

Ecosystem Management Coordination



Court Decisions

1. Mining & Land Use | Region 9

The Western District of Pennsylvania dismissed a trespass lawsuit concerning oil and gas drilling on the Allegheny National Forest in *Duhring Resource Co. v. USA*. The court based its decision on the plaintiff failing to show a tangible physical injury to or loss of the underlying oil/gas/estate due to the agency preventing their access to their underground mineral rights. **Merely delaying the owner's ability to extract the oil and gas by not giving unfettered access to the surface of the land, according to the court, does not give rise to liability for damages** in tort under Pennsylvania laws. (15-289, W.D. Pa.)

Litigation Update

1. Nothing to report.

New Cases

1. Mining | Region 2

Environmental groups filed suit in the District of Colorado challenging the proposed expansion of the West Elk Mine on the Grand Mesa, Uncompahgre, and Gunnison National Forest in *High Country Conservation Advocates, et al. v. Forest Service, et al.* On December 11, 2017, the agency consented to the modification to the West Elk underground mine which would expand the mine, according to the complaint, into 1,700 acres of the Sunset/Pilot Knob Roadless area and would include the bulldozing of 6 miles of road and the construction of 10 drilling pads. Plaintiffs claim the agency's approval of this expansion violates the National Environmental Policy Act (NEPA). Plaintiffs claim the agency's NEPA analysis fails to:

- Consider a range of alternatives which would protect the Sunset/Pilot Knob Roadless Area;
- Succinctly describe wildlife habitat, water resources, and vegetation located in the mine expansion area;

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- Adequately analyze the climate impacts the additionally mined coal will have; namely that cheap, new coal from the mine will lead to more greenhouse gas emissions;
- Take a “hard look” at the socioeconomic impacts of the lease modifications by overstating the benefits and understating the costs
- Respond to Plaintiffs’ expert report on the impacts of the lease modifications;
- Reduce methane emissions in the lease modifications; and
- Take a “hard look” at the modification’s impacts on wildlife through habitat fragmentation.

(17-3025, D. Colo.)

Notices of Intent

1. Clean Water Act (CWA) Tahoe NF | Effluent from the Klondike, Dutch, and Telegraph Tunnel Mines
 The Forest Service received a notice of intent to sue (NOI) from California River Watch which states the agency is violating the Clean Water Act (CWA) through discharges of contaminated effluent from the Klondike, Dutch, and Telegraph Tunnel Mines on the Tahoe National Forest. The NOI alleges violations of National Pollutant Discharge Elimination System (NPDES) permits, including: 1) exceeding limitations for lead and cadmium, and 2) exceeding turbidity and ph.

Natural Resource Management Decisions Involving Other Agencies

1. Bureau of Land Management (BLM)

The 10th Circuit reversed and remanded the District of New Mexico decision to deny environmental groups’ motion to intervene on BLM’s side concerning Western Energy Alliance’s challenge to BLM’s Mineral Leasing Act (MLA) policies stating that the BLM is “holding too few oil and gas lease sales,” in *Western Energy Alliance v. Zinke, et al.* Parties not named in a lawsuit may intervene in a case if: 1) their application is timely; 2) the parties claim an interest relating to the subject of the action; 3) the parties’ interests may be impaired or impeded by the outcome of the case; and 4) the parties’ interests are not adequately represented by existing parties. The district court concluded the environmental groups failed to show the pending litigation had potential to harm their environmental interest or that the parties listed could not adequately represent their interests. The 10th Circuit, though, found differently.

The 10th Circuit concluded the environmental groups had two interests subject to the lawsuit. **One interest the court noted was the groups’ “record of advocacy’ for the protection of public lands** and a demonstrated concern for the damage to public lands caused by oil and gas development.” As this case could lead to a larger number of oil and gas leases, the court found the environmental groups had an obvious interest in the case. **The second interest the court recognized was the effort the environmental groups put into negotiating and litigating the regulations being challenged** by the plaintiffs in the case.

The 10th Circuit also concluded the “presently named parties cannot adequately represent the [environmental] group’s interests” as “the government cannot adequately represent the interests of a

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private intervenor and the interests of the public.” **As the government must consider multiple interests before moving ahead with any actions, future positions of the government are unclear. As such, the court concluded it could not be said that BLM’s interests match those of the environmental groups** such that the BLM could adequately represent the groups’ interests. (17-2005, 10th Cir.)

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