

situated on Government land but the plaintiffs have had use of them and surrounding property for mining purposes. The plaintiffs assert that they have occupied the buildings since 1974, but after a 2003 inspection, Government officials declared the buildings inadequate in various respects and sought to remove them from the property. Id. According to the complaint, the 2003 inspection report omitted any reference to a large, valuable quartz deposit that plaintiffs contend exists upon the property. Id. Plaintiffs further contend that they have wrongfully been denied access to the property by a locked gate on Dear Park Road; the lock was changed and they were not provided a key. Id. Finally, plaintiffs complain that there was an “improper” decision regarding their property in 1975 and that the Government erroneously failed to recognize their mining plan. Id.

The COFC Complaint ultimately alleges that “[t]his is a taking of Property by the Government without compensation and in violation of the 5 Amendment, Bill of Rights.” Id. It requests “Development Loss of \$150,000.00 for the years 2003 and 0n”; “Damage to Mill Site Stone Buildings of \$25,000.00 per year from 2003 on” and “Legal Costs of \$75,000 thru 2007” for a total of “\$600,000 plus repairs.” Id. The COFC Complaint further requests an injunction requiring the Forest Service to process the plaintiffs’ application to patent their mining claims, along with an award of an additional \$110,000. Id.

More than two years earlier, however, the plaintiffs had filed a complaint in the United States District Court for the Southern District of California, Case Number 06-cv-1560, making very similar allegations to those set forth in the COFC Complaint. Ex. 1 to Def.’s Mot. to Dismiss (docket entry 4, July 10, 2008).

On February 20, 2008, one month before they filed the COFC Complaint, plaintiffs filed a second amended complaint in the Southern District of California. This complaint also alleges that the Swansons were denied access to the Stone Mill Site Buildings by a locked gate on Dear Park Road to which they were not provided a key. Ex. 5 to Def’s Mot. to Dismiss (docket entry 4, July 10, 2008) (the “California Complaint”). Other similarities include allegations of continuous use since 1974; a 2003 Government inspection that found deficiencies in the buildings and omitted reference to a quartz deposit; and a wrongful attempt to require the Swansons to submit a new plan of mining operations. Id. Just like the complaint in this Court, the California Complaint requests “yearly loss at \$125,000 per year” (but only for three years); “deterioration of the Stone mill Site self at \$25,000 per year” and \$25.00 a day for various repairs. Id. The California Complaint does not, however, allege a taking under the Fifth Amendment to the United States Constitution, seek an injunction requiring processing of a patent application, or request legal fees.

On July 10, 2008, the Government filed a motion to dismiss the COFC Complaint pursuant to 28 U.S.C. § 1500, which precludes this Court from hearing “any claim for or in respect to which the plaintiff . . . has pending in any other court any suit . . . against the United States.” Def’s Mot. to Dismiss (docket entry 4, July 10, 2008). That is, if the California

Complaint was filed first and concerns the same claim as the COFC Complaint, then this Court does not have the power to hear or decide the plaintiffs' lawsuit.

Plaintiffs did not respond to the motion to dismiss, and on October 17, 2008, this Court issued an order requiring plaintiffs to show cause why the Court should not grant the Government's motion. (docket entry 5). On October 22, plaintiffs filed a request that the "Orders to dismiss not be granted." (docket entry 6). In this filing, plaintiffs asserted that the Government had declared their Stone Mill Site Buildings out of compliance with "some new regulation" and had "taken over the Buildings for demolition." *Id.* It made the same (along with some new) allegations about the 2003 Government inspection and problems with the resulting report and reiterated protests regarding the lack of keys to the gate on Dear Park Road. *Id.* The letter "request[ed] this Claim 08-360 L be kept open To STOP the U.S. Forestry Service, Alpine, Ca. From destroying and seizing our Mining buildings which is against the Constitution 5th amendment." *Id.* It further requested the Court to "have the US Forestry Service return our Buildings after correcting the Inspection Report of 2003 to identify the Valuable mineral on the claims" and "to instruct the U S Forest Service, Alpine, Ca. To follow the Mining CFR regulations and the 1872 Mining Laws as modified" to "give us access and egress from" the mining site. *Id.*

Analysis

The plaintiff bears the burden of demonstrating that the Court possesses subject matter jurisdiction. *Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002). In determining whether subject matter jurisdiction exists, a court must accept as true all undisputed facts asserted in the plaintiff's complaint and draw all reasonable inferences in favor of the plaintiff. *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995). Because plaintiffs are representing themselves without benefit of counsel, the Court will construe their pleadings liberally and hold them to less stringent standards. *Greenhill v. United States*, 81 Fed. Cl. 786, 790 (2008). But "[e]ven given this considerable leeway . . . *pro se* plaintiffs must still meet the same jurisdictional requirements that all plaintiffs must meet before being allowed to proceed with a claim in this Court." *Id.*

Like all federal courts, this Court has limited jurisdiction and can only hear cases Congress has specifically authorized it to adjudicate. *Soriano v. United States*, 352 U.S. 270, 273 (1957). 28 U.S.C. § 1500 explicitly prohibits the Court from hearing "any claim for or in respect to which the plaintiff . . . has pending in any other court any suit . . . against the United States." The purpose of § 1500 is to prevent any plaintiff from suing the Government twice on the same claim; that is, to "force plaintiffs to choose between pursuing their claims in the Court of Claims or in another court' and to prevent the United States from having to litigate and defend against the same claim in both courts." *Harbuck v. United States*, 378 F.3d 1324, 1328 (Fed. Cir. 2004) (quoting *UNR Indus. v. United States*, 962 F.2d 1013, 1018-1021 (Fed. Cir. 1992)); see also *Keene Corp. v. United States*, 508 U.S. 200, 209 (1993). To decide whether it has jurisdiction, therefore, the Court must determine, first, whether plaintiffs had another lawsuit

pending when they filed their complaint in this Court, and second, whether that other pending lawsuit involved the same claim as this one.

As to the first question, the Court is satisfied that the plaintiffs first filed their prior lawsuit in the Southern District of California and that lawsuit was pending when they filed this action in this Court. The COFC Complaint was filed on May 19, 2008 (docket entry 1), more than two years after the initial filing of the California lawsuit and a month after the plaintiffs filed their second amended complaint in that action. Exs. 1, 5 to Def.'s Mot. to Dismiss.

Next, the Court must decide whether the COFC Complaint and the California Complaint assert the same claim. To decide whether the two lawsuits involve the same claim, the Court must look at the "operative facts" and the relief requested in each suit to see how similar the two complaints are. Loveladies Harbor, Inc. v. United States, 27 F.3d 1545, 1548 (Fed. Cir. 1994).

"Claims are the same where they arise from the same operative facts even if the operative facts support different legal theories which cannot all be brought in one court." Harbuck, 378 F.3d at 1329. The facts alleged in the two complaints are substantially identical. The plaintiffs allege they have been unable to access the Stone Mill Site Buildings because of a locked gate to which they do not have a key. There was a 2003 inspection by the Government that resulted in a report the plaintiffs contend contains various errors, and the Government refuses to correct those alleged errors. The Government has asked the plaintiffs to submit a plan of mining operations, and they do not believe they are required to comply. Indeed, the Court takes judicial notice that plaintiffs themselves have recognized that the lawsuits are identical and, at least at one time, consented to dismissal of this case. Notice of Letter to Department of Justice by George B Swanson, Natalie M Swanson, docket entry 28, Swanson v. BLM, 06-cv-1560 (Southern District of California, Aug. 29, 2008) ("We have now filed in the San Diego Court as a result of your report stating that 2 courts cannot hear the same case. . . . We agree that Case No 08 360 L be terminated under 'Motion to Leave.'"); Ex. 1 to Def.'s Opp. to Pl.'s Resp. (docket entry 7, Oct. 30, 2008). The Court concludes that the complaints are based upon the same operative facts.

If, as we have found, the operative facts of the two claims are the same, then the Court must further examine whether the "same relief" is sought. Keene, 508 U.S. at 212. The requested relief does not need to be identical: there must only be "some overlap in the relief requested." Id. In other words, to avoid the application of 28 U.S.C. § 1500, the relief requested must be "distinctly different." Loveladies, 27 F.3d at 1552. Thus, "[w]here both complaints seek the same relief, but there is additional relief sought in one of the complaints that is not sought in the other, making the relief not completely identical or coterminous, [28 U.S.C. § 1500] still applies." Moorehead v. United States, 81 Fed. Cl. 353, 357 (2008); see also Ramah Navajo School Bd., Inc. v. United States, 83 Fed. Cl. 786 (2008); Yankton Sioux Tribe v. United States, 2008 WL 4604357 (Fed. Cl. Oct. 10, 2008). The proper inquiry is "whether there is meaningful overlap both in the underlying facts and in the relief sought in the two actions. A perfect symmetry of demands for relief is not necessary." Tohono O'Odham Nation v. United States, 79 Fed. Cl. 645, 656 (2007).

The two complaints request monetary relief in nearly identical amounts for nearly identical reasons, although there are a few differences. First, the COFC Complaint, unlike the California Complaint, asks for injunctive relief requiring the Forest Service to process plaintiffs' applications to patent their mining claims and some additional monetary damages. And second, the COFC Complaint requests legal fees.¹ But the complaints clearly request significantly overlapping relief, potentially exposing the Government to double liability—the very evil § 1500 seeks to avoid. Keene, 508 U.S. at 206. The complaints are based on the same operative facts and do not seek “completely different” relief. Id. at 213 n.6; Harbuck, 378 F.3d at 1329 (observing that both complaints seek money damages and “[n]o more is required to trigger the second bar under § 1500.”). There is “plainly substantial overlap in the operative facts as well as in the relief requested. That being the case, unfortunately for plaintiff[s], section 1500 is a bar.” Tohono, 79 Fed. Cl. at 659. This Court may not exercise jurisdiction over their complaint. Keene, 508 U.S. at 212.

Conclusion

For the reasons stated, defendant's motion to dismiss for lack of subject matter jurisdiction is **GRANTED**. The Clerk of the Court is directed to enter judgment consistent with this order.

IT IS SO ORDERED.

s/ George W. Miller
GEORGE W. MILLER
Judge

¹ The plaintiffs' response to the Court's order to show cause requests, for the first time, an order precluding the Government from destroying the Stone Mill Site buildings. This does not factor into the Court's analysis, however, because the Court examines the state of affairs at the time the COFC Complaint was filed. Keene, 508 U.S. at 207.