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Coal Lease/National Environmental Policy Act: Federal Court Addresses Challenge to Bureau of Land Management Environmental Assessment

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The United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") in a February 27th opinion addressed a challenge by the Northern Plains Resource Council, Inc. ("NPRCI") to an Environmental Assessment ("EA") prepared by the United States Bureau of Land Management ("BLM"). See *Northern Plains Resource Council, Inc. v. U.S. Bureau of Land Management, et al.*, 2018 WL 1060564.

The EA had been prepared by BLM to address its decision to lease coal in Montana's Bull Mountains to Signal Peak Energy, LLC.

NPRCI alleged four bases for noncompliance with the National Environmental Policy Act ("NEPA") in an action filed in the United States District Court for the District of Montana. They included:

1. Cumulative-impacts analysis failed to address reasonably foreseeable mining in the "mirror-image" mine to the north of the existing mine area.
2. Improper "tiering" of BLM's analysis to a 1990 Environmental Impact Statement.
3. Failure to take a "hard look" at the mining impacts upon the relevant topography and water resources.
4. Significant impacts analysis improperly relied on mitigation measures that minimized the impacts on surface and water resources.

The lower court granted summary judgment to BLM.

The Ninth Circuit upheld the granting of summary judgment and rejected each of the alleged NEPA violations.

As to Issue 1, the Ninth Circuit stated that BLM "reasonably determined that hypothetical future mining activity contemplated to the north is not currently a reasonably foreseeable future action," citing *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 762 (9th Cir. 2014).

In addressing Issue 2 (tiering), the Ninth Circuit stated that the federal regulations allow tiering, or incorporation by reference (i.e., the general discussions in a previous Environmental Impact Statement that pertain to issues specific to a subsequent analysis), citing 40 C.F.R. § 1508.28.

The alleged “hard look” (Issue 3) violation was rejected because the EA was deemed to contain:

. . . an extensive discussion of the anticipated effects that further mining would have on the area’s topography and water resources, including the ground and surface water quality, the hydrolic impacts of groundwater, and the effects of mining operations on area springs.

Consequently, BLM was deemed to have adequately considered the effects upon the affected topography and water resources and the decision was characterized as “fully informed and well-considered.”

Finally, the significant impacts analysis (Issue 4) was deemed adequate because BLM “reasonably concluded that the overall surface effects from subsidence would be minor in the short term and negligible in the long term.”

[A copy of the opinion can be downloaded here.](#)