UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO, NORTHERN DIVISION

CHANTELL and MICHAEL SACKETT, Plaintiffs, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; and STEPHEN L. JOHNSON, in his official capacity as Administrator of the Environmental Protection Agency, Defendants.	Case No. 08-cv-185-N-EJL **ORDER**

Pursuant to Federal Rules of Civil Procedure 60(a) and 59(e), Plaintiffs Chantell and Michael Sackett have filed a Motion for Clarification and for Reconsideration asking the Court to clarify and reconsider its decision of August 7, 2008 (the "Order"), wherein the Court granted Defendant EPA's Motion to Dismiss For Lack of Subject Matter Jurisdiction. The motion is ripe. Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this matter shall be decided on the record before this Court without a hearing.

Rule 60(a) permits a court "to correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." Pursuant to this authority, Plaintiffs seek clarification of the Order's treatment of the Eleventh Circuit case, Tennessee Valley Authority ("TVA") v. Whitman, 336 F.3d 1236

(11th Cir. 2003). According to Plaintiffs, the Order is ambiguous as to whether or not the Court adopted and applied the reasoning set forth by the Eleventh Circuit in the TVA opinion.

It is hard to imagine in what manner the Court could more clearly state in the Order its determination to reject Plaintiffs' request that it accept the reasoning of TVA. In the body of the Order the Court expressly states that "[t]here is no need . . . for the Court to resolve the matter before it by applying Eleventh Circuit case law [TVA] interpreting the Clean Air Act." (Order at 4). The Court then went on to formally adopt instead the holding of those courts that interpreted the Clean Water Act ("CWA") as precluding "judicial review of compliance orders prior to the initiation of a civil action." (Order at 4-5). And in the footnote that Plaintiffs cite as the source of their confusion, the Court expressly states, again, that it did not believe it appropriate to extend TVA's analysis of the Clean Air Act to the CWA. (Order at 4 n.2).

There is no ambiguity; the Court's Order is clear. The Plaintiffs' Motion for Clarification is denied.

The Ninth Circuit has identified three reasons sufficient to warrant a court's reconsideration of a prior order under Rule 59(e): (1) an intervening change in controlling law; (2) the discovery of new evidence not previously available; and (3) the need to correct clear or manifest error in law or fact, to prevent manifest injustice. School Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993), cert. denied, 512 U.S. 1236 (1994). Upon demonstration of one of these three grounds, the movant must then come forward with "facts or law of a strongly convincing nature to induce the court to reverse its prior decision." Donaldson v. Liberty Mut. Ins. Co., 947 F. Supp. 429, 430 (D. Haw. 1996).

Here, Plaintiffs contend that the Court's Order is based on a manifest error of law. However, in this regard the Plaintiffs merely disagree with the Court's conclusion in

analyzing the arguments put forth by the Plaintiffs in opposition to the Defendant EPA's Motion to Dismiss For Lack of Subject Matter Jurisdiction.

Whatever may be the purpose of Rule 59(e) it is not intended to give an unhappy litigant one additional chance to sway the Court. Illinois Central Gulf Railroad Company v. Tabor Grain Company, 488 F. Supp. 110, 122 (N.D. Ill. 1980) (a rehash of the arguments previously presented affords no basis for a revision of the court's order). Where a motion for reconsideration is merely being pursued "as a means to reargue matters already argued and disposed of and to put forward additional arguments which [the party] could have made but neglected to make before judgment, [s]uch motions are not properly classifiable as being motions under Rule 59(e)" and must therefore be denied. Davis v. Lukhard, 106 F.R.D. 317, 318 (E.D. Va. 1984). See also, Above the Belt, Inc. v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983) ("Plaintiff improperly used the motion to reconsider to ask the Court to rethink what the Court had already thought -- rightly or wrongly."). The Plaintiffs' Motion for Reconsideration is denied.

ORDER

Based on the foregoing, and the Court being fully advised in the premises, it is **HEREBY ORDERED** that Plaintiffs' Motion for Clarification and for Reconsideration (docket no. 23) is **DENIED.**

DATED: October 9, 2008

Honorable Edward J. Lodge
U. S. District Judge