



Courthouse News Service

Greens Sue USA Over Colorado Coal Mine

By SAM REYNOLDS

DENVER (CN) - A pristine alpine landscape in western Colorado will become an industrial wasteland if a federally approved plan to expand coal mining is allowed, environmentalists claim in court.

WildEarth Guardians and the High Country Citizens' Alliance sued the U.S. Forest Service, the Bureau of Land Management and three top officials in Federal Court, challenging approval of the expansion of an underground coal mine into 1,700 acres of the Sunset Roadless Area.

Bear, mountain lions and goshawks live in the Sunset Roadless Area and hunters and hikers use it, according to the environmentalists' complaint.

WildEarth Guardians claims that expansion of the West Elk Mine "will clear cut forest, destroy and fragment habitat, displace wildlife, alter hydrology, and transform a natural forest into a developed area."

"The scars of construction will persist for decades, long after the mine has removed its coal and moved on," the complaint states.

"The Sunset Roadless Area is a 5,800 acre area of undeveloped aspen and spruce forests, beaver ponds and streams that hugs the west flank of 12,700-foot Mount Gunnison and the West Elk Wilderness in western Colorado," according to the complaint. "These roadless lands, managed by the U.S. Forest Service, are home to elk, black bear, and goshawk, and are enjoyed by hunters and hikers. Wildflowers abound in summer, and the area turns gold with the aspen leaves in the fall. Visitors can find stunning vistas of Mount Lamborn and the Raggeds, and smaller-scale wonders, like bear claw-marks high up in aspen, and chorus frogs in clear pools.

"In the last year, however, the Forest Service and the Bureau of Land Management made three interrelated decisions that will dramatically damage the Sunset Roadless Area within a matter of days. First, BLM and the Forest Service took action that culminated in March 2013 in the modification of two coal leases for the nearby underground West Elk Mine, owned by corporate giant Arch Coal. These 'Lease Modifications' allow the mine to expand into 1,700 acres of the Sunset Roadless Area. The Forest Service predicted mining coal within the lease modifications will result in the bulldozing of 6.5 miles of new road and the flattening of forest and hillsides to build 48 wells pads -16 well pads per square mile - in the roadless area. This construction will allow the mine to vent methane, a combustible gas.

"The second decision, by the Forest Service alone, modified the national Roadless Rule, which generally prohibits road construction in Forest Service-inventoried roadless areas such as the Sunset Roadless Area. On July 3, 2012, the Forest Service issued a final rule for Colorado Roadless Areas, superseding the national rule in this state. The Colorado Roadless Rule contains a loophole allowing road

construction for coal mining within 19,100 acres of roadless forest in the North Fork Valley, including the Sunset Roadless Area. Absent adoption of the Colorado Roadless Rule, the Forest Service could not have adopted a decision authorizing road construction for the West Elk Mine in the Sunset Roadless Area.

"Third, BLM and the Forest Service took action on June 27, 2013 to approve the Mine's 'Sunset Trail Area Coal Exploration Plan' within the lease modifications area. The exploration plan allows the mine to immediately bulldoze six miles of road up to 45 feet wide and scrape 10 well pads into the Sunset Roadless Area so that drill rigs can extract core samples, enabling the mine to evaluate the underground coal seam in preparation for mining the lease modifications area."

The environmental impact of the industrial activity will be devastating, the plaintiffs say.

"When coal in the lease modifications is mined, the Forest Service estimates that 1,701 acres of the 5,800-acre Sunset Roadless Area would be crisscrossed by methane drainage wells and associated well pads and roads. Because 99 percent of the lease modifications' acreage lies in the Sunset Roadless area, nearly all of the 48 methane drainage wells identified under the 'Reasonably Foreseeable Mine Plan' in the Final EIS [Environmental Impact Statement] will likely be located within the Sunset Roadless Area. The federal agencies project that the 6.5 miles of new roads necessary to drill and maintain the methane drainage wells will disturb approximately 24 acres of land in the Sunset Roadless Area. Expansion of the West Elk Mine into the Sunset Roadless Area would fragment wildlife habitat, destroy plant and wildlife communities, cause increased air pollution and erosion, diminish solitude, and significantly harm other resources in the Roadless Area. Aspen and spruce trees a century old or older will be logged; the U.S. Fish and Wildlife Service concluded that habitat may not recover its 'functionality' for some wildlife species for 30-40 years after the roads and well pads are decommissioned. The area's capability for addition to the preservation as wilderness would also likely be compromised due to the construction of roads, well pads, and clearcutting, some of which will occur within the lands identified as wilderness capable by the Forest Service just eight years ago."

WildEarth Guardians claims Uncle Sam's ruling were not just misguided, they were illegal.

"The lease modifications and exploration plan decisions must be set aside because each violates federal law meant to protect the environment," the complaint states. "The National Environmental Policy Act (NEPA) requires agencies to take a 'hard look' at the risks and consequences of agency actions before they are approved. Here, the BLM and Forest Service failed to take the required hard look. First, the agencies failed to disclose adequately the impacts of coal mining on adjacent lands that its lease modifications decision will unleash. Despite acknowledging that the mine would be unable to access or mine the 8.9 million tons of coal on adjacent lands without the lease modifications, the agencies' Final Environmental Impact Statement (EIS) fails to analyze the surface and other damage from mining on lands outside the leased area. Second, the lease modifications Final EIS fails to address the societal costs of mining and burning the coal within the lease modifications area. Third, the Final EIS fails to disclose the air pollution that will result from mining the lease modifications, failing to estimate the likely emissions of volatile organic compound (VOC) - pollutants that result in the formation of health-threatening smog. Fourth, the Final EIS fails to properly disclose the likely impacts of road and methane drainage well construction on the wilderness and roadless character of the Sunset Roadless Area. Finally, in approving the exploration plan, the agencies failed to fully disclose the environmental impacts of road well pad construction on recreation and wilderness character, or to analyze less damaging alternatives. The Forest Service also failed to comply with its NEPA obligations and regulations providing for public involvement, notice, and appeal prior to deciding to concurring in BLM's approval of the

exploration plan.

"In addition, the lease modifications and exploration plan decisions cannot rely on the Colorado Roadless Rule to permit road construction, because the Rule itself was adopted in violation of law. The Forest Service failed to comply with NEPA by failing to take a hard look at the impacts of the Rule's loophole permitting road construction for coal mining, which will allow half a billion tons of coal to be mined and burned that otherwise would stay in the ground.

"Because the Forest Service's and BLM's approval of the lease modifications and the exploration plan violate federal law, the agencies' decisions must be set aside, and any construction of roads or well pads allowed by those decisions must be enjoined."

Plaintiffs want the approvals enjoined under the National Environmental Policy Act, the Mineral Leasing Act, the Colorado Roadless Rule and the Healthy Forests Restoration Act.

They are represented by Edward Zukoski with Earthjustice in Denver.