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## Court Order Halts Fossil Bed Project

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Rocky Mountain News Writer

The U.S. Tenth Circuit Court of Appeals Thursday acted to preserve the proposed Florissant Fossil Beds National Monument.

In a precedent-setting ruling, the three-judge court restrained Colorado Springs land developers from building an access road through the 34-million-year-old, world-famed area.

"This court can't countenance destruction of a 34-million-year-old record," Victor Yannacone Jr., New York attorney, said pleading for the decision.

"Some would say a record written by the hand of God."

Chief Judge Alfred P. Murrah and Judges Jean Breitenstein and John J. Hickey heard bulldozers for the Park Land Co. were ready to attack the site Thursday afternoon.

"We understand excavation can start Friday or Monday at the latest," State Rep. Richard Lamm, D-Denver, said.

Lamm and Yannacone represent Defenders of Florissant, Inc., a group of scientists trying to save the 6,000-acre area west of Colorado

Springs until Congressional action to make the area a national monument.

A bill to do this has passed the U.S. Senate. U.S. Rep. Wayne Aspinall, D-Colo., wants to rush the matter Friday before his House Interior and Insular Affairs Committee "despite the untimely death of his wife," Yannacone told the court.

### Despite Wife's Death

Judge Breitenstein at first questioned the court's power to grant the temporary restraining order.

Yannacone said plant and insect fossils in the area "will crumble into the volcanic ash from which they came" if their covering topsoil, "in some cases only three inches thick," is brushed away without measures taken to preserve them.

He said study of the fossils may provide evidence to support a scientific theory that the amount of volcanic—or any particle pollutant—in the atmosphere can cause climatic changes.

"Think what this would mean in this area of concern with air pollution," he said.

"But what statute does this excavation violate?" Judge Breitenstein demanded.

### No Statutory Protection

"Your Honor, there is no direct statutory protection for fossils," Yannacone conceded.

"What right have we to control the use of private land unless there's a nuisance perpetrated by the owners?" Judge Breitenstein asked.

"Your Honor, if someone had found the original U.S. Constitution buried on his land, and wanted to use it to mop up a stain on the floor, is there any doubt in the mind of this court they could be prevented?" Yannacone asked.

U.S. Dist. Judge Hatfield Chilson Wednesday refused to issue a restraining order in the case, saying he had no right at the restraining order level to control the use of private land.

Roger P. Hansen, a lawyer and executive director of the Rocky Mountain Center on Environment, then flew to Washington, D.C., to lay the case for Florissant before U.S. Justice Byron White.

However, Justice White told Hansen the scientists must first exhaust their remedies in the lower courts.

The restraining order is effective only until July 9, the date of a hearing before Judge

Chilson on the scientists' request for a preliminary injunction.

However, the scientists hope Congress will have passed the bill by then.

Yannacone told the Circuit Court the fossil beds "represent something unique in the Western Hemisphere, and in a sense, the world, since its only other competitor beds are in the Baltic area, behind the Iron Curtain."

He displayed a palm leaf fossil for the judges to see.

The three judges agreed in their written order the beds "are a unique, natural resource" and that excavation would "result in serious, permanent, and irreparable damage."

The judges issued the order without the presence of Robert Johnson of Colorado Springs, defense attorney, after Lamm and Yannacone said Johnson at Wednesday's hearing refused to enter a formal appearance in the case, for Park Land Co. owners, Claude Blue and J. R. Thornton both of whom were in court.

Lamm and Johnson said they sent two telegrams to Johnson's office at 10 a.m. and at noon Thursday, informing him of the 2 p.m.

"You try and find us to get service," Yannacone told the judges Johnson told him after the Wednesday hearing.

Johnson apparently became angry when Lamm informed him by telephone of the results of Thursday's hearing.