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Colorado Oil and Gas Association v. City of Fort Collins
Case No. 2013CV31385

JOINT MOTION FOR CERTIFICATION OF FINAL JUDGMENT PURSUANT TO C.R.C.P 54(b)

Exhibit A

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: November 18, 2014 CASE NUMBER: 2014CA1991
Larimer County 2013CV31385	
Plaintiff-Appellee: Colorado Oil and Gas Association, **v.** **Defendant-Appellant:** City of Fort Collins Colorado, **and** **Intervenors-Appellants:** Citizens for a Healthy Fort Collins, Sierra Club, and Earthworks.	Court of Appeals Case Number: 2014CA1991
ORDER to show cause	

TO: THE PARTIES

Upon consideration of the notice of appeal by proposed intervenor Citizens for a Healthy Fort Collins, the motion to intervene, and the request for an extension of time to respond, the Court DEFERS ruling and ENTERS the following Order:

From the notice of appeal filed by City of Fort Collins, it appears that appellant is seeking review of a district court order granting summary judgment on August 7, 2014. However, it also appears that this court lacks jurisdiction over this appeal because a final, appealable judgment resolving all claims between all

Exhibit A

parties has not yet entered. *See* C.A.R. 1(a)(1); § 13-4-102(1), C.R.S. 2014; *see also* C.R.C.P. 54(b); *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982).

Specifically, the district court order of September 17, 2014 dismissed the second claim without prejudice. Dismissal of a claim without prejudice does not constitute a final judgment for purposes of appeal because the factual and legal issues underlying the dispute have not been resolved. C.R.C.P. 41(a)(2); *District 50 Metro. Recreation Dist. v. Burnside*, 157 Colo. 183, 186-87, 401 P.2d 833, 835 (1965); *Brody v. Bock*, 897 P.2d 769, 777 (Colo. 1995). Moreover, allowing the appeal of claims dismissed with prejudice while other claims have been dismissed without prejudice may permit an appeal that is an end-run around the final judgment rule since the claims voluntarily dismissed without prejudice may be renewed. *See e.g. Emmitt v. Dickey*, 188 F. App'x. 681, 683 (10th Cir. 2006); *Rabbi Jacob Joseph Sch. v. Province of Mendoza*, 425 F.3d 207, 210 (2d Cir. 2005).

To the extent that the order of September 17, 2014 is to construed as a C.R.C.P. 54(b) certification of the August 7, 2014 district court order, it does not contain the required express determination "that there is no just reason for delay and . . . express direction for the entry of judgment." Where the express language required by the rule does not appear in the order, the appeal must be dismissed. *See* C.R.C.P. 54(b); *Blackburn v. Skinner*, 156 Colo. 41, 42, 396 P.2d 968, 969

(1964). Therefore, the Court ORDERS appellant to show cause, in writing and within 14 days, why this appeal should not be dismissed without prejudice for lack of a final, appealable order.

Failure to respond to this Order within 14 days will result in the dismissal of the appeal without further notice to the parties.

The Court will address the motion to intervene if the jurisdictional issue raised in this Order is resolved.

BY THE COURT

jb/sa