

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-680-JLK-AP

SAN LUIS VALLEY ECOSYSTEM COUNCIL, and
CONEJOS COUNTY CLEAN WATER, INC.,

Plaintiffs,

v.

UNITED STATES BUREAU OF LAND MANAGEMENT, an agency of the U.S.
Department of Interior, and
ANDREW ARCHULETA, in his official capacity as Field Manager, San Luis Valley
Field Office, Bureau of Land Management,

Federal Defendants.

ORDER

KANE, J.

This administrative appeal is before me on the Court's appellate (AP) procedures docket for pre-merits case management and briefing. In accordance with the parties' Joint Case Management Plan (Doc. 10), the government filed the administrative record (Doc. 11) on July 18, 2014. Amid disputes regarding the legibility of certain documents and the omission of others, the government filed a Supplemental Administrative Record (Doc. 12), on September 9, 2014.

On September 17, 2014, Plaintiffs filed their own Motion to Supplement the Administrative Record (Doc. 13) seeking two very different forms of relief. The first is a standard request to supplement the record with "extra-record evidence," i.e., evidence

Plaintiffs contend *should* have been considered by the agency before authorizing the drilling and development activities at issue but was not. The second is the somewhat novel request for an *ex ante* legal determination that the government’s September 9th supplement is also “extra-record evidence,” i.e., an effective “admission” that the materials lodged were not considered by the agency at the time it made the relevant drilling and development decisions. I have reviewed the Motion carefully and am disinclined toward either form of relief. Given the potential impact of both rulings on briefing and the issues argued on appeal, I will defer to the merits judge ultimately charged with a ruling on the appeal and direct the Clerk to remove the case from the AP docket.

Under the Court’s local rules of practice, D.C.COLO.LAPR 1.1. *et seq.*, the AP judge manages an administrative appeal through briefing, after which it is returned to the Clerk’s Office to be drawn to a judge like any other civil case under D.C.COLO.LCiv.R 40.1. *See* Untangling Federal Administrative Appeals Practice in the District of Colorado, 42 Colo. Law. 31 (March 2013).¹ In some appeals – particularly those from informal agency decisions where there is no formal record of the administrative proceedings below – this pre-briefing case management often includes challenges to the scope and composition of the administrative record lodged in the first instance by the agency

¹ Available on the Court’s website at http://www.cod.uscourts.gov/Portals/0/Documents/JLK/jlk_CH-KR-AP-docket-article-03-2013-Colo-Lawyer.pdf.

appellant. *Id.* at 35. When those disputes are tangential or procedural, they are easily handled on the AP docket with little or no impact on the substantive merits of the appeal itself. In some instances, however, those disputes are sufficiently intertwined with the merits of the underlying controversy that prudence suggests the AP judge refrain from resolving them to avoid binding the merits judge to a ruling which he or she may view differently.² While the instant dispute appears less substantive than others, I leave it for the merits judge to decide.

For the foregoing reasons, this case is REMITTED to the Clerk for immediate random assignment to a merits judge under D.C.COLO.LCiv.R 40.1. The parties are reminded that the case remains an administrative appeal under the Court's Local Appellate (LAP) Rules and that briefing and other pre-merits procedures remain governed by the LAP Rules and the operative Joint Case Management Plan.

Dated January 16, 2015.

s/John L. Kane
SENIOR U.S. DISTRICT JUDGE

² There are times a record dispute initially appears resolvable on the AP docket without unduly tying the hands of a subsequent merits judge, but later reveals itself to be much more substantive. The LAP rules do not preclude the AP judge from exercising his inherent authority under those circumstances to seek permission from the Chief Judge to retain the case.