *Christensen v. Grant Cty. Hosp. Dist. No. 1*, 152 Wash.2d 299, 307, 96 P.3d 957, 961 (2004).

GLW enjoyed a full and fair opportunity to litigate the lawfulness of its proposed boundary-line adjustment. The superior court concluded GLW could not reconfigure its property into two tracts, because doing so would require reducing an approximately 96-acre parcel below the County's 80-acre minimum. The Court must give preclusive effect to this decision, which forecloses the possibility that GLW may adjust the parcel boundaries as proposed. The superior court did not decide, however, whether the Forest Service acted wrongfully under the Gorge Act.

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

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

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

[12] [13] [14] In deciding whether a case is moot, a court considers “whether granting a present determination of the issues offered ... will have some effect in the real world. When it becomes impossible for a court to grant effective relief, a live controversy ceases to exist, and the case becomes moot.” *Miller ex rel. S.M. v. Bd. of Educ. of Albuquerque Pub. Sch.*, 565 F.3d 1232, 1250 (10th Cir. 2009) (quoting *Kansas Judicial Review v. Stout*, 562 F.3d 1240, 1245–47 (10th Cir. 2009)); see also *Pub. Utilities Comm'n of State of Cal. v. F.E.R.C.*, 100 F.3d 1451, 1458 (9th Cir. 1996). Federal courts lack subject matter jurisdiction over moot claims. See *Rosemere Neighborhood Ass'n v. U.S. Envtl. Prot. Agency*, 581 F.3d 1169, 1172–73 (9th Cir. 2009).

The preclusive effect of the superior court's decisions makes it impossible for the Court to grant GLW effective relief. The Gorge Act limits the Court's authority “to compel compliance” to an order granting “injunctive or mandamus type relief, not damage awards.” See *Broughton Lumber Co. v. Yeutter*, 939 F.2d 1547, 1553 (Fed. Cir. 1991) (discussing § 544m(b)(2)'s jurisdictional limits); see also *Lehman v. Nakshian*, 453 U.S. 156, 161, 101 S.Ct. 2698, 69 L.Ed.2d 548 (1981) (“[L]imitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied.”). The Court cannot enjoin the Forest Service from litigating claims it has already litigated, cannot declare GLW's proposal lawful, and cannot compel the Forest Service to sign it.

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

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

### III. CONCLUSION

By opposing GLW's furtherance of its reserved right to reconfigure its property, the Forest Service at the very least teetered on the edge of its duty to deal fairly and in good faith with GLW to not deny it the fruits

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

IT IS SO ORDERED.

#### All Citations

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#### Footnotes

- 1 For additional background information, see the Court's order staying the case, Dkt. # 44.
- 2 Section 544m(b)(2) of the Gorge Act authorizes citizen-suit provisions against the Secretary of Agriculture for alleged violations of the Act or any other action taken under the Act, 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\(b\)\(2\)](#).