

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**COAL RIVER MOUNTAIN WATCH, et
al.,**

Plaintiffs,

v.

**S.M.R. JEWELL, Secretary of the United
States Department of the Interior, et al.,**

Defendants.

Civil Action No. 08-02212 (BJR)

**MEMORANDUM DECISION AND
ORDER OF DISMISSAL**

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This case addresses a rule published by the Office of Surface Mining Reclamation and Enforcement (“OSM”) of the U.S. Department of the Interior (“DOI”) entitled “Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams,” 73 Fed. Reg. 75,814 (Dec. 12, 2008) (hereinafter “2008 Rule” or “Rule”). The 2008 Rule governs coal mining operations in and near streams.

The plaintiffs (“Coal River Plaintiffs”) are nine environmental groups. The defendants are S.M.R. Jewell, Secretary of the United States Department of the Interior, and Gina McCarthy, Administrator of the United States Environmental Protection Agency (collectively, the “Federal Defendants”). In addition, the National Mining Association (“NMA”) has intervened as a defendant in the case. Before the court are the cross-motions for summary judgment filed by the Federal Defendants and the Coal River Plaintiffs. NMA has filed a response to the cross-motions for summary judgment.

The Coal River Plaintiffs request that the court vacate both the 2008 Rule and the Environmental Protection Agency’s concurrence in that Rule. They contend that in

promulgating the 2008 Rule, OSM violated the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, and the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”), 30 U.S.C. §§ 1201-1328. In addition, the Coal River Plaintiffs assert that the Environmental Protection Agency violated the APA and the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, when it gave OSM its concurrence in the 2008 Rule. The Federal Defendants argue that all of the Coal River Plaintiffs’ claims should be dismissed as moot, because the Federal Defendants have conceded in a different case, *National Parks Conservation Association v. Jewell*, Civil Action No. 1:09-00115, that the 2008 Rule should be set aside based on OSM’s failure to consult with the Fish and Wildlife Service.

Given the court’s ruling this day in *National Parks Conservation Association v. Jewell*, in which the court vacated the 2008 Rule and remanded the matter to OSM, there is no further relief that the court can grant in this case. Therefore, the case is moot and is dismissed. Accordingly, it is hereby

ORDERED that the Coal River Plaintiffs’ and the Federal Defendants’ cross-motions for summary judgment are STRICKEN and this case is DISMISSED.

SO ORDERED.

February 20, 2014



BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE