



**ASTON'S MINING LAW CASE REVIEWS™
& ENVIRONMENTAL LAW
MONITOR™**
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Aston's Complimentary Mining Law Case Review™ #16-08-04

Jurisdiction : U.S. / Colorado

Federal Dist Ct./ Colorado

**COLORADO ENVIRONMENTAL GROUP DENIED WILDLIFE STUDY AREA
INJUNCTION**

An environmental group brought an action seeking judicial review of the Bureau of Land Management's (BLM) approval of an application by National Fuels Corporation (NFC) to drill two gas wells and construct an extension to an existing access road in a wilderness study area (WSA). On review, the federal court upheld the BLM's findings to allow the drilling.

In *Colorado Environmental Coalition v. Bureau of Land Management*, 932 F.Supp.1247 (D.Colo. 1996), the National Fuel Corporation (NFC) intervened with the defendant BLM. In 1994-1995, NFC applied for a permit to drill on 2,518-acres leased to it by the BLM in Garfield County, Colorado. The BLM had originally granted the lease to NFC in 1970. NFC had drilled a gas well in 1977 which is still producing. Although the productive gas well is located on NFC's lease, it is not within the WSA. NFC's 1994 permit application sought to drill two more gas wells on a portion of their lease that fell within the Demaree Canyon WSA.

As a result of Congressional order, the BLM created the Demaree Canyon WSA under §603 of the Federal Land Policy and Management Act of 1976 (1988)(FLPMA). However, §701 of the FLPMA preserved "valid existing rights" to permit activity on mineral leases issued before the enactment of FLPMA in 1976. (NFC's mineral permit dated from 1970.)

The designation of the Demaree Canyon as a proposed wilderness study area by BLM required the preparation of an environmental impact statement (EIS). The resulting EIS recommended that Demaree Canyon not be included in the wilderness system due to the natural gas and other mineral values present. That recommendation was adopted by the Secretary of the Interior in October 1991, but remains unacted upon to date by Congress.

In 1995 an Environmental Assessment (EA) was completed and a Record of Decision (ROD) issued. The ROD determined that “the proposed action would not have a significant impact on the human environment” , i.e., a FONSI (a finding of no significant impact) . As a consequence, BLM issued the permit to drill to NFC.

BLM’s permitting action was appealed by the Colorado Environmental Coalition (CEC) which alleged failure to comply with the EIS requirement of the National Environmental Policy Act of 1969 (NEPA), and violation of the FLPMA’s §603 standard for mineral leasing on WSA lands. After BLM’s permitting action had been affirmed by the State Director and the Interior Board of Land Appeals (IBLA) , the CEC filed its complaint in 1996 for a temporary restraining order (TRO) in the federal district court. A TRO was issued in June 1996 preventing NFC from further work.

The Federal District Court of Colorado held: (1) those applicants holding existing mineral leases when FLPMA was enacted are exempt from the FLPMA standard regarding such leases in a wilderness study area; (2) the environmental organization failed to demonstrate that it was unreasonable for BLM to allow continued use of an existing access road serving a producing gas well in order to more fully develop the mineral lease; and (3) processing of the environmental studies by tiering occurred in a manner consistent with the NEPA regulations and agency policy in connection with the BLM’s finding of no significant impact (FONSI).

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