



#### 4. OIL AND GAS: Federal court blocks drilling in Colo.'s Baca wildlife refuge (09/10/2009)

Eryn Gable, special to E&E

A federal judge has handed down a decision blocking oil and gas drilling in Colorado's Baca National Wildlife Refuge, eliciting cheers from environmental groups and some residents in the San Luis Valley that were fighting the development.

U.S. District Court Judge Walker Miller last week issued a [preliminary injunction](#) against Lexam Explorations Inc., a Canadian energy company, barring it from oil and gas drilling and exploration activities on the 79,000-acre refuge in southwest Colorado.

"It is undisputed that the Refuge contains unique resources, including sensitive wetlands, habitat for a variety of wildlife and fish, aquifers that play an important role in the wetlands and in providing water for the community, clean air, and a large expanse of undeveloped land with a significant 'sense of place' and quiet," Walker wrote in his decision.



The Baca Wildlife Refuge includes more than 15,000 acres of irrigated wetlands and another 10,000 acres of natural wetlands and playas, which environmentalists say make them among the most concentrated, pristine and biologically diverse wetlands in the southwestern United States. Courtesy of FWS.

The refuge was established as part of the Great Sand Dunes National Park and Preserve Act of 2000, which protected a 500,000-acre complex of lands.

But environmental groups and some local residents feared those resources could be at risk, when Lexam, which owned mineral rights within the refuge, proposed drilling there for natural gas in 2006.

The Fish and Wildlife Service worked with Lexam to establish restrictions intended to protect migratory birds and wetlands while the company drilled two 14,000-foot test wells, but the agency did not conduct a formal environmental review or provide an opportunity for public comment ([Land Letter](#), Dec. 6, 2007).

Environmental groups argued that such an analysis was required by the National Environmental Policy Act. And the San Luis Ecosystem Council, Energy Minerals Law Center and San Luis Valley Water Protection Coalition filed suit in 2007 to force FWS to conduct a full NEPA analysis.

The agency determined in a final environmental assessment last year that drilling on the refuge would have "no significant impact" and that a full-scale environmental impact statement was unnecessary, clearing the way for Lexam to drill its exploratory wells and construct an access road on about 5,200 acres. The final environmental assessment included 63 stipulations the agency said would protect the refuge's natural resources while allowing Lexam to access the minerals ([Land Letter](#), Oct. 30, 2008).

But that analysis was called into question after records obtained under the Freedom of Information Act showed the government's analysis had been shaped by industry officials.

In granting the preliminary injunction, Judge Miller said Lexam's drilling proposal threatens "irreparable harm" to the refuge and underlying aquifers. He also criticized the proposal for not providing sufficient protections and questioned "whether the agency really evaluated the efficacy of many of the proposed safeguards."

Miller also expressed concern about the potential impact of chemicals used in drilling and about cleanup and mitigation efforts.

The refuge includes more than 15,000 acres of irrigated wetlands and another 10,000 acres of natural wetlands and playas, which environmentalists say make them among the most concentrated, pristine and biologically diverse wetlands in the southwestern United States. The refuge also serves as an important recharge area for San Luis Valley's Closed Basin groundwater aquifer system.

Environmental groups were particularly concerned about the effects of Lexam's drilling proposal on these sensitive wetlands and potential groundwater recharge areas since the test wells would be located in the midst of them.

In his order, Judge Miller said the agency failed to meaningfully analyze the chemicals and other materials that could be used during drilling or the hazards they could pose. Additionally, he criticized the agency for concluding that they would not have a significant impact on the refuge or its aquifers.

"This decision is a victory for those of us who live and work in the San Luis Valley and who have fought to protect the refuge and its special sense of place," said Christine Canaly of the San Luis Valley Ecosystem Council in a statement.

A diverse group of San Luis Valley residents, including ranchers, farmers, teachers, artists, business owners, faith leaders and scientists, united to oppose the drilling proposal.

"The economic value of this area is dependent on the protection of sensitive places like the Baca Refuge," said Jillian Klarl, a Crestone real estate broker. "Our quality of life depends on clean water, clean air and the recreational opportunities that surround our communities. Drilling is not compatible with those qualities."

Based on the evidence presented, Judge Miller determined that the San Luis Valley Ecosystem Council is "likely to prevail on the merits" and called the decision to approve the drilling "arbitrary and capricious."

Travis Stills of the Energy Minerals Law Center said Miller's decision recognized the harm that would come to the refuge from drilling, as well as the flaws in the process through which FWS officials approved the drilling. And he expressed hope that the recent court decision would spur FWS to reconsider its options, including buying the mineral rights from Lexam.

"This will send everyone back to the drawing board to look at the entire proposal," Stills said.

Stefan Spears, vice president of strategic development for Lexam, expressed disappointment in Miller's decision, although he said it was not unexpected. The company is still taking stock of how to proceed, but at this point, the company's drilling and exploration activities are on hold, he said.

Since Lexam is merely an intervenor in the lawsuit, Spears stressed that it will largely be up to FWS to decide what to do next. "They need to look at the decision closely and decide how to proceed," he said.

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