

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

JUN 07 2007

Stephan Harris, Clerk  
Cheyenne

**In the United States District Court  
for the District of Wyoming**

STATE OF WYOMING,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 01-CV-86-B
	)	
	)	
USDA ET AL.,	)	
	)	
Defendants.	)	

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**ORDER DENYING STATE OF WYOMING'S MOTION FOR RELIEF FROM JUDGMENT  
OR ORDER PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60 (b)**

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This matter came before this Court on Plaintiff Wyoming's motion for relief from judgment on May 25, 2007. Patrick J. Crank represented the Plaintiff State of Wyoming. Barclay T. Samford represented the Defendant USDA and James S. Angell represented Defendant Wyoming Outdoor Council. After reading the briefs and hearing oral arguments and being fully advised, this Court finds that Plaintiff's motion for relief from judgment should be **DENIED**.

**BACKGROUND**

After holding 600 public meetings over three years and receiving 1 million public comments urging forest protection, Pres. Clinton issued the Roadless Area Conservation Rule just days before

he left office in January of 2001. This rule protected nearly 192 million acres of national forest land.

The State of Wyoming challenged the Clinton rule in federal court and the Wyoming District Court, on July 14, 2003, held that the Clinton Roadless Rule was promulgated in violation of the National Environmental Policy Act ("NEPA") and the Wilderness Act. The Wyoming District Court ordered the Clinton Roadless Rule to be permanently enjoined. See Wyoming v. United States Dep't of Agric., 277 F. Supp. 2d 1197 (D. Wyo. 2003).

The Wyoming Outdoor Council and seven other environmental interveners appealed this decision. The Tenth Circuit heard oral arguments on May 4, 2005. On May 5, 2005, the day after oral arguments, the Bush administration issued a new roadless rule to replace the Clinton Roadless Rule. On July 11, 2005, the Tenth Circuit ruled that the issues in the appeal regarding the Clinton Roadless Rule were moot as a result of the issuance of the 2005 Bush Roadless Rule. See Wyoming v. United States Dep't. of Agric., 414 F.3d 1207, 1210-1213 (10th Cir. 2005).

In late August of 2005, California, New Mexico, Washington, and Oregon filed suit against the Federal Defendants in the United States District Court for the Northern District of California

challenging the 2005 Roadless Rule. On or about October 5, 2005, a coalition of 20 environmental groups filed suit in the United States District Court for the Northern District of California. The two lawsuits were subsequently consolidated.

On October 18, 2005, the State of Wyoming filed a Motion to Recall Mandate in the Tenth Circuit. Wyoming urged the Tenth Circuit to recall the mandate it had issued on September 2, 2005, in Wyoming v. United States Dep't. of Agriculture, 414 F.3d 1207, (10th Cir. 2005). Wyoming stated that the 2005 Roadless Rule was being challenged in the Northern District of California. Wyoming explained that the parties in that case were requesting the United States District Court in California to order the reinstatement of the Clinton Roadless Rule, which had been found to be in direct violation of federal law, and that there was a possibility that the Clinton Roadless Rule could spring back into existence resulting in a manifest injustice. The Tenth Circuit denied Wyoming's Motion to Recall Mandate on November 2, 2005, and ordered the District Court to dismiss the Plaintiffs' claims without prejudice. The Wyoming District Court on January 3, 2006, by mandate from the Tenth Circuit, issued an order dismissing this case without prejudice.

Subsequently, Magistrate Judge Laporte of the Northern

District of California, on September 20, 2006, struck down the 2005 Roadless Rule and reinstated the Clinton Roadless Rule.

#### **RULE 60(b) STANDARD**

Rule 60(b) provides several avenues by which a district court may grant relief from a judgment, order, or proceeding. One avenue is for "any . . . reason justifying relief from the judgment." The Tenth Circuit has stated that:

Although strict compliance with the mandate of the reviewing court is required, a district court may consider a Rule 60(b) motion to reopen a decision that has been affirmed on appeal when the basis for the motion was not before the appellate court or resolved on appeal. See Standard Oil Co. of Calif. v. United States, 429 U.S. 17, 18-19 (1976). A court is not flouting the mandate of the appellate court by acting on a motion raising events occurring after the trial or appeal because "the appellate mandate relates to the record and issues then before the court, and does not purport to deal with possible later events." Id. at 18.

F.D.I.C. v. United Pac. Ins. Co., 152 F.3d 1266, 1273 (10th Cir. 1998).

#### **DISCUSSION**

Again, on mandate from the Tenth Circuit, this Court entered an Order of dismissal without prejudice on January 3, 2006. Plaintiff Wyoming argues that this Court has the discretion to grant relief from that Order and reinstate its judgment invalidating the Clinton Roadless Rule. Plaintiff claims that the

circumstances have changed and that Wyoming took every step to protect its legal interests. Therefore, Plaintiff argues, this Court must recall and vacate the January 3, 2006 Order and preserve the integrity of the judicial process and prevent injustice. Defendants, on the other hand, claim that the vacatur mandate is unequivocal and addressed the very issues raised by Wyoming. Therefore, Defendant argues, the Wyoming District Court has no power to reverse that mandate and order.

Although not involved in the Northern District of California case, this Court acknowledges the possible invalidity of the 2005 Bush Roadless Rule for failing to complying with NEPA. However, at the same time, this Court is extremely perplexed over how the California court could resurrect the Clinton Roadless Rule. The Clinton Roadless Rule did not comply with NEPA and this Court held it invalid. This Court is troubled and questions the authority of the California court to raise this rule back to life and force. Clearly, a California Magistrate Judge could have no right, by way of appeal, to reverse this Court's decision, which still stands, even though the Tenth Circuit ordered the case dismissed. This Court's opinion, that the Clinton Administration did not comply with NEPA, was not reversed. The case was dismissed for mootness

and not because the opinion was wrong. Aside from the question of whether a magistrate can reverse the opinion of a district court, Judge Laporte plainly did not have the authority to do so or the power to revive a once dead rule.

Nevertheless, this Court is bound by the Tenth Circuit's mandate to vacate and dismiss without prejudice. See e.g., Ute Indian Tribe v. State of Utah, 935 F. Supp. 1473 (D. Utah 1996).<sup>1</sup> This Court finds no circumstances upon which to grant Rule 60(b). Wyoming's main argument in this present motion, a ruling by the Northern District of California reinstating the Clinton Roadless Rule, was raised by Wyoming in its prior briefing to recall the mandate before the Tenth Circuit. The Tenth Circuit expressly considered Wyoming's arguments and subsequently denied the motion. None of those exceptional circumstances listed above seem to apply here. There has been no dramatic change in controlling authority, no significant new evidence previously unavailable, and no blatant error. This Court can find no change of circumstances or facts

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<sup>1</sup> In this Utah case, an en banc panel of the Tenth Circuit established boundaries of an Indian reservation. A subsequent U.S. Supreme Court decision in an unrelated case, established boundaries for the same reservation that conflicted with the en banc panel's determination. Despite these inconsistent determinations, the district court concluded that it was bound by the "law of the case" doctrine to continue the injunction, "unless and until it receives different instructions from the court of appeal." Id. at 1522.

that was not previously before the Tenth Circuit or would justify this Court in granting Rule 60(b) relief. F.D.I.C. v. United Pac. Ins. Co., 152 F.3d 1266, 1273 (10th Cir. 1998). Wyoming's proper procedural remedy is now to inform the Tenth Circuit of the California ruling and ask that the circuit court recall its mandate.

**CONCLUSION**

NOW THEREFORE, IT IS HEREBY ORDERED, THAT Plaintiff's motion for relief from judgment pursuant to federal rule of civil procedure 60(b) is **DENIED**.

Dated this 7<sup>th</sup> day of June, 2007.

  
UNITED STATES DISTRICT JUDGE