

ject evidence from “other sources,” the ALJ must give germane reasons for doing so. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

[21, 22] Here, the ALJ noted that FNP Vos completed a check-box questionnaire in May 2011 concerning Gonzales’s impairments. Tr. 1402. The ALJ gave FNP Vos’ medical opinion little weight because she was not a medical source under the regulations and because the ALJ found FNP Vos’ opinions were based on Gonzales’ subjective complaints and not on objective medical testing. Tr. 1402. First, although FNP Vos is not a “medical source under the regulations” this is not a legally sufficient reason to reject her medical opinion. Second, the court disagrees with the ALJ’s finding that FNP Vos’ opinions were based on Gonzales’ subjective complaints and not objective medical images or testing. An independent review of the record shows FNP Vos treated Gonzales over the years and wrote many of the medical reports after examining Gonzales. *See* Tr. 875–76, 1057–72. This court finds FNP Vos’ medical opinions were based on objective medical images or testing, and therefore rejects the ALJ’s finding that FNP Vos’ medical opinion was based entirely on Gonzales’ subjective complaints. Given the ALJ provided no other reason for rejecting FNP Vos’ medical opinion, the ALJ erred in failing to provide a legally sufficient reason for rejecting FNP Vos’ medical opinion.

C. REMAND

[23] The ALJ’s failure to credit Gonzales’ subjective symptom testimony and FNP Vos’ medical opinion is erroneous for the reasons set out above. The VE testified that if an individual missed two or more days of work a month she would be unable to maintain employment. Tr. 1386. On this record, FNP Vos wrote that she expected Gonzales to miss two or more days of work per month based on her long treatment of

Gonzales for complications with her headaches. Tr. 1349. If credited, that opinion establishes that Gonzales is disabled. Additionally, Gonzales testified that she can’t focus or stay on task, which the VE testified would prevent an individual from being gainfully employed. Tr. 53, 70. Gonzales also testified that she has debilitating headaches about four times a month. Tr. 71. When crediting Gonzales and FNP Vos’ testimony and medical opinion as true, this court concludes Gonzales is disabled based on this medical record and no useful purpose would be served by a remand of this matter for further proceedings. *See Harman v. Apfel*, 211 F.3d 1172, 1178–79 (9th Cir. 2000).

CONCLUSION

For the reasons set forth above, the Commissioner’s final decision denying Gonzales’ application for disability insurance benefits and supplemental security income is reversed and remanded for the immediate payment of benefits.

IT IS SO ORDERED.



GLW VENTURES LLC, Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
AGRICULTURE, U.S. Forest
Service, et al., Defendants.**

CASE NO. C12-5140-RBL

United States District Court,
W.D. Washington,
at Tacoma.

Signed 06/17/2016

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.

1. Federal Civil Procedure ⚖️2543

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).

2. Federal Civil Procedure ⚖️2470

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).

3. Federal Civil Procedure ⚖️2470.3

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).

4. Federal Civil Procedure ⚖️2544

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).

5. Federal Civil Procedure ⚖️2470.4

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).

6. Judgment ⚖️828.12

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.

7. Judgment ⚖️634

Collateral estoppel promotes judicial economy by preventing needless litigation.

8. Judgment ⚖️713(1)

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

9. Federal Courts ⇨3045(6)

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

10. Judgment ⇨634

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.

11. Environmental Law ⇨663**Judgment** ⇨828.12

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).

12. Federal Courts ⇨2111

In deciding whether a case is moot, a court considers whether granting a pres-

ent determination of the issues offered will have some effect in the real world.

13. Federal Courts ⇨2111

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

14. Federal Courts ⇨2109

Federal courts lack subject matter jurisdiction over moot claims.

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

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.¹

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

1. For additional background information, see

the Court's order staying the case, Dkt. # 44.

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.

[1–5] 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 non-movant'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 relitigating 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)²), undecided by the state court: whether the Forest Service violated the easement deed by opposing GLW's boundary-adjustment proposal.

[7–10] 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 relitigating 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

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).

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 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.

[12–14] 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. Env'tl. 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.



Christopher HEIDE, Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant.

C16-652 TSZ

United States District Court,
W.D. Washington,
at Seattle.

Signed 05/26/2017

Background: Motorist brought action against underinsured motorist (UIM) insurer, alleging claims of bad faith under Washington law, and violation of Washington’s Insurance Fair Conduct Act (IFCA) and Consumer Protection Act (CPA), arising out of gastrointestinal bleed he allegedly suffered as a result of using nonsteroidal anti-inflammatory drugs (NSAIDs) to treat pain in his lower back and left leg after vehicle he was driving was struck by uninsured motorist. Insurer moved for partial summary judgment.

Holdings: The District Court, Thomas S. Zilly, J., held that:

- (1) fact issues precluded summary judgment for insurer on motorist’s IFCA and bad faith claims, but
- (2) motorist did not suffer an injury to business or property, as required to support his CPA claim against insurer.

Motion granted in part and denied in part.

1. Federal Civil Procedure ⚡2501

Genuine issue of material fact existed as to whether it was reasonable for motorist’s underinsured motorist (UIM) insurer to determine that motorist’s gastro-intestinal bleeding, allegedly resulting from his use of nonsteroidal anti-inflammatory drugs (NSAIDs) to treat pain in his lower back and left leg after his vehicle was hit