Friends of the Earth, et al. v. Department of State Lands, et al.
Cause No.44384, 1st Judicial District
Judge Wheelis
Decided 1980

MEPA Issue Litigated: Should the agency have conducted a MEPA analysis (an EIS)?

Court Decision: The possibility of mandamus exists to compel the agency to conduct an EIS but the court does not dismiss the case on this issue.

OPINION AND ORDER

INDEXED

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARK

Cause No. 44384

FRIENDS OF THE EARTH, MONTANA WILDERNESS ASSOCIATION, AND THE FLATHEAD CITIZENS FOR SAFE ENERGY,

Plaintiffs,

vs.

DEPARTMENT OF STATE LANDS OF THE STATE OF MONTANA, BOARD OF LAND COMMISSIONERS OF THE STATE OF MONTANA, AND THE KERR-McGEE CORPORATION,

Defendants.

OPINION AND ORDER

I. OPINION

Plaintiffs seek on their behalf and on behalf of their members a (i) declaratory judgment; (ii) injunction; and (iii) mandamus compelling the Defendants to comply with the Montana Environmental Policy Act and with the constitutional right of all citizens to a "clean and healthful environment" as guaranteed in Montana Constitution Article II, Section 3. They seek to prevent further committments of resources for uranium exploration in Montana pending full compliance with these legal duties by the Defendants.

Defendants raise these grounds for dismissal of the complaint: (i) Plaintiffs' lack of standing; (ii) failure to state a claim upon which relief may be granted; (iii) failure to join indispensable parties; (iv) failure to establish the existence of an actual case and controversy concerning in-situ uranium mining activities; and (v) misrepresentation of the requirements of the Montana Strip and Underground Mine Reclamation Act.

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Marjorie Berkite

1. Standing must be resolved prior to consideration of any substantive grounds for dismissal. Resolution of standing, however, is not a precise process; in fact, it has been described as "among the most amorphous in the entire domain of public law." Remarks by Professor Paul Freund, Hearings on S. 2097, before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 89th Cong., 2d Sess., pt. 2 at 498 (1966). Justice Douglas has observed that "(g)eneralizations about standing to sue are largely useless as such. . . ." Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 151 (1970)

Standing as a concept derives from two distinct doctrines: '(i) discretionary doctrines aimed at prudently managing judicial review of the legality of public acts, and (ii) constitutional requirements of the existence of a 'case or controversy' in order to invoke federal judicial power, U.S. Constitution Article II, and the "cases at law and equity" jurisdictional requirement for judicial review in Montana, Montana Constitution Article VII, Section 4., See Warth v. Seldin, 422 U.S. 490 (1975); Stewart v. Board of Commissioners of Big Horn County, 34 St. Rptr. 1594, 1596, 573 P.2d 184, 186 (1977).

The United States Supreme Court has expressed that the essence of this constitutional inquiry is:

> (W)hether the parties seeking to invoke the court's jurisdiction have alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens that presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. Baker v. Carr, 369 U.S. 186, 204, . . . As refined by subsequent reformulation, this requirement of a "personal stake" has come to be understood to require not only a "distinct and palpable injury," Warth v. Seldin, 422 U.S. 490, 501 . . . but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct . . . Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 72 (1978).

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By the very nature and objectives of these Plaintiff organizations as dedicated to the preservation of the environment and to communication with their members and the general public concerning environmental issues and government actions concerning the evnironment, a concrete adverseness may be presumed absent a showing that this presumption is not justified in a particular case. The Plaintiffs' self-description indicates such an adverseness exists as the motivation for this cause of action. Assuming that factual allegations of the Plaintiffs are true as is required in a motion to dismiss, Duffy v. Butte Teachers' Union, #332, AFL-CIO, 168 Montana 246, 252-253, 541 P.2d 1199 (1975), the causal connection between the Plaintiffs' alleged innuries and the Defendants' alleged omissions and failures to act as mandated by law is demonstrated throughout the entire complaint.

The Montana Supreme Court has established as a minimum criteria in addition to this case or controversy requirement the necessity of alleging (i) past, present or threatened injury to a property or civil right; and, (ii) an injury distinguishable from the injury to the public in general, but this injury need not be exclusive to the complainant. Stewart v. Bd. of Commissioners of Big Horn County, 34 St. Rptr. at 1597, 573 P.2d at 186 (emphasis added).

The Plaintiffs allege numerous injuries, actual and threatened, to their environmental interests and those of their members as individuals. These alleged injuries fall within four categories. First, the Plaintiffs, allege that the state Defendants' granting of permits to Kerr-McGee without first preparing an Environmental Impact Statement (EIS) violates the Montana Environmental Policy Act, §75-1-201 MCA 1979, Counts I and II of the complaint allege violations of §75-1-201 (2)(c) by failure to prepare programmatic and regional EISs prior to issuance of these permits. Count III alleges violation of

A.R.M. 26-2.2(18)-P270 through the failure of the state Defendants to prepare a site-specific EIS after a Preliminary Environmental Review (PER) authroized by that regulation indicated that a potentially significant impact on groundwater could result from exploration drilling activities. Finally, Count IV alleges violation of §75-1-201 (2)(a) by the failure of the state Defendants to utilize a systematic, interdisciplinary approach in making their decisions concerning the potential impact on the human environment of uranium exploration.

The second category of alleged injuries involves the Montana Strip and Underground Mine Reclamation Act, §82-4-102 MCA 1979. The Plaintiffs allege in Count V that the state Defendants violated the Act by granting permits for exploration in the absence of an informed decision based on hydrological data of the allegedly impacted areas. The inadequacy of the reclamation plan and map supporting Kerr-McGee's permits is the basis of Count VI. The Plaintiffs allege in Count VII that the state Defendants violated this Act by their granting permits to Kerr-McGee despite numerous alleged violations of drilling regulations and procedures prior to this application for permits.

The third category of alleged injury focuses on the violation of a duty of care in administering school trust lands by the Board of Land Commissioners. Count VIII alleges that this Defendant granted permits on school trust lands in the absence of an informed judgment and that action is a breach of their duty of care.

Finally, the Plaintiffs allege a violation of their right to a clean and healthful environment as guaranteed in Article II, Section 3 of the Montana Constitution by the state Defendants failure to prepare the necessary EISs prior to granting the permits at issue.

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Environmental interests may establish standing to sue:

> Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by many rather than few does not make them less deserving of legal protection through the judicial process. Sierra Club v. Morton, 405, U.S. 727, 734 (1972);

Accord, U.S. vs. Students Challenging Regulatory Agency Procedures, 412 U.S. 669 (1973), (SCRAP).

The Montana Environmental Policy Act (MEPA), §75-1-103 (3) MCA 1979, recognizes each citizens entitlement to a healthful environment and the Montana Constitution Article II, §3, guarantees the inalienable right to a "clean and healthful environment." The policy enunciated in Sierra Club v. Morton, plus these statutory and constitutional state rights clearly provide the Plaintiffs civil rights which may form the basis for standing as required by Stewart v. Bd. of Comm. The Defendants argue that Kadillak, et al. v. The Anaconda Co., 36 St. Rptr. 1820, _____Mont._____ (1979), eliminates this constitutional basis for an environmental civil right; however, Kadillak is distinguishable from the factual situation confronting this Court. In Kadillak, the Supreme Court was concerned with a conflict between MEPA and the Hard Rock Mining Act, and the court determined that this constitutional environmental right could not serve to resolve the conflict in statutory schemes confronting it. The Court did not, however, eliminate Article II, Section 3 as a source for a substantive environmental civil right. Therefore, Kadillak does not proscribe founding a civil right on Article II Section 3 of the Montana Constitution.

Likewise, the Defendants urge that Professional Consultants Inc. v. Board of County Commissioners of Ravalli County, 36 St. Rptr. 613, 592 P.2d 945 (1979), controls this standing issue and that the Plaintiffs' failure to allege a property interest denies standing to seek a mandamus. This argument

confuses the separate issues of standing to sue and the issues of substantive relief sought by the Plaintiffs. Cf. Montana Wilderness Association v. Board of Health and Environment, 171 Mont. 477, 559 P.2d 1157 (1976) (Dissent, Haswell, C.J.) (Reversed on other grounds). Professional Consultants does not, however, contain the analysis of standing most applicable to environmental cases; rather, Montana Wilderness Association (Beaver Creek I and Beaver Creek II's dissent) enunciates the Montana test of standing for environmental cases. See, Comments, The Montana Constitution: Taking New Rights Seriously, 39 Montana Law Review 225 (1978).

Chief Justice Haswell noted that the rights allegedly violated in Beaver Creek I and II were "environmental interests" within the "zone of interests" protected and regulated by MEPA. MEPA is patterned after the National Environmental Policy Act (NEPA), and it is, therefore, appropriate to consider federal interpretations of NEPA when construing MEPA. Montana Wilderness Association, 171 Mont. at 506, 559 P.2d at 1172. Accord, Kadillak, 36 St. Rptr. at 1826.

Satisfaction of the 'case or controversy' requirement for standing assures the concrete adverseness necessary to illuminate these fundamental and difficult constitutional issues, Duke Power Co., v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 72 (1978). These Plaintiffs by their very nature and organization fulfill this requirement; in fact, as observed in Montana Wilderness Association:

> Finally, we reiterate these associations are citizen groups seeking to compel a state agency to perform its duties according to law . . . Were the Associations denied access to the courts for the purpose of raising the issue of illegal state action under MEPA, the foregoing constitutional provisions would be rendered useless verbiage, stating rights without remedies, and leaving the state with no checks on its powers and duties under that act. The statutory functions of state agencies under MEPA cannot be left unchecked simply because the potential mischief of agency default in its duties may affect the interests of citizens

without the Associations' membership. 171 Mont. at 499, 559 P.2d at 1168. (Dissent, Haswell, C.J.)

Although this declaration appears as a dissent in Beaver Creek II, that dissent formed the majority opinion in Beaver Creek I and reading these cases together clearly indicates that standing was presumed upon the Supreme Court's reconsideration of this case. Therefore, this dissenting statement regarding standing remains the clearest indication of the standard for standing to be applied in environmental cases.

Plaintiffs also allege violations of their rights to participate in the decision-making process and to be informed of pending state actions which may substantially affect the environment in addition to these previously described MEPA and constitutional rights. The primary purpose of an EIS is to inform the public of environmental information relevant to possible state actions. Natural Resources Defense Council v. Morton, 458 F.2d 827, 833 (D.C. Cir. 1972); Atchison Topeka & S.F. Ry. Co. v. Callaway, 431 F. Supp. 722, 728 (D.C.C. 1974). If the Plaintiff establishes sufficient geographical nexus, failure to prepare an EIS constitutes sufficient "cause-in-fact" because it creates the risk of serious environmental impacts being overlooked entirely. City of Davis v. Coleman, 521 F.2d 661, 671 (9th Cir. 1975). Plaintiffs demonstrate this geographical nexus by the allegations of the complaint coupled with the affidavits of Berg and Gardner which allege residence in Lewis and Clark County and the existence of uranium exploration permits and activities in that county. Determination of the validity of their allegations must of course be resolved at trial, but the allegations and supporting evidence presented so far is sufficient to satisfy the Cavsation principle enunciated in City of Davis. In environmental cases challenging the failure to prepare an EIS, proof of actual damage should not be required because such a requirement would "in essence be requiring the plaintiff to conduct the same environmental investigation

that he seeks in his suit to compel the agency to undertake." City of Davis v. Coleman, 521 F.2d at 670-671.

The allegations that uranium exploration may adversely affect the environment must be taken as true in this motion to dismiss, Fulton v. Farmers Union Grain Terminal Association, 140 Mont. 523, 374 P.2d 231 (1962). The allegations and affidavits of Cunningham, Berg and Gardner as individuals and as members of Plaintiff organizations provide the Associations standing to raise issues affecting its members. Hunt v. Washington Apple Advertising Commission, 432 U.S. 333, 342-343 (1977).

In addition, the Plaintiffs allege injury to their "informational interests," in Count V of the Complaint as distinct from the injury suffered by its members as individuals. Informational interests are judicially recognized, Scientists Institute for Public Information v. Atomic Energy Commission, 481 F.2d 1079 (D.C. Cir. 1973), and are provided for by state administrative regulations implementing MEPA, A.R.M. 26-2.2 (18)-P270. Failure to prepare an EIS may cause "injury-in-fact" to an organization dedicated to communication of environmental information to its members concerning pending governmental actions which may have a potential effect on the environmental because it frustrates exercise of these informational interests.

A second requirement of standing is that a plaintiff have more than a mere interest in the issues; that is, that his interest be distinguishable from that of the general public. Stewart, 34 St. Rptr. at 1597, 573 P.2d at 186; Sierra Club v. Morton, 405 U.S. at 737. An interest may be widely held and still not defeat standing, U.S. v. SCRAP, 412 U.S. 669, 687-88 (1973); Stewart, 34 St. Rptr. at 1597, 573 P.2d at 186 and mere attenuation between the alleged failure to comply with NEPA and a possible substantive injury will not defeat standing. City of Davis v. Coleman, 521 F.2d at 671.

Plaintiffs and their members by affidavit allege more than a "mere interest"; Dobson's and Perlmutter's affidavits concerning their personal efforts to intervene in the decision-making process prior to issuance of these disputed permits indicates a sufficient interest to satisfy both the case and controversy requirement and the distinguishable injury requirement.

Once the Plaintiffs achieve standing to challenge the failure to prepare both the regional and programmatic EISs, they have standing to assert the inadequacies in the procedure for issuance of the permits in Carter County, too. The absence of Plaintiff's members actually living in Carter County is not determinative on the issue of standing to challenge these permits; once standing has been conferred, a plaintiff may assert the public's interest on related issues. In Sierra Club v. Morton, 405 U.S. 727, 737 (1972), the Court noted that "the fact of . . . injury is what gives a person standing to seek judicial review. . . but once review is properly invoked, that person may argue the public interest in support of his claim that the agency has failed to comply with its statutory mandate."

In fact, standing should not necessarily be denied as to issues which are not expressly within the zone of interests of the plaintiff, provided the plaintiff otherwise has standing. "An interpretation that unnecessarily restricts the ability of plaintiff's properly before the court to challenge additional inadequacies in an environmental impact statement would be patently inconsistent with the unequivocal legislative intent embodied in NEPA that agencies comply with its requirements 'to the fullest extent possible'." Sierra Club v. Adams, 578 F.2d 389, 393 (D.C. Cir. 1978). Additionally, judicial economy dictates that because of the interrelationship of the EISs which conceivably should have been prepared in this case prior to the decision to issue permits be examined at one time, in one forum. The facts

and considerations relevant to determination whether a site-specific or programmatic EIS was required will also be relevant in determining whether an EIS on the site-specific permits drilling should have been required. Consideration of these issues together reduces the possibility of inconsistent judicial determinations on these issues and provides the Supreme Court an opportunity to consider these related issues together should an appeal be taken.

2. The Defendants' second ground for dismissal is that the Plaintiffs have failed to state a ground upon which mandamus may be granted because of the absence of a clear legal duty which the state Defendants must perform. This motion is considered as a resonse under M.R. Civ. P. 12(b)(6) and, therefore, all material allegations are considered to be true for the purposes of ruling upon this motion. If the complaint states facts sufficient to constitute a cause of action upon any theory, a motion to dismiss must be rejected. Duffy v. Butte Teachers' Union, #332, AFL-CIO, 168 Mont. 246, 253-254, 541 P.2d 1199 (1975); Buttrell v. McBride Land & Livestock, 170 Mont. 296, 553 P.2d 407 (1976).

Section 27-26-102 MCA 1979, permits a district court to issue a writ of mandamus to compel the performance of an act the law enjoins as a duty in all cases in which there is not a plain, speedy and adequate remedy in the ordinary course of law. The Montana Supreme Court requires a Plaintiff to allege facts indicating that the duty to be performed must be a "clear legal duty." State ex rel. Lucier v. Murphy, 156 Mont. 186, 478 P.2d 273 (1970); State ex rel. State Tax Appeals Board v. Montana Board of Personnel Appeals, ____Mont. ____, 593 P.2d 747 (1979).

Kerr-McGee argues that the Plaintiff's failure to satisfy this standard is conclusively shown by the mere fact that it seeks a declaratory judgment; however, the Court finds a clear

legal duty exists upon the standard of review applicable to motions to dismiss without necessarily deciding the declaratory judgment issue. The complaint indicates that if all facts alleged are proven, the existence of a legal duty to prepare an environmental impact statement would be demonstrated because "potential significant environmental impacts" exist. This preliminary decision does not decide that such impacts, in fact, do exist, merely that if the stated allegations are shown to be true, then, impacts would be shown to exist. Determination of the accurateness of the Plaintiff's allegations must await full trial. The Plaintiffs argue that a "clear legal duty" to prepare an EIS arises from the Preliminary Environmental Review (PER) which indicates that a potentially significant environmental impact on groundwater exists as a consequence of uranium prospecting drilling operations.

Government agencies must strictly comply with the procedural requirements of NEPA with regards to the necessity of preparing EISs and violation of these procedures constitutes grounds for reversal of the agency action by the judiciary. Calvert Cliffs Coordinating Committee v. A.E.C., 449 F.2d 1109, 1112 (D.C. Cir. 1971). MEPA imposes a duty to prepare an EIS prior to every major action of state government "significantly affecting the quality of the human environment." §75-1-201 (2)(c) MCA 1979. The threshold decision whether to prepare an EIS is not solely left to the discretion of the agency but is subject to judicial review. Scherr v. Volpe, 336 F. Supp. 882, aff'd 446 F.2d 1027, 1032 (7th Cir. 1972). In fact, the courts have recognized that an EIS is required if the government action "may cause a significant degradation of some human environmental factor." City of Davis v. Coleman, 521 F.2d 661, 673 (9th Cir. 1975). The threshold decision as to what constitutes "significant degradation" is low:

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> Generally, the procedural requirement of SEPA, which are merely designed to provide full environmental information, should be invoked whenever more than a moderate effect on the quality of the environment is a reasonable probability. Norway Hill Preservation and Protection Ass'n, v. King City Council, 87 Wash. 2d 267, 552 P.2d 674, 680 (1976).

The state has adopted regulations implementing §75-1-201 (2)(c) to guide the determination whether an EIS should be prepared. A Preliminary Environmental Reivew (PER) is authorized by A.R.M. 26-2.2(18)-P 270(2): "If the PER shows a potential significant effect on the human environment, an EIS shall be prepared on that action." The plain meaning of this regulation is that if the PER suggests a potential significant impact, an EIS should be prepared; judicial determinations on this point are in accord. See, e.g., City of Davis v. Coleman, 521 F.2d 661, 673 (1975).

The Department of State Lands prepared a PER on Kerr-McGee's concentrated drilling permits and it indicated a potential significant impact on groundwater. The appendices to the PER provide limited basis for argument that the PER actually shows no potential impact; in fact, the appendices indicated that if the plugging procedures required by the permit are not totally effective a significant decrease in artesian pressure within the acquifier is possible and contamination could occur. Rather than indicating the elimination of risk, the appendices indicated the existence of a potential risk which could be explored by an EIS. A.R.M. 26.2.2(18)-P270(2) provides a clear legal duty to prepare an EIS and, therefore, a mandamus properly could be issued to direct preparation of an EIS. The deposition of Hemmer indicated possible doubt as to the effectiveness of current plugging procedures which an EIS could explore in more depth and accept as either acceptable or unacceptable risks.

It must be stressed that the decision whether the Court shall issue a mandamus is not decided hereby; rather, the possibility

for issuance of a mandamus exists and dismissal on this basis is denied.

3. Arguments concerning the merits of in-situ mining operations and their potential effects on the environment fails to raise issues ripe for judicial determination. The Plaintiffs' complaint seems to recognize this difficulty by alleging that two companies, Amoco and Frontier, may intend in the future to establish pilot in-situ processing plants. The evidence, however, shows neither applications for permits have been received by the state nor any concrete preparation which the state would be authorized to regulate.

The Court declines to consider evidence directed at resolution of issues involving in-situ mining operations at this time. When, and if, this issue arises, the appropriate state agency should be given the opportunity to exercise its expertise and discretion prior to any judicial consideration of these issues.

4. A motion for a preliminary injunction should be granted only where a petitioner carries his burden of proof for each of these requirements:

(1) Will the petitioner suffer immediate and irreparable injury in the absence of an injunction?

(2) Will the harm suffered by the petitioner in the absence of an injunction outweigh the harm suffered by the adverse party should an injunction issue?

(3) Has the petitioner shown a likelihood of prevailing on the merits at trial?

A preliminary injunction is an extraordinary remedy and the judiciary must be mindful not "to exercise equitable powers loosely or casually whenever a claim of 'environmental damage' is asserted." Aberdeen and Rockfish R.R. v. SCRAP, 409 U.S. 1207, 1217 (1972) (Burger, Circuit Justice). Plaintiff lists numerous cases in which perliminary injunctions have been granted

in environmental cases, but this Court considers the determination as one which must be grounded in the particular factual circumstances before the Court.

The Plaintiffs' evidentiary showing of a potential significant environmental impact as a result of Kerr-McGee's exploration drilling is insufficient to support a preliminary injunction. Evidence relating to the potential impact of in-situ mining is speculative as the Court is not confronted with determinations on in-situ mining and, therefore, it cannot be considered in ruling on this motion for a preliminary injunction.

Evidence presented by both parties indicated potential impact only if one presumes that the plugging procedures required by the Defendants will be inadequate and that there will be migration of groundwater through these inadequately plugged exploration holes. The evidence thus far adduced for the purposes of the preliminary injunction, however, does not indicate that the procedures are defective, in fact or theory. In addition, the Plaintiffs assume that state regulation is inadequate without positive evidence to support their assumption.

Upon questioning by the Court, it was evident that no factual basis exists at this time to hold that these prospecting holes present an increased danger to ground water purity or artesian pressure than may currently exist from gas or oil prospecting holes.

Simply, the evidence presented demonstrates the basis of the Plaintiffs concern and the necessity of a trial to resolve these issues, but it does not justify granting the motion for a preliminary injunction.

5. The alleged indispensable parties fall into two general categories: (i) state agencies, and (ii) private companies involved in the general field of uranium exploration.

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Dismissal of in-situ mining operations issues as not being ripe for adjudication eliminates the potential private parties to this suit. Consideration of the complaint indicates that this case focuses on the alleged violations of law in awarding specific permits to Kerr-McGee and not to other private parties. Therefore, no other exploration parties are indispensable parties to this action nor could they allege sufficient standing to intervene even if they desired to do so.

Other state agencies are not indispensable parties because only the current state Defendants have any authority to act on the issues before the Court. Although other state agencies may have eventual contact with these parties concerning these general issues, their involvement would be a result of the requirements of MEPA rather than as directly ruling on these contested permits. Under MEPA their participation would be as consultants to the current state Defendants on permits; additional action on their part would involve distinct permits made to them and not be directly involved with these disputed permits.

6. Upon reading the Montana Strip and Underground Mine Reclamation Act and the complaint alleging its violation, the Court rejects the characterization of Plaintiff's allegations as a "misrepresentation." The Court considers such a characterization as implying an intent clearly not discernable from the complaint. Different constructions of the law are the sum and substance of the adversial system and should not be lightly characterized as "misrepresentations."

II. ORDER

The Court grants the motion to dismiss as follows:

1. The Court grants dismissal of those portions of the complaint which involve in-situ mining operations as failing to establish an actual case or controversy.

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2. The Court grants dismissal of the portion of the complaint which seeks a preliminary injunction against the state Defendants and Kerr-McGee for failure to establish immediate and irreparable harm to the Plaintiffs.

The Court denies motions as follows:

1. The Court denies dismissal of the complaint on the ground that the Plaintiffs lack standing. The Plaintiffs have standing on all issues not otherwise dismissed.

2. The Court denies dismissal of the complaint on the ground that a mandamus could not issue against the state Defendants.

3. The Court denies dismissal of the complaint on the ground that the Plaintiffs have "misrepresented" the Montana Strip and Underground Mine Reclamation Act.

4. The Court denies dismissal of the complaint on the ground that the Plaintiff has failed to join indispensable parties.

DATED this the 2nd day of April, 1980.

District Judge