

§2:14. Form of temporary restraining order

FOR THE TENTH CIRCUIT
COURT OF APPEALS

DEFENDERS OF FLORISSANT, INC.,
Individually and on behalf of all those entitled
to the full benefit, use and enjoyment of the
national natural resource that is the proposed
FLORISSANT FOSSIL BEDS NATIONAL
MONUMENT, and all those similarly situated,

Plaintiffs

vs.

PARK LAND COMPANY; CENTRAL EN-
TERPRISES, INC., CLAUDE R. BLUE,
KENNETH C. WOFFARD; J. R. FONTAN,
M. L. BARNES; W. NATE SNARE, A. W.
GREGG, R. MITSCELE, MARILDA NEL-
SON; DELBERT and EMMA WELLS; E.
D. KELLY, JOHN BAKER and successors in
interest, if any, as their interest may appear,

Defendants

No. 340-69

Upon reading and filing the application of the plaintiffs herein for a temporary restraining order, together with transcript, the hearing on the application of plaintiffs for similar relief before the United States District Court, District of Colorado on July 9, 1969, together with the oral application of counsel for the plaintiffs before this Court on this date, including a complete recital of all the efforts by counsel for the plaintiffs to secure the appearance of the defendants, Claude R. Blue and J. R. Thornton, individually and as partners of the Park Land Company, the principal defendant herein, including recital of the substance of the conference held among the parties in the United States District Courthouse, Courtroom "C" on July 9, 1969, in which counsel for the plaintiff indicated he would secure further immediate temporary relief from the Circuit Court of Appeals for having jurisdiction of this Circuit and the United States Supreme Court and the representations by counsel for the defendants upon information and belief, Robert Johnson of Colorado Springs, that he would not enter a formal appearance under any circumstances in this action at this time, together with telegraphic notice at 10:00 A.M. and 12:00 P.M. on July 10, 1969, to Attorney Johnson, Claude R. Blue and J. R.

Thornton, at the address in Colorado Springs furnished to plaintiff's counsel at the conference of July 9, 1969 and to which no reply had been received.

AND IT APPEARING TO THE COURT from the representations of counsel and the information contained in the verified complaint and exhibits annexed thereto, the affidavits submitted therewith of Dr. Estella Leopold, Paleontologist for the United States Geological Survey, that the Florissant Fossil Beds represent a unique national natural resource and that the excavation with road building or other construction equipment of these fossil beds will result in serious, permanent, irreparable damage and render the action for preliminary injunction pending for trial in the United States District Court on July 29, 1969, moot, and it appearing from the uncontradicted statements contained in the transcript of the hearing of July 9, 1969, conducted in the presence of defendants and their counsel and the similar representations of plaintiff's counsel before this Court, and that there will be no damage to the defendants by order of this Court restraining construction activities at the area of the Florissant Fossil Beds,

IT IS ORDERED that the defendants, jointly or severally, individually or collectively, or by their agents, servants or employees, their contract vendees or their successors in interest, be and are hereby restrained from disturbing the soil, or sub-soil or geologic formations at the Florissant Fossil Beds by any physical or mechanical means including, but not limited to excavation, grading, road-building activity or other construction practice until a hearing on the merits of the plaintiff's application for preliminary injunction to be heard in the United States District Court, District of Colorado, on July 29, 1969, at 9:30 A.M.

IT IS FURTHER ORDERED that service of this order shall be made by the United States Marshal on any workman engaged in construction activities at the Florissant Fossil Beds forthwith and that personal service shall also be made on each of the defendants subject to the jurisdiction of the Court.

ALFRED P. MURRAH, Chief Judge
United States Court of Appeals

JEAN S. BREITENSTEIN, Judge
United States Court of Appeals

JOHN J. HICKEY, Judge
United States Court of Appeals
Dated: July 10, 1969