

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

SEP 16 2009

Stephan Harris, Clerk
Cheyenne

United States District Court
for the District of Wyoming

STATE OF WYOMING,)
)
 Petitioner,)
)
 and)
)
 BOARD OF COUNTY)
 COMMISSIONERS OF THE COUNTY)
 OF PARK, et al.,)
)
)
 Petitioner,)
)
 and)
)
 THE INTERNATIONAL)
 SNOWMOBILE MANUFACTURER'S)
 ASSOCIATION, INC. et al.,)
)
)
 Petitioner-)
 Intervenor)
)
)
 v.)
)
 UNITED STATES DEPARTMENT OF)
 THE INTERIOR et al.,)
)
)
 Respondents)
)
)
 vs.)
)
)
 NATIONAL PARKS CONSERVATION)
 ASSOCIATION,)
)
)
 Intervenor.)

Consolidated Cases:

Case No. 07-CV-0319-B
Case No. 08-CV-0004-B

ORDER DENYING PETITIONER'S MOTION TO ENFORCE JUDGMENT

This matter came before the Court at a hearing on August 18, 2008 and upon the Petitioner's Motion to Enforce Judgment [doc. # 121]. At the hearing, Jay A. Jerde represented the Petitioner, State of Wyoming; James F. Davis represented Petitioner, Park County; Luther L. Hajek and Nicholas Vassallo represented the United States Department of the Interior, the National Park Service, Secretary of the Interior, Dirk Kempthorne, the National Park Service Director, Mary Bomar, and the National Park Service Intermountain Region Director, Michael Snyder (collectively "Federal Respondents"); and Robert D. Rosenbaum represented the Intervenor, National Parks Conservation Association. This court having carefully considered the administrative record, the submitted briefs, the arguments of the parties at the hearing and the responses thereto, and being fully advised in the premises, **FINDS** and **ORDERS** the following:

I. BACKGROUND

On September 15, 2008, a U.S. District Court in the District of Columbia vacated the National Park Service's ("NPS") 2007 final rule governing snowmobile use in the Yellowstone National Park, Grand Teton National Parks, and the John D. Rockefeller, Jr. Memorial Parkway (collectively, "Parks").

On November 7, 2008, this Court issued an Order Implementing Temporary Remedy ("Remedy Order") to address, "the remedy that should be implemented while the NPS promulgates a new rule in compliance with the D.C. District Court's order." [doc. # 88]. This Court entered judgment on the matter on November 19, 2008 and ordered that, "the National Park Service shall reinstate the 2004 temporary rule until such time as it can promulgate an acceptable rule to take its place" [doc. # 90].

The National Parks Conservation Association ("NPCA") filed an appeal with the U.S. Court of Appeals for the Tenth Circuit after this Court denied the NPCA's Motion to Vacate the Remedy Order.

The Petitioner, State of Wyoming, moves the Court to enforce the Judgment it entered in this case on November 19, 2008. Specifically, Petitioner requests the Court issue an order directing that the 2004 order remain in place until a *permanent* winter use rule is promulgated, enjoin Respondents from adopting any new interim winter rules, and directing Federal Respondents to immediately begin promulgating a permanent final winter use rule. (Pet'r State of Wyo.'s Motion to Enforce Judgment at 6 (emphasis added).)

The Federal Respondents oppose Petitioner's motion on several grounds. First, Federal Respondents argue the Court lacks jurisdiction over the motion because the Remedy Order is on appeal. Further, Federal Respondents claim that because no final rule has been issued, any challenge to the NPS's proposed rule is premature. Federal Respondents also suggest that adopting the Petitioner's interpretation of the Remedy Order would be contrary to established legal principles of administrative law. Finally, Federal Respondents argue the proposed interim rule will not cause uncertainty.

II. ANALYSIS

It is a well established legal principle that the timely filing of a notice of appeal divests the district court of jurisdiction. Int'l Paper Co. v. Whitson, 595 F.2d 559, 561 (10th Cir. 1979). As the Supreme Court noted, "[t]he filing of a notice of appeal is an event of jurisdictional significance-it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982). The district court retains jurisdiction, however, over collateral matters not involved in the appeal. Garcia v.

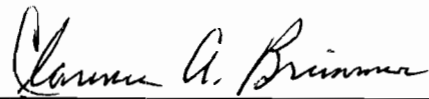
Burlington N. R.R. Co., 818 F.2d 713, 721 (10th Cir. 1987). Determination of attorney's fees, for example, is a collateral matter for which the district court retains jurisdiction. Budinich v. Becton Dickinson & Co., 807 F.2d 155, 157 (10th Cir. 1986) (per curiam).

Under the circumstances of this case, however, the Court finds Petitioner's Motion to Enforce Judgment is so intertwined with the merits of the case that it would infringe on 10th Circuit jurisdiction to entertain the motion.

The Court therefore, declines to grant the motion.

NOW THEREFORE, IT IS HEREBY **ORDERED** that Petitioner's Motion to Enforce is **DISMISSED**.

Dated this 16th day of September, 2009.



UNITED STATES DISTRICT JUDGE