

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SHELL GULF OF MEXICO, INC, et
al.,

Plaintiffs,

vs.

CENTER FOR BIOLOGICAL
DIVERSITY, INC., et al.,

Defendants.

Case No. 3:12-cv-0048-RRB

ORDER DENYING MOTION
TO DISMISS SECOND
AMENDED COMPLAINT

I. INTRODUCTION

Before the Court are Defendants Center For Biological Diversity, Inc.; Redoil, Inc.; Alaska Wilderness League; Natural Resources Defense Council, Inc.; Northern Alaska Environmental Center; Pacific Environment and Resources Center; Sierra Club; The Wilderness Society; Ocean Conservancy, Inc.; Oceana, Inc.; Defenders of Wildlife; Greenpeace, Inc.; National Audubon Society, Inc.; and World Wildlife Fund, Inc. (collectively the "Organizations") with a Motion to Dismiss Second Amended Complaint at Docket 69. The Organizations contend that this Court lacks jurisdiction and that the Complaint fails to state a valid claim because: (1) the Complaint does not present a case or controversy;

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(2) no cause of action exists that permits a private party to sue another private party to affirm agency action; (3) the Noerr-Pennington doctrine prohibits bringing suit based on a party's exercise of its First Amendment right to petition the government; (4) the Court should decline to exercise its discretionary authority under the Declaratory Judgment Act ("DJA"); and (5) the Complaint fails to plead facts that, if proven true, would prove Plaintiffs' claims.¹ Based on the lack of jurisdiction and of a valid claim, the Organizations request that the Court dismiss the present litigation.

Plaintiffs Shell Gulf of Mexico, Inc. and Shell Offshore, Inc. (collectively "Shell") oppose at Docket 89 and argue that the law of the case doctrine governs the Court's decision on the present motion. Shell submits that because the arguments raised by the Organizations here are identical to those arguments already rejected by this Court in its Order at Docket 85, the Court must deny the Organizations' current Motion to Dismiss.² Additionally, Shell argues that the Second Amended Complaint provides ample factual allegations to survive a motion to dismiss.³

¹ Docket 70 at 2-4.

² Docket 89 at 8-9.

³ Id. at 9.

Inasmuch as the Court concludes that the first four of the Organizations' arguments have already been decided by this Court in its Order at Docket 85 and that the Second Amended Complaint alleges adequate facts, Shell's request for declaratory judgment will not be summarily dismissed.⁴

II. STANDARD OF REVIEW

Under the law of the case doctrine, a court cannot reconsider "an issue that has already been decided by the same court" ⁵ The doctrine is a guide of a court's discretion. However, a court can use such discretion to depart from the doctrine where: "1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3) the evidence on remand is substantially different; 4) other changed circumstances exist; or 5) a manifest injustice would otherwise result."⁶ A court's failure to apply the doctrine may be deemed an abuse of discretion.⁷

⁴ For the factual background underlying this order, the Court adopts Docket 85 at 3-5.

⁵ United States v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997) (quoting Thomas v. Bible, 983 F.2d 152, 154 (9th Cir. 1993)).

⁶ Id.

⁷ Id.

A motion under FRCP, Rule 12(b)(6), may be granted "only if it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations."⁸ In deciding a motion, not only must a court accept all material allegations in the complaint as true, but the complaint must be construed, and all doubts resolved, in the light most favorable to the plaintiff.⁹ Yet, such tenet does not apply to legal conclusions.¹⁰ "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."¹¹ "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."¹²

Specifically, a complaint must "contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'"¹³ Plausibility is required so "that it is not unfair to require the opposing party to be subjected to the expense of

⁸ Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

⁹ Holden v. Hagopian, 978 F.2d 1115, 1118 (9th Cir. 1992) (citing Usher v. City of L.A. 828 F.2d 556, 561 (9th Cir. 1987)).

¹⁰ Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

¹¹ Id. at 663 (internal citations omitted).

¹² Id. at 679 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

¹³ Id. at 678 (quoting 550 U.S. at 570).

discovery and continued litigation: The complaint should give fair notice and enable the opposing party to defend itself effectively.¹⁴ "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."¹⁵ "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."¹⁶ "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully."¹⁷ "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'"¹⁸

In short, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]—'that the pleader is

¹⁴ Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

¹⁵ 556 U.S. 662, 679 (internal citations omitted).

¹⁶ Id. at 663 (citing 550 U.S. at 556).

¹⁷ Id. at 678 (quoting 550 U.S. at 557).

¹⁸ Id.

entitled to relief.'"¹⁹ In other words, the "dismissal for failure to state a claim is 'proper only where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory.'"²⁰ A court should not look to "whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims."²¹

III. DISCUSSION

In their Motion to Dismiss Second Amended Complaint, the Organizations raise arguments identical to those the Organizations raised in their Motion to Dismiss at Docket 44. The only differences that exist between the current motion and the prior motion is the addition, as a Defendant, of World Wildlife Fund, Inc., the additional request of the Court to declare that the approvals comply with the Endangered Species Act ("ESA") as well as with the APA, and the addition of an inadequacy-of-alleged-facts argument under FRCP, Rule 8. Other than those three differences, the legal questions sought to be answered in this motion are identical to those found in Docket 44.

¹⁹ Id. at 679 (quoting Fed. R. Civ. P. 8(a)(2) (2009)).

²⁰ Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035, 1041 (9th Cir. 2010).

²¹ Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1997).

Because the predominate legal issues to be resolved in this case are indistinguishable from the issues already resolved by this Court in its Order at Docket 85, save the additional ESA review to be performed by the Court at a later point in the litigation, the law of the case doctrine requires that the Court adopt and include, herein by reference, the Court's reasoning at Docket 85, pages 9 through 31. Furthermore, as concerning the Organizations' Rule 8 argument, after careful review, the Court finds that the Complaint does meet the Rule 8 pleading requirements by containing alleged facts adequate to survive a motion to dismiss.²²

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion To Dismiss Second Amended Complaint at **Docket 69** is hereby **DENIED**.

ORDERED this 13th day of September, 2012.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

²² Docket 64 at 11-31.