

"The Forest Services acknowledges, and we have recognized, that mining rights may not be unreasonably restricted in the performance of Forest Service duties," the court concluded.

The Ninth Circuit opinion was by Judge Richard A. Paez and joined by Judges Pamela Ann Rymer and Thomas G. Nelson.

The Rogue River-Siskiyou National Forest consists of about 1.8 million acres located in Southwestern Oregon and Northern California.

By ROBERT C. COOK

*Text of the U.S. Court of Appeals for the Ninth Circuit's Siskiyou Regional Education Project v. U.S. Forest Service decision is available at <http://www.ca9.uscourts.gov/datastore/opinions/2009/05/07/06-35332.pdf>.*

## Mining

### BLM Ordered to Produce Added Documents About Impact of Colorado Uranium Leases

**T**he Bureau of Land Management wrongly withheld documents requested under the Freedom of Information Act by two environmental groups concerned about uranium mining on federal land in Colorado, a federal court held (*Information Network for Responsible Mining v. BLM*, D. Colo., No. 06-cv-2269, 4/28/09).

At issue are records BLM provided to the Department of Energy that the department used to prepare an environmental assessment for the federal Uranium Leasing Program in western Colorado.

Judge John L. Kane, of the U.S. District Court for the District of Colorado, ruled April 28 that BLM has not carried out its burden of showing that redacted material was properly withheld under the act's deliberative process privilege, known as FOIA Exemption 5.

The court ruled that BLM would have to produce additional records and justify to the court why they were not produced under FOIA.

It also held that BLM violated the Freedom of Information Act by failing to respond in a timely manner to the request for records, by failing to conduct a reasonable search for documents, and by withholding information without adequately demonstrating it was exempt from disclosure.

The Information Network for Responsible Mining (INFORM) and Colorado Environmental Coalition filed a July 13, 2006, request with BLM's Colorado State FOIA Officer.

The two groups sought records concerning the environmental assessment prepared by the Energy Department for the Uranium Leasing Program the department manages on government lands in western Colorado.

BLM administers many of the federally owned lands in the program.

Kane ruled as a matter of law that BLM's summary judgment motion was denied, but the summary judgment motion filed by INFORM was granted in part and denied in part.

The court relied on a U.S. Supreme Court case, *U.S. Department of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1 (2001), and a case from the U.S.

Court of Appeals for the 10th Circuit, *Trentadue v. Integrity Committee*, 501 F.3d 1215 (10th Cir. 2007)), which define the parameters of the deliberative process privilege.

**DOE Leases Land.** The Energy Department administers 38 lease tracts located in Mesa, Montrose, and San Miguel counties in Colorado, according to information posted by DOE.

In 2006, DOE said it was considering three environmental alternatives for how to run the leasing program over the next 10 years. Its "expanded program" would continue leasing 13 active tracts to the private sector for exploration and offer leases on up to 25 inactive tracts to the domestic uranium industry.

Its "existing program" alternative would allow continued leasing of the 13 currently leased tracts, and the 25 other sites would remain inactive.

The third alternative, the "no action" alternative, would allow existing leases to expire and return all the land to BLM.

The assessment was prepared in accordance with the National Environmental Policy Act to assess the environmental impact of program management strategies.

**BLM Ordered to Search for Records.** The court ordered BLM to conduct a search for the documents requested and to prepare a document known as a "Vaughn Index" to determine whether information must be disclosed.

The Vaughn Index, which is filed with the court as an affidavit, identifies each document withheld, states the exemption claimed, and explains how disclosure would damage the interests protected by the claimed exemption.

The court stated that if the Vaughn Index is inadequate to review the BLM claims of privilege, the court will review the withheld or redacted documents itself.

Kane stated that the 10th Circuit's *Trentadue* holding required him to disclose all information that could be segregated and disclosed without exposing the agency's deliberative process.

According to DOE, the Uranium Leasing Program began after World War II to ensure an adequate reserve of uranium and vanadium ores for the national defense.

"This was accomplished through various Public Land Order withdrawals. The Uranium Leasing Program was initiated to lease the withdrawn tracts of land to private industry to mine uranium and vanadium ores," DOE said.

By ROBERT C. COOK

*Text of the DOE Programmatic Environmental Assessment is available at [http://www.lm.doe.gov/documents/sites/uraniumleasing/ULM\\_EA.pdf](http://www.lm.doe.gov/documents/sites/uraniumleasing/ULM_EA.pdf).*

## Mining

### Corps of Engineers Suspends Mine Permit In Southwestern Virginia After EPA Request

**T**he U.S. Army Corps of Engineers on May 7 suspended a federal permit for A&G Coal Corp. to operate a surface mine in Wise County, Va., according to Southern Appalachian Mountain Stewards and Public Justice, two environmental groups that had sued the corps over the permit.

The permit suspension comes in the wake of an April 3 request by the Environmental Protection Agency for the U.S. Army Corps of Engineers to withdraw the A&G Coal permit and two others. EPA said the proposed projects require better consideration of Clean Water Act protections for streams adjacent to the mines (40 ER 874, 4/17/09).

A&G Coal's proposal calls for a 1,300-acre surface mine on Ison Rock Ridge that would result in more than 11 million cubic yards of rock and dirt filling three streams and nine valleys. Southern Appalachian Mountain Stewards said in a May 7 statement.

The two groups filed a lawsuit against the Corps of Engineers April 30 to challenge the permit (*Southern Appalachian Mountain Stewards v. U.S. Army Corps of Engineers*, E.D. Va., 2:09-CV-200RAJ, 4/30/09).

Officials from the Norfolk District of the Corps of Engineers and A&G Coal could not be reached for comment.

**Nationwide Permit Approval Questioned.** Jim Hecker, an attorney with Public Justice, said in a May 7 news release that the corps is unlikely to revive the permit. He also faulted the corps for approving the mine operation under Nationwide Permit 21, which covers mining.

"Both EPA's recent objection letter and a recent West Virginia court decision recognize that the impacts of mountaintop removal mines like this one are so large that they are ineligible for 'cookie-cutter,' nationwide permits. We now expect that, if A&G Coal wants to open this mine, it will have to obtain an individual permit, which will require much more rigorous environmental review," Hecker said.

The release added that a permit from the Virginia Department of Mines, Minerals, and Energy would also be required before mining could begin. The environmental groups urged the department to reject A&G Coal's state permit application.

By JEFF DAY

View the lawsuit filed against A&G Coal at [http://www.publicjustice.net/briefs/SAMSVAnninos\\_Complaint\\_043009.PDF](http://www.publicjustice.net/briefs/SAMSVAnninos_Complaint_043009.PDF)

## Brownfields

### EPA to Award Nearly \$112 Million in Grants For Cleanup, Land-Revitalization Projects

The Environmental Protection Agency is awarding \$111.9 million in grants to 252 applicants for new and ongoing cleanup and land-revitalization projects through its brownfields programs, EPA Administrator Lisa Jackson announced May 8.

The funding includes \$74.6 million from the EPA brownfields general program funds plus \$37.3 million from the American Recovery and Reinvestment Act (Pub. L. No. 111-5) of 2009, according to Jackson's announcement. The additional funds allowed the program to fund 146 grants that otherwise would not have been funded, according to EPA.

"Cleaning and reusing contaminated properties provides the catalyst to improving the lives of residents living in or near brownfields communities," Jackson said. "A revitalized brownfields site reduces threats to human health and the environment, creates green jobs,

promotes community involvement, and attracts investment in local neighborhoods."

**52 Communities Receive Grants.** According to EPA, communities in 46 states, four tribes, and two U.S. territories will use the grants to revitalize brownfields, former industrial and commercial sites where contamination is suspected or confirmed. The goal is "turning them from problem properties to productive business and community institutions," EPA said.

David Lloyd, director of the Office of Brownfields and Land Revitalization, said that delivering both recovery act and regular program funds to communities "will stimulate and accelerate the pace of cleanup and redevelopment of brownfields sites, and will create jobs . . . Communities, states, and tribes need this now more than ever."

Funds will be awarded during the summer of 2009, Lloyd said, after EPA regional offices negotiate cooperative agreements with grant recipients and approve their work plans.

The brownfields program began as an administrative program under EPA's superfund program, which enforces liability and cleanup of the country's most contaminated sites. The program was later authorized under the 2002 Small Business Liability Relief and Brownfields Revitalization Act; it provides some relief from liability for existing environmental contamination to developers and purchasers.

Assessment grants from stimulus funds, totaling \$25.8 million, will be used to conduct site assessment, planning, or remediation at brownfields sites, EPA said. In addition, \$41 million in assessment grants will be awarded from general program funds, EPA said.

**Three Categories of Grants Awarded.** Three revolving loan fund grants in the amount of \$4 million will be awarded from stimulus funds, and another \$18.6 million from general funds. The revolving loan funds capitalize local organizations that, in turn, offer "subgrants" to carry out cleanup activities.

Stimulus funds totaling \$7.5 million will provide cleanup grants to 39 projects; \$15 million will go to 77 other cleanup project grantees from general funds, according to EPA.

In all, 252 applicants were selected to receive 389 grants, 104 under stimulus funds totaling \$25.8 million, and 149 under general program funds totaling \$41 million, according to EPA spokeswoman Enesta Jones.

When availability of economic recovery funds for the brownfields program was announced in February, Lloyd said it had received about 700 applications by the November 2008 deadline for assessment, cleanup, and revolving loan fund grants. Therefore, he said, the additional funds would be awarded to applicants from that pool, rather than re-opening competition for the grant funds (40 ER 428, 2/27/09).

Lloyd said that "in the coming weeks," Jackson will announce additional Recovery Act funding for the brownfields job training grants program and for supplemental revolving loan funds.

The brownfields program encourages cleanup and redevelopment of an estimated 450,000 brownfields sites. Since its start, the program has awarded 1,449 assessment grants totaling more than \$337.3 million, 242 revolving loan fund grants totaling more than \$233.4