

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COLUMBIA RIVERKEEPER, SIERRA CLUB, CENTER FOR BIOLOGICAL DIVERSITY, WASHINGTON ENVIRONMENTAL COUNCIL, and WASHINGTON PHYSICIANS FOR SOCIAL RESPONSIBILITY,

Plaintiffs,

v.

UNITED STATES ARMY CORP OF ENGINEERS, and NATIONAL MARINE FISHERIES SERVICE,

Defendants.

and

PORT OF KALAMA,

Intervenor-Defendant.

CASE NO. 19-6071 RJB

ORDER DENYING MOTION FOR RECONSIDERATION

1 This matter comes before the Court on the Intervenor-Defendant Port of Kalama's
2 ("Port") Motion for Reconsideration or Clarification. Dkt. 84. The Court has considered the
3 pleadings filed regarding the motion and the file herein.

4 In its motion, the Port moves for reconsideration or clarification of a portion of the
5 Court's November 23, 2020 Order on Cross Motions for Summary Judgment ("Prior Order")
6 (Dkt. 83). Dkt. 84. In particular, the Port moves for reconsideration or clarification of the
7 portion of the Prior Order which remands the case to the Defendant United States Army Corps of
8 Engineers ("Corps") to conduct an Environmental Impact Statement ("EIS") before issuing
9 permits under the Clean Water Act ("CWA") and Rivers and Harbors Act ("RHA") for the
10 project at issue. *Id.* The facts and procedural history of the case are in the Prior Order (Dkt. 83)
11 and are adopted here.

12 **Standard on Motion for Reconsideration.** Western District of Washington Civil Rule
13 of Procedure 7(h)(1) provides, "[m]otions for reconsideration are disfavored. The court will
14 ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or
15 a showing of new facts or legal authority which could not have been brought to its attention
16 earlier with reasonable diligence."

17 **Discussion.** The Port's motion for reconsideration or clarification (Dkt. 84) should be
18 denied. It has failed to show a "manifest error in the prior ruling" or "new facts or legal
19 authority which could not have been brought to the [court's] attention earlier with reasonable
20 diligence." The Prior Order found that the Corps was arbitrary and capricious in relying on
21 EIS's (and supplements) conducted by the county and state when it was aware that those EIS
22 were being supplemented and that review was ongoing. These are the grounds that the Port
23 focuses on in its motion. The Port, however, focuses on only a portion of the Prior Order's
24

1 holding on the question of whether the Corps is required to conduct a full EIS. The Prior Order
2 also found that “[t]he complex and ongoing state proceedings demonstrate that there is
3 considerable controversy about the Project’s size, nature or effect” requiring that the Corps
4 conduct a full EIS. Dkt. 83. It further found that the Plaintiffs “raised a ‘substantial question’ as
5 to the Project’s potential significant impact on the environment.” *Id.* (quoting *Ocean Advocates*
6 *v. U.S. Army Corps of Engineers*, 402 F.3d 846, 867 (9th Cir. 2005)). In the Court’s Prior Order,
7 the Court made no order regarding the Corps use of, or reference to, county and state studies or
8 SEPA documents in preparing the Corps’ EIS. The motion for reconsideration or clarification
9 (Dkt. 84) should be denied and the Prior Order (Dkt. 83), including its decision requiring the
10 Corps to conduct an EIS, should be affirmed.

11 **ORDER**

12 Therefore, it is hereby **ORDERED** that:

13 (1) Intervenor-Defendant Port of Kalama’s Motion for Reconsideration or Clarification.

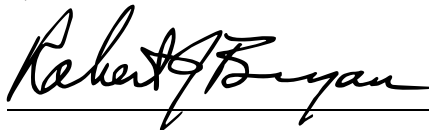
14 (Dkt. 84) **IS DENIED**; and

15 (2) The November 23, 2020 Order on Cross Motions for Summary Judgment (Dkt. 83),

16 including its decision requiring the Corps to conduct an EIS, **IS AFFIRMED**.

17 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
18 to any party appearing pro se at said party’s last known address.

19 Dated this 9th day of December, 2020.

20 

21 ROBERT J. BRYAN
22 United States District Judge