

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 29, 2015

Elisabeth A. Shumaker  
Clerk of Court

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WILDEARTH GUARDIANS,

Plaintiff - Appellee,

v.

UNITED STATES OFFICE OF  
SURFACE MINING RECLAMATION  
AND ENFORCEMENT, et al.,

Defendants,

v.

COLOWYO COAL CO, L.P.,

Intervenor Defendant - Appellant,

and

TRAPPER MINING, INC.,

Intervenor Defendant.

No. 15-1186  
(D.C. No. 1:13-CV-00518-RBJ)  
(D. Colo.)

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**ORDER**

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This appeal is before the court *sua sponte* following a review of the docketing statement and the district court docket. We have identified a potential jurisdictional defect discussed below and are considering the appeal for summary disposition. *See* 10th Cir. R. 27.2(B). The briefing schedule is suspended pending further order of the court. *See* 10th Cir. R. 27.2(C).

It appears that the district court's judgment is not yet final. On May 29, 2015, Colowyo Coal Company, L.P. filed a notice of appeal from the district court's May 8, 2015 Order and "Final Judgment." In the docketing statement, Colowyo Coal Company, L.P. responded "No" in response to the question "Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties?"

Except in certain circumstances that do not appear to be present here, this court's appellate jurisdiction is limited to review of final judgments. *U.S. v. Nixon*, 418 U.S. 683, 690-92 (1974); *Albright v. Unum Life Ins. Co.*, 59 F.3d 1089, 1092 (10th Cir. 1995). A decision is "not final, ordinarily, unless it ends the litigation on the merits and leaves nothing for the court to do but execute judgment." *Cunningham v. Hamilton County, Ohio*, 527 U.S. 198, 204 (1999) (internal quotations omitted).

The district court's May 8, 2015 Final Judgment states:

[T]he Court will not, at this time, enter an order of vacatur as to the approval of the mining plan revision for the Colowyo Coal Co., L.P. mine. However, the Court will enter an order of vacatur, vacating the Secretary of the Interior's approval of the Colowyo mining plan revision, in 120 days unless the Office of Surface Mining, Reclamation and Enforcement has fully completed its obligations under the National Environmental Policy Act, absent further court order based upon very good cause shown.

May 8, 2015 Final Judgment, pp. 2-3.

**Within 14 days** from the date of this order, Colowyo Coal Company, L.P. and WildEarth Guardians are directed to file written responses discussing the basis for this court's exercise of appellate jurisdiction at this time over the district court's May 8, 2015 Order and Final Judgment.

If Colowyo Coal Company, L.P. chooses to file nothing or fails to file a timely response, the appeal may be dismissed pursuant to Tenth Circuit Rule 42.1.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk



by: Lindy Lucero Schaible  
Counsel to the Clerk