



MINING: Judge upholds Obama mining curbs

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A federal judge ruled yesterday in favor of the Obama administration's efforts to limit uranium mining on 1 million acres near the Grand Canyon.

U.S. District Court Judge David Campbell in the District of Arizona ruled that while he believes a section of the Federal Land Policy and Management Act is unconstitutional, that doesn't invalidate large-scale withdrawals of land from new mining claims.

Plaintiffs including the National Mining Association and the Nuclear Energy Institute argued that the section allowing for a congressional resolution of disapproval for 5,000-acre-plus withdrawals is unconstitutional and, therefore, so are the withdrawals (E&ENews PM, Feb. 27, 2012).

Appointed by President George W. Bush in 2003, Campbell wrote that the "legislative veto, which provides that Congress can block withdrawals in excess of 5,000 acres through a resolution of both houses, is unconstitutional," but he added the "provision is severable from the grant of authority" used by Interior Secretary Ken Salazar in this case.

Campbell examined the law's legislative history and congressional intent in a lengthy ruling. He noted, "Congress specifically stated that '[i]f any provision of the Act or the application thereof is held invalid, the remainder of the Act and application thereof shall not be affected thereby.'"

His decision notes that Obama administration defendants "do not dispute that the provision permitting Congress to terminate a withdrawal by concurrent resolution is unconstitutional because it allows Congress to act without adhering to normal constitutional requirements."

The Interior Department has yet to comment on the ruling.

Environmental groups that intervened on behalf of Interior cheered the decision. While there are other issues pending in the overall litigation, they were worried about the constitutional portion the most.

Center for Biological Diversity public lands advocate Taylor McKinnon said, "Today's ruling protects not only the Grand Canyon's watershed, but millions of acres of other public land that have been withdrawn to protect natural values from destructive mining."

Earthjustice attorney Ted Zukoski said, "The uranium industry was hoping to cripple the Interior Department's ability to temporarily protect lands from destructive mining."

Campbell still has to decide on issues dealing with whether Interior followed the National Environmental Policy Act. Industry argues that the uranium mining that occurs around the Grand Canyon is safer than projects elsewhere and, therefore, preferable under NEPA.

The National Mining Association said in a statement, "NMA is disappointed in the ruling, but the case is not over. The matters related to NEPA and whether the withdrawal was arbitrary and capricious are still before the court."

Another case addressing the Grand Canyon mining withdrawal is moving forward in the U.S. Court of Federal Claims. Vane Minerals LLC filed suit in September seeking more than \$80 million in compensation and damages (Greenwire, Jan. 9).

Separately, Republicans on the House Natural Resources Committee have been investigating whether the administration followed proper procedure in issuing the withdrawal.