



## **U.S. District Court in Montana Sides with BLM on Monument RMP Challenge**

**By:** [Amy Mowry](#)

A United States District Court Judge in Montana ruled against a number of wilderness advocacy groups and individuals challenging the Bureau of Land Management's 2008 Resource Management Plan (RMP) for the Upper Missouri River Breaks National Monument (Monument), an area of wide and varied land use in Montana.

*In re Montana Wilderness Association*, Case No. CV-09-95-GF-SEH consolidated several separate cases filed against the Bureau of Land Management (BLM) in U.S. District Court in Montana. The cases arose in response to BLM's 2008 adoption of the Monument's RMP, as well as BLM's renewal of the Woodhawk Allotment Grazing Permit in the same area.

Former President Clinton established the Monument by Proclamation issued on January 17, 2001 under the authority of the Antiquities Act of 1906. BLM was designated as the managing agency for the Monument, which encompasses over 377,000 acres of federal lands in Montana. An additional 80,000 acres of state and private lands checkerboard the BLM acreage.

BLM began work on its management plan in 2002 and issued its proposed RMP and Final Environmental Impact Statement (EIS) in 2008. The proposed RMP offered a number of increasingly restrictive alternatives, including numerous road and airstrip closures, reduced recreational use of waterways, heightened range standards for grazing, and numerous additional protective conditions for natural gas wells on existing leases. Only one of the six proposed alternatives was more restrictive than the final, approved RMP.

The Plaintiffs, including the Wilderness Society and a number of other environmental groups and individuals, sought a declaratory judgment that the approved RMP was issued in violation of a number of federal laws, including the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-06; the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-61; the Wild and Scenic

Rivers Act (WSRA), 16 U.S.C. §§ 1271-81; the Federal Land and Policy Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-82; the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470x-6; and former President Clinton's 2001 Proclamation designating the Upper Missouri River Breaks National Monument (Monument), 66 Fed. Reg. 7,359 (Jan. 17, 2001).

According to the Plaintiffs, the RMP improperly allowed oil and gas Development, along with access to the monument for off-road vehicles, recreational boating and camping on the monument lands, livestock grazing, access for utilities, and the construction of several airstrips in sensitive areas of the Monument. Two aviation groups, four Montana counties (Fergus County, Phillips County, Chouteau County, and Blaine County) and the Missouri River Stewards, an organization of ranchers, intervened as Defendants.

The court disagreed with the Plaintiffs' underlying argument that BLM violated the Proclamation by allowing multiple use at the expense of the Monument's protection, concluding that multiple use under 43 U.S.C. § 1732(a) "was required so long as Monument objects were protected" (Memorandum and Order, page 9). As to the Plaintiffs' argument that the validity of preexisting oil and gas leases within the monument was not properly determined, the Court concluded that verification of lease validity was not required under the Proclamation nor any other legal authority, so long as any oil and gas lease were managed "to prevent new, adverse impacts on Monument objects" (Memorandum and Order, page 11; citing 66 Fed. Reg. at 7361).

Applying the APA and Summary Judgment standards of review, the Court disagreed that BLM abused its discretion in approving the RMP, and that in the absence of nonconformity with the law no genuine issues of material fact existed for adjudication. The Plaintiffs' assertions that BLM failed to apply appropriate standards, failed to follow appropriate protocol and essentially failed to protect the Monument values under FMPMA, WSRA, NEPA, NHPA and other federal laws were summarily dismissed on August 9. The Memorandum and Order can be found at the following link: <http://www.bwenergylaw.com/News/documents/MemorandumandOrder.pdf>

Please contact [Amy Mowry](#) for more information.