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UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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DIV. OF OIL, GAS & MINING

UTAH ENVIRONMENTAL CONGRESS,

Plaintiff-Appellant,

v.

No. 04-4153

BUREAU OF LAND MANAGEMENT,  
an agency within the U.S. Department of  
Interior; KENT HOFFMAN, in his official  
capacity as BLM Deputy State Director for  
Lands and Minerals,

Defendants-Appellees,

and

CANYON FUEL COMPANY, LLC,

Defendant-Intervenor-  
Appellee,

STATE OF UTAH, DIVISION OF OIL,  
GAS AND MINING,

Amicus Curiae.

ORDER  
Filed August 17, 2004

Before **KELLY** and **LUCERO**, Circuit Judges.

mining in the East Fork of Box Canyon is imminent. See Homans v. City of Albuquerque, 264 F.3d 1240, 1243 (10th Cir. 2001) (noting that immediacy of asserted problem is a factor in decision to consider motion for stay or injunction not first presented to district court); see also Canyon Fuel's Response at 10.

Upon consideration, then, UEC's motion for an injunction pending appeal is denied.

10th Cir. R. 8.1 requires the applicant to address the following: "(a) the likelihood of success on appeal; (b) the threat of irreparable harm if the stay or injunction is not granted; (c) the absence of harm to opposing parties if the stay or injunction is granted; and (d) any risk of harm to the public interest."

O Centro Espirita Beneficiente Uniao de Vegetal v. Ashcroft, 314 F.3d 463, 465-66 (10th Cir. 2002) (quoting Rule 8.1 as formerly numbered; further citation omitted). "In ruling on such a request, this court makes the same inquiry as it would when reviewing a district court's grant or denial of a preliminary injunction." Id. at 466 (quotation omitted).

"When reviewing the district court's grant of preliminary injunctive relief, we may set it aside for an abuse of discretion, an error of law or clearly erroneous factual findings." Id.

UEC's claim of irreparable harm is speculative, at best. UEC does not demonstrate based on citation to evidence in the record that irreparable harm is likely to occur. In addition, UEC's argument that it is likely to succeed on appeal was not raised

UEC's motion for an extension of time in which to file an appendix is granted. The joint appendix on appeal shall be due on or before November 5, 2004.

Entered for the Court  
PATRICK FISHER, Clerk

By:  
Deputy Clerk