

August 24, 2005

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

PATRICK FISHER
Clerk

SIERRA CLUB; MINERAL POLICY
CENTER,

Plaintiffs - Appellees,

v.

EL PASO GOLD MINES,

Defendant - Appellant.

No. 03-1236

(D. of Colo.)

(D.C. No. 01-PC-2163 (OES))

ORDER AND JUDGMENT *

Before **MURPHY** , **McKAY** , and **TYMKOVICH** , Circuit Judges.

The Sierra Club and the Mineral Policy Center (“Plaintiffs”) filed suit against El Paso Gold Mines, Inc. (“EPGM”) for alleged violations of the Clean Water Act. The United States District Court for the District of Colorado entered judgment against EPGM and directed that entity to take certain actions, including the reimbursement to Plaintiffs for the attorneys’ fees and costs they incurred in

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

prosecuting the case. An appeal was taken from that judgment by EPGM and that appeal was assigned Case No. 03-1105.

Subsequently, the District Court entered an order on May 2, 2003 assessing a specific amount of attorneys' fees and costs to be awarded. EPGM filed a notice of appeal from that order and this appeal, Case No. 03-1236, was opened. In this appeal, EPGM argues simply that if the court reverses the judgment of the District Court in Case No. 03-1105, then Plaintiffs may no longer be prevailing parties and that the District Court's award of attorneys' fees and costs in this appeal must also be reversed.

In an opinion issued today in Case No. 03-1105, we have reversed the District Court's entry of judgment and have remanded for additional proceedings. *See Sierra Club v. El Paso Gold Mines, Inc.*, ___ F.3d ___ (10th Cir., August __, 2005). Because of that decision, the fee dispute in this appeal is subject to reconsideration by the District Court. We accordingly REVERSE the District Court's order of May 2, 2003 regarding the assessment of attorneys' fees and costs and REMAND to the District Court for further proceedings relating to those issues consistent with the judgment of this court entered in Case No. 03-1105 and

any further proceedings of the court.

ENTERED FOR THE COURT,

Timothy M. Tymkovich
Circuit Judge