



Utah Federal Court Dismisses Environmental Groups' Lawsuit Challenging EIS-Level Oil and Gas Development Project in the Uinta Basin

By: [Andrew Glenn](#)

A recent court order from the United States District Court for the District of Utah largely dismantled several environmental groups' recent effort to halt oil and gas development by Gasco Energy, Inc. (Gasco) on valid existing federal oil and gas leases in the Uinta Basin.¹ The Court granted most components of the Motions to Dismiss filed by the Department of Justice on behalf of the Bureau of Land Management (BLM) and Gasco, represented by Beatty & Wozniak, P.C.

The Court determined that the environmental plaintiffs—Southern Utah Wilderness Alliance, The Wilderness Society, and Natural Resources Defense Council—failed to plead viable legal claims under the Administrative Procedures Act (APA) and the Federal Land Policy and Management Act (FLPMA) challenging BLM's approval of a programmatic analysis, and two subsequent site-specific analyses for development within Gasco's oil and gas field. The Court also concluded that Plaintiffs lacked standing to challenge the Record of Decision (ROD) for a programmatic environmental impact statement (EIS) promulgated under the National Environmental Policy Act (NEPA).

Specifically, Plaintiffs challenged BLM's programmatic EIS and ROD analyzing proposed development of Gasco's oil and gas field through 1,300 oil and gas wells and related infrastructure. Plaintiffs also challenged BLM's subsequent site-specific environmental assessment (EA) and associated Decision Record and Finding of No Significant Impact (DR/FONSI) that authorized the drilling of 16 wells on existing well pads within the overall field analyzed by the programmatic EIS and ROD. The existing pads had been analyzed and authorized under another EA prior to issuance of the EIS/ROD.

The Court dismissed Plaintiffs' claims that the EIS/ROD failed to comply with the procedural requirements under NEPA. The Court found that the programmatic EIS/ROD did not actually authorize any activity and determined that Plaintiffs therefore did not have standing to challenge the EIS/ROD. The Court also dismissed as moot Plaintiffs claims related to BLM's authorization for drilling 6 wells on existing pads under an EA and DR/FONSI. In addition, the Court dismissed Plaintiffs' claims that the EIS/ROD, and EAs and DRs were issued in violation of FLPMA, finding that Plaintiffs failed to state a viable legal claim upon which relief could be

¹ Gasco Energy, Inc. recently changed its corporate name to Badlands Energy, Inc. BLM authorized the projects prior to this name change under the Gasco Energy name.

granted because the statutory provisions relied upon by Plaintiffs applied only to federal land use plans, and not project-level authorizations.

The Court's dismissal of the environmental groups' NEPA challenge is two-fold and effectively distinguishes the programmatic EIS/ROD from the site-specific EAs and related Decision Records authorizing specific drilling and development activities. First, the Court found that the EIS/ROD is only programmatic, and did not authorize a specific drilling permit or construction activity, and did not otherwise authorize any specific activity that could affect the environmental groups' and their members. Accordingly, because there was no site-specific activity authorized, the Court ruled that the EIS/ROD does not constitute final agency action under the APA, a necessary prerequisite for a valid NEPA claim.

Second, the Court concluded that Plaintiffs simply lacked standing to bring their NEPA claim against the EIS/ROD and could not therefore invoke the jurisdiction of the Court under Article III of the U.S. Constitution. In particular, the Court determined that since the ROD explicitly required additional NEPA analysis prior to the approval of any drilling permit or construction of related infrastructure, BLM had not approved any change to the environment based upon the ROD that could actually injure the Plaintiff environmental groups.

In contrast, as to BLM's site-specific analysis under the Environmental Assessment and site-specific authorizations under the Decision Record, the Court found that BLM's site-specific authorizations for 16 wells did approve activities that could result in a potential change to the environment that could affect the articulated interests of the Plaintiffs' members. The Court found that the environmental Plaintiff groups alleged an injury-in-fact sufficient to establish legal standing to maintain these specific claims before the Court at the motion to dismiss stage of the litigation.

Finally, the Court rejected Plaintiffs' attempt to advance a claim that BLM's NEPA documents and related decisions were issued in violation of FLPMA. The Court reasoned that to state a valid claim under FLPMA requires either alleging an inconsistency with the underlying resource management plan (RMP) or asserting a challenge to the RMP itself; the environmental groups did neither.

The suit is *Southern Utah Wilderness Alliance v. U.S. Dep't of Interior*, Case No. 2:13-cv-01060-EJF, and a copy of the decision may be found [here](#).

The Beatty & Wozniak team included Bret Sumner and Theresa Sauer representing Gasco in the Court hearing, with Andrew Glenn on the briefs.

If you have any questions please contact [Bret Sumner](#), [Theresa Sauer](#), or [Andrew Glenn](#).