IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SOUTHERN UTAH WILDERNESS ALLIANCE, et al., Plaintiffs, vs. BUREAU OF LAND MANAGEMENT, et al. Defendants.	ORDER Case No. 2:96-CV-836 TC

Nine motions are pending in this case.[1] The motions can be grouped into three categories: (1) motions seeking finality of the proceedings on unresolved issues (there are three, all of which raise overlapping issues); (2) motions seeking to re-open previously decided matters (there are three, all filed by Defendant San Juan County); and (3) motions to strike certain pleadings (there are three).

For the most part, the parties filed motions seeking resolution of what they contend are

[1]A tenth pleading, a Notice of Withdrawal of Counsel, is also before the court. On September 8, 2003, attorney Barbara G. Hjelle filed a Notice that she is withdrawing as counsel for Kane and Garfield Counties, both of which are represented by the State of Utah Attorney General's office. The basis for her withdrawal is that "other attorneys continue to represent . . . the Counties in this case and Ms. Hjelle is not participating in the representation." (Sep. 8, 2003 Notice of Withdrawal of Counsel at 1-2 (Dkt. No. 376).) The court acknowledges and approves Ms. Hjelle's Notice.

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the unresolved issues in this nearly eight-year-old case. The Southern Utah Wilderness Alliance ("SUWA") filed a Motion for Entry of Final Judgment on Plaintiffs' Claims. The United States filed a Motion for Summary Judgment on Claims for Declaratory Relief against the Counties. Kane and Garfield Counties filed a Motion Requesting the Court to Grant SUWA's Prior Motion for Permanent Injunction against the Counties.

While SUWA, the United States, and Kane and Garfield Counties seek closure through their motions, San Juan County is attempting to re-open matters already decided against it. San Juan County filed three motions: (i) Motion for Leave to File Second Amended Counter-Claim; (ii) October 1, 2003 Motion for Relief from the June 25, 2001 Order; and (iii) November 3, 2003 Motion for Relief from the June 25, 2001 Order.

Three motions to strike have been filed. SUWA and the United States have filed motions to strike San Juan County's November 3, 2003 Motion for Relief on the basis that it is untimely. The United States has also filed a motion to strike a reply memorandum of Kane and Garfield Counties on the basis that it was not limited to rebuttal of matters raised in the United States' opposition memorandum.

All of the motions were scheduled to be heard on Friday, January 23, 2004. However, the court determined that oral argument would not materially assist with the court's determination. Accordingly, the hearing was cancelled. The court makes its decision based on the briefs submitted by the parties.

For the reasons set forth below, the court GRANTS SUWA's Motion for Entry of Final Judgment, the United States' Motion for Summary Judgment on Claims for Declaratory Relief, and the United States' Motion to Strike Kane and Garfield Counties' Reply Memorandum. The

court DENIES Kane and Garfield Counties' Motion seeking a permanent injunction, San Juan County's Motion for Leave to File a Second Amended Counter-Claim, San Juan County's October 1, 2003 Motion for Relief from the court's June 25, 2001 Order, San Juan County's November 3, 2003 Motion for Relief from the court's June 25, 2001 Order, and SUWA's and the United States' Motions to Strike San Juan County's November 3, 2003 Motion for Relief.

I. PROCEDURAL HISTORY

This case centers around a long-standing dispute between certain counties in southern Utah (San Juan, Garfield, and Kane Counties, collectively, the "Counties") and the United States Department of the Interior (specifically, the Bureau of Land Management, "BLM") regarding alleged rights-of-way on federal land. In 1996, the Counties physically altered certain remote areas and trails on federal land through activities such as road grading and realignment. The United States contends that the Counties do not have any rights-of-way and are trespassing on and damaging federal land, in violation of the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C.A. §§ 1701-1785 (2003). The Counties contend that they perfected rights-of-way on federal public land pursuant to Revised Statute 2477 ("R.S. 2477")[2] and have the right to grade and otherwise maintain the alleged roads.

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[2]R.S. 2477 provides: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." 43 U.S.C. § 932, 14 Stat. 253 (1866). R.S. 2477 was repealed 110 years later by the Federal Land Policy and Management Act of 1976 (FLPMA), § 706(a), Pub. L. No. 94-579, 90 Stat. 2793. All accepted rights-of-way existing at the time of R.S. 2477's repeal in 1976, however, remain valid. See, e.g., Sierra Club v. Hodel, 848 F.2d 1068, 1078 (10th Cir. 1988), overruled on other grounds, Village of Los Ranchos de Albuquerque v. Marsh, 956 F.2d 970, 973 (10th Cir. 1992).

In 1996, the United States brought suit against the Counties[3] arguing that the Counties should be enjoined from unauthorized and destructive construction of roads on federal land. About the same time, Southern Utah Wilderness Alliance and the Sierra Club (collectively "SUWA") brought this action to stop what they likewise contended was the Counties' unauthorized and destructive construction of roads on federal land and to compel the BLM to enforce the federal law (FLPMA) prohibiting the Counties' activities. The cases were consolidated.[4]

In 1996-1997, the Counties entered into agreements not to conduct any further road work activity without first notifying the BLM and SUWA. (See Kane and Garfield Counties' Mem. in Supp. of Mot. Requesting the Court to Grant SUWA's Prior Mot. for Perm. Inj. at 3 n.1.) Apparently the Counties have not engaged in any physical alteration of the routes at issue since then.

The BLM's R.S. 2477 Administrative Determinations

In 1998-1999, during a court-ordered stay in the case, the BLM performed its duty and issued three "R.S. 2477 Administrative Determinations," one for each county. In the Administrative Determinations, BLM concluded that, with one exception, the Counties did not have R.S. 2477 rights-of-way. (See, e.g., BLM R.S. 2477 Admin. Determinations for Garfield, Kane, and San Juan Counties (Dkt. Nos. 225-231); June 25, 2001 Order at 3 (Dkt. No. 350).)

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[3]Certain individuals have been named as Defendants in their official capacities, such as Tyler Lewis, San Juan County Commissioner. References in this memorandum to any or all of the Counties should be read to include those individuals.

[4]This matter consists of three consolidated cases. The cases of United States of America v. Kane County, 2:96-CV-884, and United States of America v. Garfield County, 2:96-CV-885, were consolidated into the SUWA v. BLM case 2:96-CV-836.

BLM found that only one of the claimed R.S. 2477 rights-of-way (Skutumpah Road in Kane County) was valid, but that Kane County's road grading activities at issue in this case exceeded the scope of its right-of-way. (Id.)

The Court's June 25, 2001 Order

SUWA then filed a Motion for Summary Judgment seeking the court's approval of the BLM's Administrative Determinations. In its motion, SUWA sought declaratory and injunctive relief barring further road construction by the Counties across federal land in southern Utah. The motion did not seek relief against the BLM. In response to the motion, the Counties contended that they had previously perfected rights-of-way in the areas at issue and so were legally entitled to build the roads.

The court treated SUWA's Motion for Summary Judgment as an appeal of informal agency action. After reviewing the administrative record of the R.S. 2477 determination proceedings, the court affirmed all three BLM Administrative Determinations. (See June 25, 2001 Order at 28-29 (Dkt. No. 350), reported as Southern Utah Wilderness Alliance v. Bureau of Land Management, 147 F. Supp. 2d 1130 (D. Utah. 2001).) In the June 25, 2001 Order ("Order"), the court did not make any other findings, expressly grant any declaratory or injunctive relief, or award any monetary damages.

The court rejected the Counties' contention that they were entitled to a trial *de novo* before the court and that the BLM administrative record was to be treated as nothing more than discovery evidence. (Order at 7 (citing Olenhouse v. Commodity Credit Corp., 42 F.3d 1560, 1575 (10th Cir. 1994).) The court also found that the Counties, as parties seeking to enforce rights-of-way against the federal government, had the burden of proving that their claimed rights-

of-way were valid under R.S. 2477. (Order at 8-9.) The court quoted Watt v. Western Nuclear, Inc., 462 U.S. 36, 59 (1983): "[T]he established rule [is] that land grants are construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it."

In the Order, the court reviewed both the factual and legal determinations of the BLM. The court upheld BLM's factual determinations with regard to the validity of the Counties' claimed rights-of-way under R.S. 2477, finding that the BLM's determinations were supported by substantial evidence. (Order at 11-12.) The court found that BLM's statutory interpretation of R.S. 2477 was "reasonable and persuasive" and the court concurred with BLM's interpretation. (Order at 25.) The court held that BLM's administrative process did not violate due process. At the end of the Order, the court stated that "BLM's determinations regarding the validity under R.S. 2477 of the rights-of-way claimed by the Counties are AFFIRMED." (Order at 28-29 (emphasis in original).) The court did not grant any declaratory relief or injunctive relief.

Interlocutory Appeal to the Tenth Circuit

The Counties filed an interlocutory appeal of the court's decision with the Tenth Circuit. (See Aug. 22, 2001 Notice of Appeal (Dkt. No. 351).) The Tenth Circuit noted that the court properly treated SUWA's Motion for Summary Judgment as an appeal of informal agency action. (Tenth Circuit Court of Appeals' June 27, 2003 Order & Judgment, Appeal No. 01-4173 (Dkt. No. 372) at 4.) The Tenth Circuit, however, dismissed the interlocutory appeal for lack of appellate jurisdiction, finding that the order was not final or certified for appeal pursuant to Federal Rule of Civil Procedure 54(b). (Id. at 7-9.)

Status Conference

Following the Tenth Circuit's dismissal of the interlocutory appeal, the court held a July 22, 2003 status conference. During that conference, the court asked the parties to file motions seeking whatever remedy they believe is necessary to finally resolve this case. The current motions were filed in response to the court's request at the status conference.

II. ANALYSIS

A. Motions on the Merits

1. SUWA's Motion for Entry of Final Judgment on SUWA's Claims

SUWA has filed a motion seeking final judgment on all of SUWA's claims on the basis that the court's June 25, 2001 Order resolved SUWA's core claim and SUWA's remaining claims are now moot or otherwise withdrawn. (See Pls.' Mot. for Entry of Final J. on Pls.' Claims at 1.) SUWA characterizes its "core claim" as the claim that the Counties lack any valid R.S. 2477 rights-of-way on the routes at issue (with the exception of the route in Kane County where Kane County's work exceeded the scope of the right-of-way). (See id. at 3.) In its motion, SUWA specifically requests that the court:

a. "enter a judgment restating that the BLM's administrative determinations are affirmed, and declaring that the Counties do not have R.S. 2477 rights-of-way on 15 of the 16 the [sic] routes at issue (all but Skutumpah in Kane County)" (Id. at 4.);

b. "enter a declaratory judgment that Kane County's construction activities exceeded the scope of the right-of-way in the Skutumpah route" (Id.);

c. dismiss SUWA's remaining claims against the BLM as moot; and

d. with exception of the declaratory judgment, dismiss SUWA's remaining claims (including SUWA's claim for injunctive relief) against the Counties as moot.

(See id. at 4.)

SUWA's motion essentially requests that the court formalize the practical effect of the court's June 25, 2001 Order. The only opposition comes from San Juan County, and such opposition is not persuasive. San Juan County mischaracterizes the Order, claiming that it "[improperly] awarded relief to SUWA upon a claim that solely involves San Juan County and the United States . . ., which is: who owns the rights-of-way." (San Juan County Mot. for Relief and Opp'n to Pls.' Mot. for Entry of Final J. at 2.) San Juan County's position has no factual, procedural, or legal merit, as is discussed later on in this memorandum.

The court does not abandon its holding in the June 25, 2001 Order. Accordingly, SUWA's Motion for Entry of Final Judgment is GRANTED.

2. The United States' Motion for Summary Judgment on Claims for Declaratory Relief

The United States moves the court for summary judgment on its causes of action for declaratory relief against the Counties and withdraws its remaining claims for common law trespass, monetary damages, and injunctive relief. The United States seeks declaratory judgment that each of the Counties has violated FLPMA and its implementing regulations, 43 C.F.R. §§ 2801.3, 9239.

The United States seeks a two-part declaration. First, it seeks a declaration that "the Counties' actions did not fall within any established right-of-way and were not authorized by the BLM." (United States' Mot. for Summ. J. on Claims for Declaratory Relief at 2.) Second, it seeks a declaration that "each County's work on the public lands at issue here, including road-grading and realignment, constitutes unauthorized use, occupancy, or development of public lands in violation of [FLPMA] and the regulations prohibiting 'unauthorized use.'" (Id.)

San Juan County opposes the motion in its entirety. Garfield and Kane County agree that the United States is entitled to *some* form of declaratory relief, but not what the United States requests in its motion. They suggest that the United States is only entitled to "a declaration reiterating the ruling the Court has already entered, and a statement that the Counties are not entitled to perform road-construction activities on the relevant roads." (Mem. of Kane and Garfield Counties in Response to the Mot. and Mem. of BLM in Support of its Mot. for Summ. J. at 2-3.)

The June 25, 2001 Order established that, with one exception, the Counties have no valid R.S. 2477 rights-of-way on federal land. The Order also established that Kane County's road grading activities on its only R.S. 2477 right-of-way (Skutumpah Road) exceeded the scope of the right-of-way. Now, in order to obtain the requested relief, the United States must establish that the Counties engaged in "unauthorized use, occupancy, or development of the public lands" or "unnecessary or undue degradation" constituting trespass under FLPMA. See 43 C.F.R. §§ 2801.3; 9239.7-1, 2920.1-2.

Specifically, the United States must show the following: (i) the Counties engaged in activities such as road grading and re-alignment on the federal lands in question; (ii) the Counties did not have authorization from the BLM to engage in the activities at issue; and (iii) the Counties did not apply for, much less obtain, a valid right-of-way under FLPMA. Also, with respect to Kane County and the Skutumpah Road, the United States must establish that Kane County's activities exceeded the scope of the R.S. 2477 right-of-way and that Kane County did not have authorization to maintain the road above and beyond the scope of the right-of-way grant.

The Counties do not deny that they engaged in the activities at issue here. Their only defense is that they had legal right to do so under R.S. 2477. That issue has already been decided against them. The Counties' responses to the United States' Motion for Summary Judgment do not provide evidence to controvert the United States' statement of material facts. Accordingly, all of the material facts set forth in the United States' Memorandum in Support are deemed admitted. DUCivR 56-1(c) ("All material facts of record meeting the requirements of Fed. R. Civ. P. 56 that are set forth with particularity in the statement of the movant will be deemed admitted for the purpose of summary judgment, unless specifically controverted by the statement of the opposing party"); United States v. Sazama, 88 F. Supp. 2d 1270 (D. Utah 2000) (citing DUCivR 56-1(c)). Moreover, the Counties, in their Answers to the United States' complaints, sometimes (although not always) admit the activities. None of the Counties has established a genuine issue of material fact, as required by Fed. R. Civ. P. 56, and the United States' Motion for Summary Judgment is GRANTED.

3. Kane and Garfield Counties' Motion Requesting the Court to Grant SUWA's Prior Motion for a Permanent Injunction

Kane and Garfield Counties filed a joint motion requesting that the court grant SUWA's prior motion for a permanent injunction. They are referring to SUWA's request for injunctive relief set forth in SUWA's September 2000 motion for summary judgment. In that September 2000 motion, SUWA requested that the court permanently enjoin the Counties "from conducting any road work activities on the alleged rights-of-way." (SUWA's Mem. in Support of Mot. for Summ. J. at 9.)

Kane and Garfield Counties argue that granting their motion is "the most efficient and

desirable means of implementing the Court's Order of June 25, 2001 (Doc. No. 350) granting SUWA's motion for summary judgment and of placing the case in an appealable posture." (Mem. in Support of Kane and Garfield Counties' Mot. Requesting the Court to Grant SUWA's Prior Mot. for Perm. Inj. at 2.) San Juan County does not join in this motion or respond to it in any way.

SUWA stated that it had no objection to entry of a permanent injunction against the Counties but questions whether a "self-imposed injunction" is the proper way to bring an end to the proceedings in district court. SUWA points out that (i) it is no longer seeking injunctive relief and there is no basis for such relief because there is no current threat of irreparable damage; (ii) the Counties may not be able to appeal from the relief they have requested because they have arguably waived that right by seeking the injunction; and (iii) the Tenth Circuit Court of Appeals would view Kane and Garfield's motion as an improper attempt to manufacture appellate jurisdiction. SUWA reiterates that its proposed form of relief is a more appropriate way to finalize the district court proceedings and avoid further delay. It wants to avoid the "attendant delays that would be caused by yet another remand." (Pls.' Response to Mot. of Kane and Garfield Counties for Inj. Relief at 3.)

The United States likewise does not object to the motion. But it too raises some of the same concerns voiced by SUWA and wonders whether Kane and Garfield Counties by their motion are saying that "they intend to continue to unlawfully construct and/or maintain roads where this Court has affirmed that they have no rights-of-way. . . ." (United States' Response to Kane and Garfield Counties' Mot. for Perm. Inj. at 2.)

After SUWA and the United States filed their responses, Kane and Garfield Counties

stated in their reply memorandum that they did not file a motion seeking an injunction against themselves. Rather, they noted that their motion said "[i]f San Juan County's Motion to relieve it from the Court's June 25, 2001 Order (Doc. 350) . . . is granted, Kane and Garfield Counties should be afforded the same relief." (Reply Mem. of Kane and Garfield Counties to Mem. of BLM at 2.) In other words, if the court does not change its June 2001 decision, then the court should make a final decision on SUWA's unresolved request for injunctive relief.

Kane and Garfield, like the other parties, are seeking finality. But granting SUWA's and the United States' motions for declaratory relief provides the finality they need on appeal without creating the potential problems noted by SUWA and the United States. For the reasons articulated by both SUWA and the United States, and because there has not been a showing that injunctive relief is required at this time, Kane County's and Garfield County's Motion for injunctive relief is DENIED.

4. San Juan County's Motion for Leave to File a Second Amended Counter-Claim

San Juan County seeks leave to file a second amended counter-claim setting forth two causes of action against the United States. First, it seeks to allege a cause of action for a Quiet Title Act claim against the United States. Second, it seeks a declaration that San Juan County, "[a]s owner of the rights-of-way for D0507, D0510, D0511, D0514, D0516, and D0518, San Juan County has the right to conduct maintenance activities within the scope of the right-of-way" and that the United States has "no authority to interfere with activities conducted by the County within the scope of its R.S. 2477 rights-of-way." (San Juan County's Proposed Second Amended Counter-Claim Against the United States, attached as Ex. 1 to Mot. for Leave to File San Juan

County's Second Amended Counter-Claim, at p. 7 ¶ 32 and p. 8 ¶ 2.)

This court may properly deny a motion to amend based on "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party [and] futility of amendment." Foman v. Davis, 371 U.S. 178, 182 (1962). The court denies San Juan's motion based on futility, undue delay, and undue prejudice. It is nothing more than a collateral attack on the court's June 25, 2001 ruling.

On July 20, 2000, the court dismissed San Juan County's first amended counter-claim without prejudice and granted it leave to file an amended counter-claim. Three and a half years later, after the court held that San Juan County did not have valid R.S. 2477 rights-of-way, San Juan argues that it has good cause to bring the proposed counter-claim.

As both SUWA and the United States point out, there is no legitimate basis for San Juan County's request to filed a second amended counter-claim "when the entire factual predicate for that claim – valid R.S. 2477 rights-of-way – has already been decided against San Juan." (Pls.' Opp'n to Mot. for Leave to File Second Amended Counterclaim at 2.) See also Kinscherff v. United States, 586 F.2d 159, 160 (10th Cir. 1978) (per curiam) ("An attempt to remove a cloud from title [under the Quiet Title Act] presupposes that the [claimant] has some title to defend"). Giving leave to San Juan would be futile because, absent R.S. 2477 rights, the County's requested relief (that is, a statement that the BLM has no authority to interfere with the County's activities conducted within the scope of those rights-of-way) could not be granted.

Also, San Juan's Motion is untimely. San Juan claims that it has reason for waiting so long to file its request. First, it claims that the court did not have jurisdiction over the case while the June 25, 2001 Order was on appeal to the Tenth Circuit for two years, so that period of time

was unavailable for filing the request for leave. Second, San Juan claims that other matters took up the time, particularly "SUWA's motion for summary judgment and the legal significance of the administrative determinations [which] were the focus of this lawsuit." (San Juan County Mem. in Support of Mot. for Leave at p. 4 ¶ 11.) As SUWA noted, "[t]he filing of a dispositive motion by one party, on specified issues, does not, of course, stay other proceedings and claims in a case." (Pls.' Opp'n to the Mots. of San Juan County at 9 (Dkt. No. 395).) Also, an interlocutory appeal does not stay all proceedings in the district court. See, e.g., Garcia v. Burlington N. R.R. Co., 818 F.2d 713, 721 (10th Cir. 1987) ("when an interlocutory appeal is taken, the district court retains jurisdiction to proceed with matters not involved in that appeal"); see also Century Laminating, Ltd. v. Montgomery, 595 F.2d 563, 567 (10th Cir. 1979) ("An attempt to appeal a non-final decision of a district court . . . is a nullity and does not divest the trial court of its jurisdiction"). San Juan has not provided a valid reason for waiting more than three years to file its request.

San Juan claims that the other parties will not be prejudiced if the court grants the motion because "the facts and law at issue are well-developed and will not require substantial new discovery to resolve." (Id. at 6.) Given the futility of San Juan's proposed filing, the amount of time that has passed in this matter (over seven years), and the procedural status of the case (it is on the verge of finality), the interests of justice will be served by *denying* San Juan's motion in order to avoid undue prejudice to the other parties.

For all of the foregoing reasons, San Juan County's Motion for Leave to File a Second Amended Counterclaim is DENIED.

5. San Juan County's Motions for Relief from the Court's June 25, 2001 Order

San Juan County filed two Motions for Relief, one on October 1, 2003, and one on November 3, 2003. San Juan County's October 1, 2003 Motion for Relief seeks a different outcome than what San Juan County requests in its November 3, 2003 Motion for Relief.

In its October 1, 2003 Motion for Relief, the County seeks "relief, by revision or clarification, from the Court's June 25, 2001, [sic] Order (DK #350) to the extent it purports to award relief to the Southern Utah Wilderness Alliance ("SUWA") defeating San Juan's property interest in an RS 2477 right-of-way for the six roads at issue herein." (San Juan County's Oct. 1, 2003 Mot. for Relief at 2 (Dkt. No. 386) (emphasis in original).) In its November 3, 2003 Motion for Relief, the County "requests the Court to set aside or reverse the BLM R.S. 2477 Administrative Determination(s) San Juan County Claims . . . and to the extent the Court deems appropriate, vacate, revise or clarify the Court's June 25, 2001, [sic] Order (Dk #350)." (San Juan County's Nov. 3, 2003 Mot. for Relief at 2 (Dkt. No. 400).)

San Juan's Motions are predicated on a mistaken interpretation of the Order and the applicable law. Also, San Juan raises the same arguments that were rejected by this court three years ago. San Juan County presents no compelling reason to re-visit the June 25, 2001 Order. Its Motions for Relief are DENIED.

B. Motions to Strike

1. Motions to Strike San Juan County's November 3, 2003 Motion for Relief

On November 3, 2003, San Juan County filed a Motion for Relief from the court's June 25, 2001 Order. The cutoff date for filing of motions was October 1, 2003. (See July 22, 2003 Minute Entry (Dkt. No. 371) (directing counsel to file motions no later than September 22,

2003); Sep. 18, 2003 Order (Dkt. No. 379) (granting extension for filing motions to October 1, 2003).) SUWA and the United States base their motions to strike on the fact that the San Juan County Motion for Relief was filed one month after the deadline. (See Plaintiffs' Mot. to Strike San Juan County's Untimely Mot. for Relief from June 2001 Order (Dkt. No. 408); United States' Objection and Mot. to Strike San Juan County's "Mot. for Relief" Filed November 3, 2003 (Dkt. No. 409).)

Given that San Juan County's Motions for Relief are denied, SUWA's and the United States' Motions to Strike San Juan County's November 3, 2003 Motion for Relief are DENIED AS MOOT.

2. Motion to Strike Kane and Garfield Counties' Reply Memorandum

The United States targets a reply memorandum filed by Kane and Garfield Counties in connection with their request that the court grant a permanent injunction against Kane and Garfield Counties. The United States objects on the basis that the memorandum was not limited to rebuttal of matters raised in the United States' opposition memorandum. (See United States' Objection and Mot. to Strike "Reply Memorandum of Kane and Garfield Counties To Memorandum of BLM" (Dkt. No. 414).)

Kane and Garfield Counties do raise matters in their reply memorandum that go beyond the scope of the United States' opposition memorandum. For example, the Counties attached approximately 60 pages of exhibits and raised two points unrelated to their request for injunctive relief: (i) "BLM's Motion [for Summary Judgment] is Fundamentally Improper and Relief from the Court's June 25, 2001 Order Should be Granted," and (ii) "If Relief from the Court's Prior Order Is Not Granted, the Preferable Form of an Implementing Order Would Now Appear To Be

a Spare Declaration." (Kane and Garfield Counties' Reply Mem. (Dkt. No. 404) at 4.)

The reply memorandum is improper. See DUCivR 7-1(b)(3) ("A reply memorandum must be limited to rebuttal matters raised in the memorandum opposing the motion"); see also DUCivR 7-1(a) ("Failure to comply with the requirements of this section may result in sanctions that may include (i) returning the motion to counsel for resubmission in accordance with this rule, (ii) denial of the motion, or (iii) other sanctions deemed appropriate by the court") (emphasis added). The United States' motion to strike is GRANTED.

ORDER

Based on the foregoing reasons, and for the additional reasons set forth in the court's Order of June 25, 2001, the court orders as follows:

1. Attorney Barbara Hjelle's notice of withdrawal as counsel is hereby formally acknowledged and approved.

2. SUWA's Motion for Entry of Final Judgment is GRANTED. Specifically, the court orders as follows:

a. SUWA's request for declaratory relief is GRANTED, and the court declares that:

i. the Counties do not have R.S. 2477 rights-of-way on fifteen of the sixteen routes at issue in the court's June 25, 2001 Order (that is, all routes except for the Skutumpah route in Kane County); and

ii. Kane County's construction work and/or proposed construction work on the Skutumpah route exceeded the scope of that right-of-way.

b. For the reasons set forth above, and for the reasons set forth in SUWA's Motion for Entry of Final Judgment, SUWA's remaining claims are dismissed with prejudice.

3. The United States' Motion for Summary Judgment on Claims for Declaratory Relief is GRANTED. Specifically, the court orders as follows:

a. The United States' request for declaratory relief is GRANTED, and the court declares that:

i. the Counties' actions at issue in this case did not fall within any established right-of-way and were not authorized by the BLM; and

ii. the Counties' actions at issue in this case, on public land managed by the BLM without the BLM's authorization, violated FLPMA and constituted "unauthorized use" trespass under applicable federal regulations.

b. For the reasons set forth above, and for the reasons set forth in the United States' Motion for Summary Judgment on Claims for Declaratory Relief, all remaining claims of the United States are dismissed with prejudice.

4. Kane and Garfield Counties' Motion seeking a permanent injunction against themselves is DENIED.

5. San Juan County's Motion for Leave to File a Second Amended Counter-Claim is DENIED.

6. San Juan County's October 1, 2003 Motion for Relief from the court's June 25, 2001 Order is DENIED.

7. San Juan County's November 3, 2003 Motion for Relief from the court's June 25, 2001 Order is DENIED.

8. SUWA's and the United States' Motions to Strike San Juan County's November 3, 2003 Motion for Relief are DENIED as moot.

9. The United States' Motion to Strike Kane and Garfield Counties' Reply Memorandum is GRANTED. The court orders the clerk of the court to strike the Reply Memorandum of Kane and Garfield Counties to Memorandum of BLM (Docket No. 404).

IT IS SO ORDERED.

DATED this 23 day of February, 2004.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

alt

United States District Court
for the
District of Utah
February 24, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:96-cv-00836

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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