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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ALATNA VILLAGE COUNCIL, *et al*., Plaintiffs, v. STEVEN COHN, in his official capacity as BLM Alaska State Director, *et al*., Defendants, and AMBLER METALS, LLC, *et al*., Intervenor-Defendants.	Case No. 3:20-cv-00253-SLG

DEFENDANTS' RESPONSE TO MOTION FOR RECONSIDERATION

This case involves the proposed Ambler Road, a gravel surfaced roadway that

would extend from milepost 161 of the Dalton Highway westward to the Ambler Mining District. *See* BLM_0000003. On May 17, 2022, the Court granted Defendants' motion for remand without vacatur, retained jurisdiction and ordered Defendants to provide status reports at 60-day intervals. *See* ECF No. 142. Defendants are now beginning to revisit the challenged agency action. Plaintiffs, meanwhile, have moved for reconsideration. *See* ECF No. 144. In accordance with the Court's order dated May 25, 2022 (ECF No. 145), Defendants respond that this Court should deny the motion for reconsideration because Plaintiffs neither articulate nor satisfy their heavy burden in seeking the extraordinary remedy of reconsideration.

"Local Civil Rule 7.3(h)(1) provides that a court 'will ordinarily deny a motion for reconsideration absent a showing of one of the following: (A) manifest error of the law or fact; (B) discovery of new material facts not previously available; or (C) intervening change in the law.'" *Lindfors v. State Farm Mut. Auto. Ins. Co.*, No. 3:20-CV-00178-SLG, 2021 WL 4860756, at *1 (D. Alaska Sept. 17, 2021). "Reconsideration is an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Blankenship v. First Nat'l Ins. Co. of Am.*, No. C21-5914 BHS, 2022 WL 1090554, at *1 (W.D. Wash. Mar. 22, 2022) (quoting *Kona Enterprises, Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)); *see also Alaska Oil & Gas Ass'n v. Jewell*, No. 3:11-CV-0025-RRB, 2013 WL 11897792, at *2 (D. Alaska May 15, 2013). The prospect of reconsideration does not exist "to provide litigants with

a second bite at the apple." *Blankenship*, 2022 WL 1090554, at *1.[1] Similarly, reconsideration is not "to ask a court to rethink what the court had already thought through – rightly or wrongly." *Id*. (citing *Defs. of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995) (rejecting a motion that "neither discloses any new facts, nor reveals any manifest error of law")). "Whether or not to grant reconsideration is committed to the sound discretion of the court." *Navajo Nation v. Confederated Tribes & Bands of the Yakima Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

Plaintiffs fail to demonstrate a basis for reconsideration. Insofar as their pleading addresses "previous filings and exhibits," Pls.' Mot. for Recons. 1, ECF No. 144 ("Pls.' Mot."), it is facially deficient in meeting the standard for reconsideration because the Court duly considered those materials in rendering its decision. And while Plaintiffs take issue with the Court's decision, they have not shown an intervening change in the law or that the Court has manifestly erred in interpreting the law – indeed, their motion does not contain a citation to any legal authority. Moreover, Plaintiffs do not contend that the Court has committed a "manifest error" of fact. *See* Local Civ. Rule 7.3(h)(1)(A).

The only remaining question is thus whether Plaintiffs have pointed to "new material facts not previously available" that could justify reconsideration. *See id*. (B).

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[1] The *Blankenship* court extended these principles to motions for reconsideration under "the Local Civil Rules" or the "Federal Rules of Civil Procedure[.]" *Blankenship*, 2022 WL 1090554, at *1. There, the local rule similarly provides that "[m]otions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence." W.D. Wash. Loc. Civ. R. 7(h).

Here too, they fall short. Plaintiffs refer to "additional information submitted herewith" but that information only "further describes" proposed, exploratory fieldwork Plaintiffs had already brought to the Court's attention in their opposition to remand. *See* Pls.' Mot. 1. Plaintiffs do not suggest there is a new development in the process already described to the Court – only their fear that "BLM is still moving toward authorizing" the fieldwork, which "if approved" could implicate Plaintiffs' concerns about impacts to cultural resources. *Id*. This is not a new *material* fact that could support reconsideration.

BLM's ongoing process to consider whether to approve 2022 fieldwork has not materially changed since presentation of the motion for remand. Contrary to Plaintiffs' suggestion, any change in that process has been toward greater caution and greater sensitivity to Plaintiffs' concerns. Plaintiffs' offer one brief excerpt from an unofficial meeting transcript, in which a representative of the Tanana Chiefs Conference questions why discussions are still occurring about the Programmatic Agreement ("PA"). *Id*. 3; Pls.' Mot., Ex. 1, ECF 144-1. To begin, Plaintiffs take their cited passage out of context. BLM Field Office Manager Tim La Marr explained at the meeting that:

> BLM will be carefully reviewing AIDEA's proposed fieldwork for 2022 and comments from tribes and consulting parties *to determine what, if any*, work will be authorized to go forward for the upcoming year, and it will do so keeping in mind the Department's *commitment to preserve the environmental status quo* pending completion of the additional analysis.

Ambler Access Project Meeting Minutes at 4:108-112 (emphasis added); Decl. of Timothy La Marr ¶ 3, p. 6, ECF No. 148-1.

Moreover, their cited passage fails to acknowledge Defendants' point that the PA, while reflecting certain deficiencies, also offers continuing protections, including on

nonfederal lands. *See* Reply in Supp. of Defs.' Mot. for Vol. Remand 8-9, ECF No. 132; *see also* La Marr Decl. ¶ 4, pp. 28-30 (BLM letter to AIDEA affirming that PA requirements apply to the full length of the Ambler Road, including on nonfederal lands). Thus, the Court considered the relative risk of environmental harm between vacating the challenged decisions or leaving them in place on remand. And the Court squarely decided that question. Order Re Mots. for Vol. Remand 11-12, 14-15, ECF No. 143.[2]

The only other "new" fact presented by Plaintiffs is a BLM letter dated May 12, 2022, extending until June 20 the deadline to comment on the proposed work plan. *See* Pls.' Mot, Ex. 2, ECF 144-2. Plaintiffs contend this letter's commitment to "solicit consultation with tribal governments for the ultimate purpose of identifying the presence of ethnographic resources with potential to be affected by the construction and use" of an Ambler Road evidences an impending threat to cultural resources justifying reconsideration. Pls.' Mot. 3-4. But these threats are predicated on "any approval" of "the proposed fieldwork." *Id*. Plaintiffs argue that "*[i]f* BLM *were to grant* a PA permit for *ground-disturbing* activities *in areas where cultural resources have not been properly identified*, this would severely prejudice Plaintiffs and *could* result in irreparable harm to their cultural resources." *Id*. 4 (emphasis added).[3] This does not approach the showing needed for reconsideration.

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[2] The Order states that if Defendants' representations "turn out to be inaccurate or misleading" that Plaintiffs retain their ability to seek appropriate relief. Order 15 n.62.

[3] BLM's letter further advises AIDEA that undertaking any portion of the 2022 proposed work plan without approval would constitute a violation of the PA. *See* La Marr Decl. ¶ 4, pp. 28-30.

In sum, Plaintiffs do not contend the Court has committed a manifest error of law or fact, or that there has been any intervening change in law. And they offer no previously unavailable material fact that suggests a plausible basis for reconsideration. The Court should deny Plaintiffs' motion for reconsideration.

Respectfully submitted this 1st day of June 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2022, a copy of the foregoing was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ Paul A. Turcke
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