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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

URANIUM WATCH, CENTER FOR WATER
ADVOCACY and LIVING RIVERS,)

Case No. 2:10-cv-00721

Plaintiffs,)

vs.)

Honorable Samuel Alba

UNITED STATES FOREST SERVICE, an)
agency in the U.S. Department of Agriculture;)
and PAMELA BROWN, in her official)
capacity as Forest Supervisor for the)
Manti-La Sal National Forest, ,)

Defendants.)

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. Pro. 65, Plaintiffs Uranium Watch, Living Rivers, and Center for
Water Advocacy hereby respectfully move this Court for a temporary restraining order and

preliminary injunction to prevent significant, irreparable damage to public lands and resources from the federal government's approval of uranium exploration and radon gas venting projects located in the Manti-La Sal National Forest. In addition, the exploration project and radon vent holes would cause significant, irreparable harm to wildlife and human health in the area near the proposed projects.

On April 14, 2010, the Defendant Forest Service issued a Decision Memo ("DM") authorizing Denison Mining Corporation (USA) ("Denison") to conduct exploratory drilling for uranium, as well as construct vent holes to release hazardous radon gas from existing Denison mining operations, on federal public lands within the Moab/Monticello Ranger District of the Manti-La Sal National Forest, approximately three miles east of the town of La Sal, Utah. DM at 3, Exhibit 1. The Forest Service approved, via the Decision Memo, the Plan of Operations ("PoO") proposed by Denison to conduct two projects on public lands: (1) the Uranium Exploration Project, in which Denison would, among other activities, drill 16 uranium exploration drill holes, construct or upgrade over a mile of road on public lands, and dig numerous waste pits and related facilities associated with the drilling and exploration; and (2) the Radon Vent Hole Installation Project, in which Denison would construct over ¾-miles of new access roads across public lands, and drill two six-foot diameter holes on public land to vent hazardous radon gas from an existing mining project operated by Denison. DM at 3-5. On information and belief, Denison has all the required permits from state and Federal regulatory agencies and could begin both projects immediately.

The Tenth Circuit has stated the standard for obtaining preliminary relief:

In order to receive a preliminary injunction, the plaintiff must establish the following factors: **"(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) [that] the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4)**

[that] the injunction, if issued, will not adversely affect the public interest.” Fed. Lands Legal Consortium ex. rel Robart Estate v. United States, 195 F.3d 1190, 1194 (10th Cir.1999). If the plaintiff can establish that the latter three requirements tip strongly in his favor, the test is modified, and the plaintiff may meet the requirement for showing success on the merits by showing **“that questions going to the merits are so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation.”** Id. at 1195.

Davis v. Mineta, 302 F.3d 1104, 1111 (10th Cir. 2002) (emphasis in original). As the District of Utah has recently stated:

“[T]he primary goal of a preliminary injunction is to preserve the pre-trial *status quo* ... before a trial on the merits occurs.” RoDa Drilling Co. v. Siegal, 552 F.3d 1203, 1208 (10th Cir. 2009). In order to obtain a preliminary injunction, the movant must demonstrate: (1) a likelihood of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that the injunction is in the public interest. Id. (citing Winter v. Natural Res. Def. Council, Inc., --- U.S. ----, 129 S.Ct. 365, 374 (2008)). The second factor, irreparable injury, may be satisfied if the movant shows a significant risk of irreparable harm. Greater Yellowstone Coalition v. Flowers, 321 F.3d 1250, 1258 (10th Cir. 2003) (holding that a party who can show a significant risk of irreparable harm has demonstrated that the harm is not speculative). Moreover, if the movant has established the second, third, and fourth factors, a relaxed standard applies to the first factor. Star Fuel Marts, LLC v. Sam's East, Inc., 362 F.3d 639, 652-53 (10th Cir. 2004) (“[W]here the moving party has established that the three 'harm' factors tip decidedly in its favor, the 'probability of success' requirement is relaxed”).

Nilson v. JP Morgan Chase Bank, 690 F.Supp. 2d 1231, 1237 (D. Utah, 2009) (emphasis in original). See also, San Luis Valley Ecosystem Council v. U.S. Fish & Wildlife Serv., 657 F. Supp. 2d 1233, 1239 (D. Colo. 2009) (same). The test is the same whether a plaintiff is seeking a temporary restraining order or a preliminary injunction. See, Bauchman v. West High School, 900 F. Supp. 248, 250 (D. Utah 1995).

In this case, under any formulation of the four factors, the Plaintiffs are entitled to an immediate injunction against the commencement of the Uranium Exploration and Radon Venting Projects. This Motion is supported by the Plaintiffs’ accompanying Memorandum in Support of Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted this 29th day of July, 2010.



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CERTIFICATE OF SERVICE

I hereby certify that on this 29th of July, 2010, I filed a true and exact copy of **PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** with the Court's CM/ECF system, and will email a true and exact copy to the following:

Jared Bennett: Jared.Bennett@usdoj.gov
Michael Zody: MZody@parsonsbehle.com

