IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-3025-PAB

HIGH COUNTRY CONSERVATION ADVOCATES, *et al.*,

Petitioners,

v.

UNITED STATES FOREST SERVICE, *et al.*,

Federal Respondents,

and

MOUNTAIN COAL COMPANY, LLC,

Intervenor-Respondent.

OPPOSITION BY FEDERAL RESPONDENTS
TO PETITIONERS' MOTION FOR INJUNTION PENDING APPEAL

Petitioners have filed a Motion for Preliminary Injunction - Injunction Pending Appeal. ECF No. 103. The Motion relates to the appeal (ECF No. 100) which seeks review of the Court's Order dated October 2, 2020, denying Petitioners' Emergency Motion to Enforce Remedy. ECF No. 99. Petitioners request "an injunction to preserve the status quo pending the appeal and prevent Mountain Coal Company ("Mountain Coal") from conducting additional irreparable surface disturbance in the Sunset Roadless Area." Pets.'

Mot. 1, ECF No. 103.[1] The Court should deny Petitioners' Motion.

An injunction pending appeal "requires plaintiffs to show the same four elements necessary to obtain a preliminary injunction: likelihood of success on the merits, irreparable harm absent an injunction, lack of harm to the opposing party, and no adverse public impacts." *Town of Superior v. U.S. Fish and Wildlife Serv.*, No. 11-cv-3294-PAB, 2012 WL 6737183, at *1 (D. Colo. Dec. 28, 2012); *Populist Party v. Herschler*, 746 F.2d 656, 659 (10th Cir. 1984). Because a "preliminary injunction is an extraordinary and drastic remedy," *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997), the party seeking such an injunction must make "a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). "The first factor, the plaintiff's likelihood of success, is 'the touchstone of the preliminary injunction inquiry.'" *Boston Duck Tours, LP v. Super Duck Tours, LLC*, 531 F.3d 1, 11 (1st Cir. 2008) (quoting *Philip Morris, Inc. v. Harshbarger*, 159 F.3d 670, 674 (1st Cir.1998)). Absent the requisite clear showing on that factor, "'the remaining factors become matters of idle curiosity.'" *Id*. (quoting *New Comm Wireless Servs., Inc. v. SprintCom, Inc.*, 287 F.3d 1, 9 (1st Cir.2002)).

Petitioners fail to carry their burden of showing that they are likely to succeed on the

[1] Petitioners filed the instant motion at 5:12 p.m. MDT on October 5, 2020. They filed a corresponding motion in the Court of Appeals at 7:14 p.m. MDT the same day. In addressing FED. R. APP. P. 8(a), the latter motion contends that awaiting a district court ruling "would be impracticable given the imminent harm to the environment and the fact that the district court just ruled against Conservation Groups on the merits." However, the minute entry issued October 6 at 8:04 a.m. MDT (ECF No. 104) directs Defendants to respond in this Court on or before October 8, 2020. The Court of Appeals on October 7 entered a "temporary injunction" and directed that responses be filed on October 13 (ECF No. 107), none of which precludes this Court from ruling upon Petitioners' Motion.

merits. As the Court correctly noted, the Tenth Circuit's holding and subsequent mandate solely addressed the North Fork Exception of the Colorado Roadless Rule, and the Court effectuated the mandate by entering vacatur on June 15. Order 7, ECF 99. Petitioners' disagreement notwithstanding, the Court acted well within its discretion in evaluating the continuing validity of the lease modifications and in comparing this case to *WildEarth Guardians v. United States Bureau of Land Management*, 870 F.3d 1222 (10th Cir. 2017). *Id*. at 8-9. Petitioners moved to enforce remedy, but the remedy they obtained does not provide a basis for their requested relief. Resps.' Opp. 6, ECF 80 ("a motion to enforce a judgment gets a plaintiff only 'the relief to which [the plaintiff] is entitled under [its] original action and the judgment entered therein.'" *Heartland Reg'l Med. Ctr. v. Leavitt*, 415 F.3d 24, 29 (D.C. Cir. 2005) (quoting *Watkins v. Washington*, 511 F.2d 404, 406 (D.C. Cir. 1975))). Petitioners do not articulate the precise relief they now seek, but appear to violate these principles. There is no pending agency approval, and prior final agency action was challenged in the underlying complaint. Petitioners cannot in a post-judgment motion seek to rescind or constrain action under the lease modifications, or plausibly present what would amount to a request for affirmative injunctive relief. The Court's ruling cogently addressed these concerns, concluding that "[w]hether or not a private entity's actions are prohibited under a regulation is a question that does not appear to be within the scope of this type of procedural review, and must therefore be brought in some other posture that would permit review." Order 10, ECF 99. Petitioners have not shown that the Court's ruling constituted legal error or an abuse of discretion.

For the foregoing reasons, the Court should deny the Motion for Injunction Pending Appeal.

DATE: October 8, 2020

Respectfully submitted,

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Counsel for Federal Respondents

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2020, a copy of the foregoing was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ *Paul A. Turcke*
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