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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHOSHONE-BANNOCK TRIBES OF
THE FORT HALL RESERVATION,

Plaintiff,

v.

UNITED STATES OF AMERICA; JOHN
TAHSUDA III, in his capacity as Principal
Deputy Assistant Secretary – Indian
Affairs, Department of the Interior, Bureau
of Indian Affairs (BIA); TWYLA
STANGE, in her capacity as Acting
Regional Director, BIA Northwest Region
Office; RANDY THOMPSON, in his
official capacity as Acting Superintendent
BIA Fort Hall Agency; BRIAN STEED, in
his capacity as Acting Director, Bureau of
Land Management (BLM); MICHAEL D.
NEDD, in his capacity as Acting Deputy
Director, BLM; PETER DITTON, in his
capacity as BLM Idaho State Director,
UNION PACIFIC RAILROAD
COMPANY, a Delaware Corporation;
CITY OF POCATELLO, a municipality of

Case No. 4:18-CV-00285

**DEFENDANT CITY OF
POCATELLO'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION TO RECONSIDER (DKT.
114)**

that State of Idaho; certain Real Property described by the Act of 1888 and later relinquished by Union Pacific Railroad Company and Subject Lands; POCATELLO RAILROAD EMPLOYEES FEDERAL CREDIT UNION, an Idaho Corporation; and, DOES I THROUGH XCIX,

Defendants.

COMES NOW Defendant, CITY OF POCATELLO, by and through counsel of record, HALL ANGELL & ASSOCIATES, LLP, and hereby join in the United States' opposition to the motion to reconsider (Dkt. 121). The City further submits this Memorandum in Opposition to Plaintiff's Motion to Reconsider (Dkt. 114) as follows:

ARGUMENT

On December 16, 2021, this Court granted in part and denied in part the United States' motion to dismiss (Dkt. 77). Relevant to this opposition to the pending motion, this Court dismissed Count V of the Amended Complaint after finding that the claim was barred by the statute of limitations. (Dkt. 102). The United States later filed a motion to reconsider asking this Court to dismiss Plaintiff's ejectment claim. (Dkt. 108). On May 20, 2022, this Court granted that motion and dismissed Plaintiff's ejectment claim. (Dkt. 112).

Plaintiff subsequently filed this pending motion to reconsider. (Dkt. 114). In the motion, Plaintiff's primary argument is that its claims are not barred by the statute of limitations. Plaintiff asserts that prior to 2004, it did not have notice that the United States had exercised a claim adverse to that of Plaintiff. However, as set forth by this Court at length in its Memorandum Decision and Order granting in part the motion to dismiss, the evidence shows that prior to 2004,

Plaintiff had notice that the United States had exercised a claim adverse to that of Plaintiff, and Count V of the Plaintiff's Amended Complaint was barred by the statute of limitations. Because Plaintiff has failed to present evidence which would dispute this finding, the City of Pocatello respectfully requests that this Court deny Plaintiff's motion to reconsider.

The City's interest in the property at dispute in this matter stems from agreements between the City and the United States. As such, the City joins in the United States' opposition to this motion. However, the City would like to point out one example cited by the Court which shows that Plaintiff had notice of the United States' adverse claim to the City Creek Property as early as 1992. The United States and the Court cite to a newspaper article dated June 21, 1992, to support the proposition that Plaintiff had notice of the adverse claim. In opposition to this argument, Plaintiff claims that, because the paper in which the article appeared is not in general circulation on the reservation that the article could not be used to show that Plaintiff had notice of an adverse claim. Even assuming this argument was correct, the evidence still shows that as early as 1992, the City of Pocatello, working with the BLM, began to establish a trail system at City Creek.

The evidence in the record shows that beginning in 1992, the City began to establish a trail system at City Creek. On March 26, 1993, the City received a right-of-way grant from the BLM for the trail system. (Dkt. 77-7 at 3-7). The City has worked exclusively with the BLM to develop the trail system at City Creek. At no time did the City request or receive permission from Plaintiff to develop a trail system at City Creek. This actual physical development of a trail system without permission from Plaintiff is sufficient to put Plaintiff on notice that some party

was exercising a claim adverse to Plaintiff's interests. As such, Plaintiff had a duty to investigate and initiate a lawsuit within the statute of limitations.

The City of Pocatello has spent considerable time and resources developing the trail system at City Creek. The City did so based on the belief that the land was owned by the BLM and not by Plaintiff. It has now been thirty years since the City began to develop the trail system at City Creek. Plaintiff sat on its rights for the vast majority of that time despite having constructive notice of a claim adverse to its rights. Because Plaintiff failed to timely bring a lawsuit, this Court correctly held that its claims with regard to City Creek were barred by the statute of limitations. Plaintiff has failed to present any evidence that would show that this Court erred in that decision. As such, Plaintiff's motion to reconsider should be denied.

CONCLUSION

Because Plaintiff has failed to show that this Court erred when it found that Plaintiff's quiet title action and ejectment action were barred by the statute of limitations, the City of Pocatello respectfully requests that this Court deny Plaintiff's motion to reconsider.

Dated this 26th day of July 2022.



BLAKE G. HALL

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 26th day of July 2022, by electronically filing with the Clerk of the Court using CM/ECF system with a Notice of Electronic Filing to the following persons:

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