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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON ENVIRONMENTAL
COUNCIL and SIERRA CLUB,

Plaintiffs,

v.

THEODORE (“TED”) L.
STURDEVANT, et. al.,

Defendants.

CASE NO. C11-417 MJP

ORDER DENYING INTERVENOR-
DEFENDANT’S MOTION FOR
RECONSIDERATION

This matter comes before the Court on Intervenor-Defendant’s motion for reconsideration. (Dkt. No. 76.) Having reviewed the motion, the Court DENIES Intervenor-Defendant’s motion for reconsideration.

Background

On December 1, 2011, the Court granted Plaintiffs’ motion for summary judgment, finding Defendants, several state environmental agencies collectively referred to as “the Agencies,” violated the RACT provision by failing to establish RACT standards for GHGs. The RACT provision states:

1 [A]ll emissions units are required to use reasonably available control technology
2 (RACT) which may be determined for some sources or source categories to be
3 more stringent than the applicable emission limitations of any chapter of Title 173
4 WAC. Where current controls are determined to be less than RACT, the permitting
5 authority shall, as provided in [RCW 70.94.154], define RACT for each source or source
6 category and issue a rule or regulatory order requiring the installation of RACT.

7 WAC 173-400-040(1). The Court held the RACT provision's plain language requires
8 Defendants to define RACT requirements where emission units are less than RACT. In
9 accordance with the procedures set forth in RCW 70.94.154, the Court ordered the Agencies to
10 establish RACTs that address "all air contaminants" deemed to be of concern for that source or
11 source category, including greenhouse gases.

12 Analysis

13 Intervenor-Defendant Western States Petroleum Association ("WSPA") timely requests
14 the Court reconsider its December 1, 2011 decision on summary judgment. Under Local Rule
15 7(h), "[m]otions for reconsideration are disfavored." LR 7(h). "The court will ordinarily deny
16 such motions in the absence of a showing of manifest error in the prior ruling or a showing of
17 new facts or legal authority which could not have been brought to its attention earlier with
18 reasonable diligence." *Id.*; see also Marlyn Nutraceuticals, Inc. v. Mucos Pharma, 571 F.3d 873,
19 880 (9th Cir. 2009)(finding a motion for reconsideration warranted only when a district court is
20 presented with newly discovered evidence, committed clear error, or when there is an
21 intervening change in the controlling law).

22 WSPA presents three arguments for reconsideration. First, WSPA argues the Court erred
23 in finding the RACT provision's reference to RCW 70.94.154 created a substantive obligation to
24 establish RACT standards for all air contaminants. (Def. Br., Dkt. No. 76 at 4.) The Court finds
WSPA's argument fails because it mischaracterizes the summary judgment order. The Court
held the RACT provision--not the RCW 70.94.154 reference--created a substantive obligation to

1 establish RACT standards. The regulation’s plain language is that state environmental agencies
2 “shall . . . define RACT for each source or source category.” WAC 173-400-040(1)(emphasis
3 added). As the Court recognized, the RACT provision references RCW 70.94.154 only to set
4 forth the procedure for defining RACT and identify the air contaminants to which RACTs apply.
5 While it is RCW 70.94.154 that clarifies that RACTs apply to “all air contaminants,” the
6 Agencies’ obligation stems from the regulation itself. The RACT provision is, therefore, not
7 superfluous by the mere fact that it incorporates RCW 70.94.154.

8 Second, WSPA argues the RACT provision imposes an obligation on Agencies only after
9 current controls are found to be less than RACT. The Court finds WSPA’s argument
10 unpersuasive because it merely reformulates an argument the Court already considered on
11 summary judgment and rejected as illogical. A motion for reconsideration should not be used to
12 ask the court “to rethink what the court ha[s] already thought through.” In re America West
13 Airlines, Inc., 240 B.R. 34, 38 (Bankr. D.Ariz.1999); see also Union Pac. R.R. Co. v. Coast
14 Packing Co., 236 F.Supp.2d 1130, 1137 (C.D. Cal. 2002)(holding that a motion for
15 reconsideration may not repeat “any oral or written argument”). As the Court previously held,
16 the RACT provision necessarily imposes an obligation on the Agencies. (Dkt. No. 72 at 7.)
17 Logically, the Agencies must establish a RACT standard in order for emission units to know
18 whether current controls are less than RACT.

19 Third, WSPA argues the Court’s order is inconsistent with the RACT provision’s
20 regulatory history. The Court finds WSPA’s argument unavailing because courts do not
21 reconsider decisions based on arguments not presented during briefing without a showing of new
22 facts or legal authority. The RACT provision’s regulatory history was not argued on summary
23 judgment. In addition, the Court finds WSPA’s argument unpersuasive on the merits. Whether
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1 or not reference to RCW 70.94.154 replaced prior language requiring the Agencies define RACT
 2 “on a case-by-case basis,” see WAC 173-400-040 (1980), the Agencies’ obligation to determine
 3 RACT “is, and always has been, determined by the regulation itself.” (See Def. Br., Dkt. No. 76
 4 at 5.). In other words, the Court need not consider the RACT provision as it existed before 1995,
 5 nor speculate as to the legislature’s intention when replacing “case-by-case basis” with RCW
 6 70.94.154, nor determine whether the pre-1995 regulation also required RACT standards for
 7 greenhouse gases. Since, as currently enacted, the regulation’s plain language obligates the
 8 Agencies to define RACTs, the RACT provision’s regulatory history is not relevant.

9 **Conclusion**

10 The Court DENIES Intervenor-Defendants’ motion for reconsideration. The WSPA fails
 11 to identify any manifest error in granting summary judgment in favor of Plaintiffs.

12 The clerk is ordered to provide copies of this order to all counsel.

13 Dated this 22nd day of December, 2011.

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 17 Marsha J. Pechman
 18 United States District Judge
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