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BLACK CANYON CASE GETS GREEN LIGHT

Federal Court denies federal government's motion to dismiss

Cheyenne, WY—U.S. District Court recently denied the government's motion to dismiss a federal court case involving Black Canyon of the Gunnison National Park's water rights. The government has attempted to relinquish its senior claim to the water flowing through the park in return from a promise from the state that it would seek a newer in-stream flow right for the canyon. A coalition of conservation and citizens' groups has asked that the courts assess the legality of this agreement, which fails to provide adequate protection for the park.

Carved over millions of years by the Gunnison River, the Black Canyon of the Gunnison is unique for its narrow opening, sheer jagged walls and depth of over 2,000 feet. It was designated as a national monument in 1933 and elevated to national park status in 1999.

According to agreements reached in April and July of 2003, the federal government proposed to rely on a new state-held in-stream flow water right for higher springtime flows to protect the river's ecology. The state-based water right and its 2003 priority date would place the Black Canyon at the very end of the line of Gunnison River water users, including potentially huge future diversions to Colorado's Front Range.

In early September, a coalition of conservation and citizens' groups filed suit in the federal court, arguing that the United States had failed in its duty to protect the park's ecological, recreational, and aesthetic values for present and future generations and asking the federal court to set aside the April and July agreement between the State of Colorado and Department of Interior agencies. Late last year the federal government filed to dismiss the case. The State of Colorado and several other parties intervened in support of the United States.

"The park was created to protect the roar of the river," said Melinda Kassen, Colorado Water Project Director for Trout Unlimited. "The federal giveaway would leave only a whisper."

"We're glad that the case will move forward," said Claudia Putnam, Communications Director for Western Resource Advocates, which is representing some of the parties to the suit. "We look forward to hearing the Department of the Interior explain why it shouldn't be responsible for protecting such an incredible national resource."

The federal government virtually abandoned its duty to protect the Black Canyon of the Gunnison National Park with its agreement last year with the State of Colorado, according to Wendy McDermott, executive director of High Country Citizens' Alliance, one of the plaintiffs in the federal suit. "The deal proposed would ignore years of scientific study that reveal the importance of seasonal fluctuations in flow. There's no point even pretending that the park would be protected for future generations under the April 2003 agreement," McDermott said.

The federal lawsuit asserts that the April 2003 agreement violates the National Park Service Organic Act, the Black Canyon Act, the Wilderness Act, the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA), and that it illegally disposes of federal property and delegates the obligation to protect federal resources to non-federal officials. The plaintiffs in the federal case are High Country Citizens' Alliance, The Wilderness Society, Western Colorado Congress, Western Slope Environmental Resource Council, Environmental Defense, Trout Unlimited, and National Parks Conservation Association. The defendants are Interior Secretary Gale Norton, the Interior Department, National Park Service Director Fran Minella and the National Park Service.

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