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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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BNSF Railway Co., )

No. 07-8068-PCT-PGR

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Plaintiff, )

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vs. )

**ORDER**

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Coconino Land and Cattle LLC )

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Defendant. )

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Currently before the Court is BNSF’s Motion to Compel Disclosure (Doc. 117) and Partial Withdrawal of Motion to Compel Disclosure and Request for Fees (Doc. 120). In its Motion to Compel, BNSF requested a Court order to discover the scope of relief Coconino sought regarding the use of the Maintenance Road so BNSF can prepare for trial on this issue. BNSF contends that Coconino refused to provide clear, unequivocal answers. According to the documents filed, approximately one week after Coconino responded to BNSF’s motion to compel, Coconino sent BNSF a letter partially complying with BNSF’s discovery requests. Coconino maintains that it will only seek to use BNSF’s Maintenance Road to support subdivision of the Dirty Smith Property into five residential parcels. Because Coconino has now provided the information BNSF was seeking, BNSF withdraws its request for an order compelling disclosure, but BNSF maintains the request for fees.

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Although it is within the Court's inherent powers to award the Plaintiff reasonable attorney’s fees under Fed.R.Civ.P.37(a)(5)(A), the Court declines to do so at this time.<sup>1</sup>

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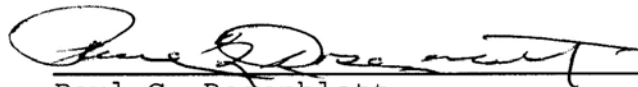
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<sup>1</sup> The Court has not found, at this time, that the fees requested by Plaintiff are reasonable.

1 Since this matter remains active and has not proceeded beyond the summary judgment phase,  
2 it is still possible that the case could settle or resolve itself in a manner inconsistent with the  
3 award of said fees. As such, the Court denies the Plaintiff's present motion without  
4 prejudice. The Court will address attorney's fees upon final resolution of this case.<sup>2</sup>

5 IT IS HEREBY ORDERED DENYING without prejudice BNSF's Motion to Compel  
6 Discovery and for Attorney's Fees.<sup>3</sup> (Doc. 117.)

7 DATED this 15<sup>th</sup> day of March, 2010.

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11 Paul G. Rosenblatt  
12 United States District Judge  
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24 <sup>2</sup> Counsel is advised that generally, this Court does not resolve motions for attorneys  
25 fees until the final resolution of the case. Furthermore, counsel is reminded to call chambers  
26 prior to filing written motions regarding any other discovery disputes.

27 <sup>3</sup> The Court recognizes BNSF's withdrawal of the substantive issues and notes that  
28 the remaining issue is solely the question of attorney's fees.