

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SEP 17 2003

PATRICK FISHER
Clerk

ASHLEY CREEK PHOSPHATE
COMPANY,

Plaintiff-Appellant,

v.

CHEVRON CORPORATION;
CHEVRON U.S.A., INC.; CHEVRON
PIPE LINE COMPANY; CHEVRON
CHEMICAL COMPANY; CHEVRON
INDUSTRIES, INC.; SF PIPELINE
LIMITED COMPANY;
SF PHOSPHATES LIMITED
COMPANY; FS, INC.; FARMLAND
INDUSTRIES, INC.; J.R. SIMPLOT
COMPANY,

Defendants-Appellees.

No. 01-1074
(D.C. No. 99-M-2099)
(D. Colo.)

AGRIUM U.S., INC.,

Real Party in Interest-
Appellee.

ORDER AND JUDGMENT *

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before **MURPHY** and **PORFILIO** , Circuit Judges, and **BRORBY** , Senior Circuit Judge.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff Ashley Creek Phosphate Company (Ashley Creek) appeals the district court's orders relating to discovery of information from the real party in interest, Agrium U.S., Inc. (Agrium). The disputed discovery materials were relevant to the principal litigation between Ashley Creek and the defendants, filed in a Utah federal court. This court has resolved all claims in the principal litigation. Ashley Creek Phosphate Co. v. Chevron USA, Inc., 315 F.3d 1245 (10th Cir. 2003), petition for cert. filed, 71 U.S.L.W. 3760 (U.S. Apr. 21, 2003) (No. 02-1758). As a result of that opinion, there are no claims pending between the principal litigants, and thus, no reason to pursue discovery from Agrium. Defendants and Agrium maintain that this appeal is moot. Ashley Creek responds that the appeal is not moot because its petition for a writ of certiorari has not been ruled on by the Supreme Court. Rather, Ashley Creek maintains that the appeal

should be abated pending a ruling on its certiorari petition. All parties agree that the appeal is moot unless the Supreme Court grants certiorari.

We have determined that abating this appeal pending the Court's adjudication of the certiorari petition would be an unnecessary burden on judicial resources. Because we are confident that our holdings in the principal litigation are correct and will not be reviewed by the Supreme Court, we conclude that the appeal is moot and should be dismissed.

Appeal DISMISSED.

Entered for the Court

Michael R. Murphy
Circuit Judge