

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOUTHERN UTAH WILDERNESS :
ALLIANCE, *et al.*, :
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 Plaintiffs, :
 :
 v. : Civil Action No. 02-1868 (JR)
 :
 GALE NORTON, Secretary, :
 Department of the Interior, *et* :
 al., :
 :
 Defendants, :
 :
 UTAH SCHOOL AND INSTITUTIONAL :
 TRUST LANDS ADMINISTRATION, *et* :
 al., :
 :
 Intervenor-Defendants. :

MEMORANDUM ORDER

In ordinary preliminary injunction practice, the two most important factors that must be considered are likelihood of success on the merits and threat of irreparable injury. It is by now well established that those two factors are to be evaluated on a sliding scale, so that a preliminary injunction might be granted in a case where the likelihood of success is great but the threat of irreparable injury is slight, or in a case where the likelihood of success is small but the threatened irreparable injury is great. See e.g., Serono Labs, Inc. v. Shalala, 158 F.3d 1313, 1317-18 (D.C. Cir. 1998). In this case, time plays a particularly important role in the competing arguments of the parties. Plaintiffs have raised the specter of immediate and

irreparable injury by huge "thumper trucks" to fragile biological soils, sensitive plants and animal species, visual resources, and proposed wilderness lands (Compl. ¶ 114). They assert that, unless injunctive relief is granted, the damage will be done and beyond the reach of any court within fourteen days. The government and intervenor-defendants respond that the damage of which plaintiffs warn is either non-existent or *de minimis*, but they have not shown that any party would be prejudiced by the passage of the time that would be necessary to decide the merits of this case. The government says that the administrative record can be filed within a few days, and plaintiffs have undertaken to file a dispositive motion within two weeks after the administrative record is filed. On that schedule, and assuming that the government and intervenor-defendants would want two weeks to respond to the motion and that plaintiffs would then require a week to reply, the merits of this case can be fully briefed, argued and decided before the middle of December.

Although the plaintiffs' ultimate success on the merits appears questionable -- because plaintiffs' claim of a defective Fish and Wildlife Service consultation appears to be moot and because plaintiffs' assessment of likely environmental harm may not indeed support their demand for an environmental impact statement -- the injury of which plaintiffs warn is indeed imminent and, to the extent it would be injury at all,

irreparable. See Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 545 (1987) (noting that environmental injury, by its nature, is irreparable). The balance of harm to the parties favors the plaintiffs. Accordingly, it is

ORDERED that plaintiffs' motion for a preliminary injunction [#3] is **granted**. It is

FURTHER ORDERED that defendants ensure that no further surface disturbing activities are conducted as part of the Yellow Cat Project, including without limitation the use of fibrosite seismic trucks, the laying of source and receiver lines, and any cross-country motorized vehicle use associated with these activities. It is

FURTHER ORDERED that this order remain in effect until the Court rules on the parties' dispositive motions. And it is

FURTHER ORDERED that the administrative record be filed (in paper form) by November 4, 2002; that any dispositive motions be filed by November 18, 2002; that any opposition be filed by December 2, 2002; that any reply be filed by December 9, 2002; and that oral argument is set for **December 13, 2002 at 3:00 p.m.**

JAMES ROBERTSON
United States District Judge