

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
MAGISTRATE JUDGE GUDRUN J. RICE

Civil Action No. 07-cv-02336-JLK-GJR

GARY KRAMMES,

Plaintiff,

v.

COLORADO DIVISION OF WILDLIFE OFFICERS:

JAMES ROMERO,
MICHAEL BLANCK,
BILL DeVERGIE,
MIKE BAUMAN,
TREVOR BALZER, and
JASON TROUSDALE,

Defendants.

RECOMMENDATION OF MAGISTRATE JUDGE

This matter comes before the court on the Defendants' Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim and Motion to Stay Proceeding during the pendency of this Motion. (Doc 4).

For the reasons set forth below I recommend that this Motion to Dismiss and to Stay Proceedings be denied as moot.

STATEMENT OF THE CASE

On October 23, 2006 the Plaintiff filed a complaint and jury demand in the District Court for Moffat County, Colorado. (Doc. 1-1)

On September 24, 2007 the Defendants filed, in the District Court for Moffat County, a Motion to Dismiss for lack of subject matter jurisdiction and failure to state a

claim and Motion to Stay Proceedings during the pendency of the Motion. (Doc. 1-18)

On October 15, 2007 the Plaintiff filed, in the District Court for Moffat County, a response to the Defendants' Motion to Dismiss and Stay Proceedings. (Doc. 1-23)

On November 7, 2007 the case was removed to the United States District Court for the District of Colorado. (Doc. 1)

The Defendants' Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim and Motion to Stay Proceeding during the pendency of the Motion, filed in the District Court for Moffat County, appear on this court's docket as a pending motion to dismiss, which motion to dismiss has been referred to the Undersigned.

By minute order dated January 18, 2008 the Defendants were given until February 4, 2008 to reply to the Motion to Dismiss and to Stay Proceeding. (Doc. 15)

However, by Order also dated January 18, 2008 the Plaintiff's Motion for leave to amend the complaint was granted. (Doc. 16) The amended complaint was entered in this case as though filed on October 22, 2007. (Doc. 16)

On November 20, 2007, the Defendants responded to and filed their answer to the Plaintiff's amended complaint in the United States District Court for the District of Colorado. (Doc. 7)

The amended complaint filed by the Plaintiff and the answer to the amended complaint filed by the Defendants are now pending before this court. Accordingly, the Motion to Dismiss the original complaint and to Stay Proceeding, filed by the Defendants in the District Court for Moffat County, is now moot.

I therefore recommend that the Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim and Motion to Stay proceedings during the pendency of the motion (Doc. 4 and Doc.1-15) filed by the Defendants in the District Court for Moffat County, before this case was removed to the United States District Court for the District of Colorado, be denied as moot.

FURTHER, IT IS ORDERED that pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed.R.Civ.P. 72(b), the parties have 10 days after service of this recommendation to serve and file specific, written objections. A party's failure to serve and file specific, written objections waives *de novo* review of the recommendation by the district judge, Fed.R.Civ.P.72(b); *Thomas v. Arn*, 474 U.S. 140, 147-48 (1985) and also waives appellate review of both factual and legal questions. *In re Key Energy Resources, Inc.*, 230 F.3d 1197, 1199-1200 (10th Circuit 2000). A party's objection to this recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review. *United States v. One Parcel of Real Property*, 73 F.3d 1057, 1060 (10th Circuit 1996).

DATED this 5th day of February, 2008.

FOR THE COURT:

s/ Gudrun J. Rice

Gudrun J. Rice
U.S. Magistrate Judge