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Court Decision Aids Uranium Lawsuit

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Efforts Also Underway For More Industry Accountability

TELLURIDE – A U.S. District Court judge ruled last week that conservation groups suing the U.S. Department of Energy for its decision to expand uranium mining on public lands near the Dolores River Canyon may question agency officials and obtain records related to its Uranium Leasing Program through the process of discovery in order to build their lawsuit.

“I find that some limited discovery is appropriate but reject the full range of discovery sought by Plaintiffs,” wrote U.S. District Court Chief Judge Wiley Y. Daniel, who both affirmed and rejected parts of a previous finding issued by U.S. Magistrate Judge Michael J. Watanabe that denied discovery.

While Daniel agreed that limited discovery was appropriate for the purpose of identifying site-specific actions taken by the DOE concerning leases, mining approvals or other activity to implement the program, he rejected a request for discovery concerning unspecified, non site-specific actions.

“This discovery request is too broad and would essentially constitute a fishing expedition on the part of Plaintiffs,” he wrote.

The groups, which include the Colorado Environmental Coalition, the Information Network for Responsible Mining, the Center for Native Ecosystems and the Center for Biological Diversity, welcomed the decision.

“This is a big victory for the Dolores and San Miguel rivers and a good sign for our litigation,” said Travis Stills of the Durango-based Energy Minerals Law Center, who is leading the litigation in a press release.

“Our main request was granted; it gives us the ability to conduct discovery and requires the government to answer our questions under oath and moves our comprehensive challenge forward,” he later explained in an interview.

In 2008 the groups sued the DOE for what they alleged was its failure to consider the environmental impacts of expanding the active leasing of 27,000 acres of public lands from 13 to as many as 38 individual lease tracts.

They maintained that uranium mining and milling resulting from the lease program will deplete Colorado River basin water and could pollute streams and rivers with toxic and radioactive waste products, potentially threatening downstream communities and fish and wildlife.

“Even small amounts of some of these pollutants, like selenium, can accumulate in the food chain and cause deformities and reproductive problems for endangered fishes, ducks, river otters and eagles,” said Josh Pollock of the Center for Native Ecosystems in a press release.

“It is irresponsible for the Department of Energy to put fish and wildlife at risk by rushing to approve numerous uranium mines without adequate protections to prevent pollution.”

The agency arrived at its decision in July 2007 after preparing an environmental assessment to evaluate its management alternatives for the future of the leasing program that included maintaining it at its existing level, expanding it, or discontinuing it.

At that time the DOE issued a Finding of No Significant Impact on the action, however the conservation groups’ lawsuit charges that the decision, and the analysis upon which it was based, inadequately evaluated soil, water, and habitat contamination threats as required by federal law.

“It basically says that the federal government failed to apply federal environmental laws when they took action to expand this program,” said Stills.

“It’s not only a decision on the probable impact of the leases themselves but a decision by the District Court to challenge the federal government’s ruling that there are no significant impacts,” said Hilary White of the Telluride-based conservation organization Sheep Mountain Alliance.

SMA is at the forefront of an opposition effort against the establishment of the nation’s first uranium mill in three decades near the lease program lands in Paradox Valley.

DOE representatives did not immediately respond to a request for comment.

Even as the expansion of uranium mining in Colorado is being challenged, conservation and citizen groups and elected officials are working to ensure that taxpayers do not pay to clean up contamination left behind by the uranium industry in the event of a new boom cycle.

State legislators including Rep. Buffie McFadyen (D-Pueblo West), Sen. Ken Kester (R-Las Animas) and Sen. Bob Bacon (D-Fort Collins) are expected to sponsor the new Uranium Processing Accountability Act in the coming weeks.

The legislation would: require operators to comply with all cleanup orders before new applications are processed; strengthen public oversight of cleanup and decommissioning bonding requirements; require operators to inform residents with registered wells in close proximity to groundwater contamination about threats to their water; and require operators to amend their operating license before accepting new sources of “alternate feed.”

“A company should clean up its toxic mess before being allowed to renew or expand its operations,” said Matt Garrington of Environment Colorado, which is spearheading the legislation with the Cañon City-based Colorado Citizens Against Toxic Waste.

The act is inspired in part by a March 2009 announcement by the Cotter Corp. of plans to resume

processing yellowcake uranium at its uranium mill in Freemont County just south of Cañon City in 2014.

In 1984 the U.S. Environmental Protection Agency listed the Cotter site as a Superfund hazardous waste site with groundwater contamination from uranium and molybdenum is still present.

Not presently operating, the mill went into standby mode in 2006.

“There has not been a legal tool for the state to require a more thorough cleanup on an ongoing basis,” said Freemont County Commissioner Mike Stiehl, whose own irrigation well has been contaminated by the mill operations, he said.

“You need to clean up your activities while you’re going.”

“It’s creating some accountability so we don’t leave taxpayers on the hook and pollution in the communities,” said Garrington.

At press time a call to the Cotter Corp. seeking comment had not been returned.

If adopted the UPAA would have no bearing on licensing for the proposed Piñon Ridge mill in Paradox Valley, but would require the remediation of any future contamination before renewing or expanding its operations, said Garrington.

The San Miguel County commissioners indicated at their Wednesday meeting their inclination to endorse the act, but postponed a formal decision until they can obtain more information.

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