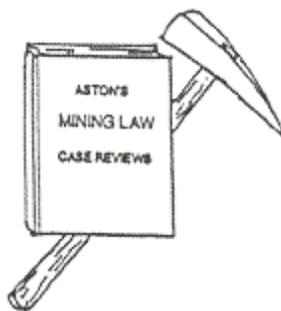


ASTON'S MINING LAW CASE REVIEWS™

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Jurisdiction- United States

Complimentary Example Case Review # 3

ENVIROMENTALISTS ALLOWED TO JOIN UTAH COAL LITIGATION

In litigation brought by the Utah Association of Counties, the complainants sought injunctive measures and a declaratory judgement to have declared illegal former President Clinton's Presidential Proclamation establishing the Grand Staircase Escalante National Monument reserving approximately 1.7 million acres of federal land in Southern Utah from public entry under the public land laws. Utah Association of Counties alleged that the creation of the monument was an illegal attempt by President Clinton and the Secretary of the Interior to prevent a proposed underground coal mine at Smokey Hollow, owned by Andalex Resources Corporation and located within the monument boundaries.

In June 1997, the Utah Association of Counties (hereafter, Utah Counties) filed its complaint alleging the Presidential Proclamation violated the separation of powers doctrine, exceeded powers vested in the President by the Antiquities Act of 1906 and failed to comply with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Administrative Procedure Act (APA). Utah Counties was joined in its complaint by the Mountain States Legal Foundation. In March 2000, the environmental intervenors (The Southern Utah Wilderness Alliance, The Wilderness Society, The Grand Canyon Trust, Escalante Canyon Outfitters, Inc., Escalante's Grand Staircase B&B/Inn, and Boulder Mountain Lodge) sought leave of court "to represent the interests of public interest organizations and individuals whose goals include protecting the nation's public lands and assuring their continued integrity in perpetuity." The district court held a hearing on the intervenors' motion and denied the intervention of the environmentalist associations. The environmentalists appealed.

In *Utah Ass'n. of Counties v. Clinton, et al*, U.S Appeals (10th Cir. July 10, 2001), the Appeals Court noted that the lower court had observed the lateness of the filing for intervention by the environmentalists, stating in its denial to the intervenors, ". . . you are late. You're two and a half years late." Thus, timeliness of the intervenors' filing became an issue.

The Federal Rules of Civil Procedure, 24(a), states the rule for intervention in an action:

an applicant may intervene as of right if: (1) the application is "timely";

(2) "the applicant claims an interest relating to the property or transaction which is the subject of the action"; (3) the applicant's interest "may as a practical matter" be

"impaired or impeded"; and (4) "the applicant's interest is [not] adequately represented existing parties."

In reviewing the lower court's decision, the Appeals Court found that the record indicated the case was far from ready for final disposition; no scheduling order had been issued, no trial date set, and no cut-off date for motions set. According to the district court docket, all that had occurred prior to the motion to intervene were document discovery, discovery disputes, and motions by defendants seeking dismissal on jurisdictional grounds. Consequently, the Appeals Court concluded, "In view of the relatively early stage of the litigation and the lack of prejudice to plaintiffs flowing from the length of time between the initiation of the proceedings and the motion to intervene, we conclude the request for intervention is timely."

As to the other issues under Fed. Rule of Procedure 24(a) of "the intervenor's interest", "impairment of interests", and "the applicant-intervenor's interest not adequately represented by the existing parties ", the Appeals Court concluded that the intervenor-environmentalists' interests would be impaired and that they were not adequately represented by the existing parties.

The Appeals Court vacated the District Court's denial of intervention for the environmentalists and remanded the application for intervention for compliance with its holding.
