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Pit River Tribe v. Bureau of Land Management, 793 F.3d 1147 (9th Cir. 2015)

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In *Pit River Tribe v. Bureau of Land Management*, the United States Court of Appeals for the Ninth Circuit explained the correct application of the zone of interests test and further solidified the importance of proper NEPA and NHPA analysis in geothermal leasing. The court reaffirmed that the BLM and the Forest Service must conduct additional cultural and environmental analysis when granting lease extensions under the Geothermal Steam Act. Furthermore, it rejected the BLM's decision to grant forty-year lease continuations to unproven geothermal leases by treating them as a unit rather than individually.

I. INTRODUCTION

In *Pit River Tribe v. Bureau of Land Management* ("*Pit River II*"), the Pit River Tribe joined with several regional environmental organizations (collectively "Pit River") to assert that the Bureau of Land Management's ("BLM") and the United States Forest Service's ("USFS") continuation of geothermal leases in the Medicine Lake Highlands violated the Geothermal Steam Act ("GSA"), the National Environmental Policy Act ("NEPA"), the National Historic Preservation Act ("NHPA"), and the Federal government's fiduciary trust responsibility to American Indian tribes.[1] The United States District Court for the Eastern District of California rejected Pit River's NEPA, NHPA, and fiduciary duty claims on the basis that the BLM lacked "discretion to consider environmental, historical, or cultural interests before continuing the leases."[2] The United States Court of Appeals for the Ninth Circuit reversed and remanded, concluding that Pit River's claims were not limited to the GSA's lease continuation clause.[3] Instead, Pit River's challenge implicated both the lease continuation provision and the lease extension provision.[4] Since the lease extension provision requires the BLM to conduct additional review under NEPA and NHPA, the Ninth Circuit held that Pit River's claim fell within the provision's "zone of interests."[5]

II. FACTUAL AND PROCEDURAL BACKGROUND

Enacted in 1970, the GSA responded to growing national interest in the development of geothermal resources due to public concern about energy

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1 Pit River Tribe v. Bureau of Land Mgmt., 793 F.3d 1147, 1148 (9th Cir. 2015) [hereinafter *Pit River II*]; *see* Geothermal Steam Act of 1970, Pub. L. 91-581, 84 Stat. 1566 (Dec. 24, 1970) (codified at 30 U.S.C. §§ 1001-1027 (2012)).

2 *Pit River II*, 793 F.3d at 1148-49; *see* 30 U.S.C. § 1005(a).

3 *Pit River II*, 793 F.3d at 1149.

4 *Id.*; *see* 30 U.S.C. § 1005(g).

5 *Pit River II*, 793 F.3d at 1149.

shortages and environmental pollution.[6] The GSA provides the framework for developing and using geothermal steam on federal lands.[7] Under the GSA, when a geothermal lease produces geothermal steam or utilizes it in commercial quantities after the initial ten-year lease term, the Secretary of the Interior ("Secretary") must grant a lease continuation for up to an additional forty-year term.[8] If no geothermal steam is produced or utilized, the Secretary may choose to extend the lease for successive five-year terms under certain conditions.[9] These five-year lease extensions require additional NEPA and NHPA review to consider the potential cultural, historical, and environmental effects of the lease extension.[10] The non-discretionary ten-year lease continuations do not require additional NEPA and NHPA review.[11]

Between 1982 and 1988, the BLM authorized geothermal development in the Medicine Lake Highlands of northeastern California, and granted the leases at issue in *Pit River II*.[12] The BLM also entered into a "Unit Agreement," which provided that drilling or operating on any tract of the leased land unit would be "accepted and deemed to be performed upon and for the benefit of each and every tract."[13] The BLM's decision to authorize leasing followed the completion of a supplemental Environmental Assessment ("EA") under NEPA.[14]

Geothermal development in the Medicine Lake Highlands conflicts with a number of tribal and non-tribal interests.[15] The Pit River Tribe's ancestral homeland includes the Medicine Lake Highlands.[16] Members of the Tribe regard the area as sacred, and continue to use it "for a variety of spiritual and traditional cultural purposes that depend on the physical, environmental, and visual integrity of th[ose] areas, and their quietude."[17] Non-tribal individuals and environmental organizations also have recreational, aesthetic, scientific, and environmental interests in the area.[18]

After the initial ten-year leasing period, one of the leaseholders requested extensions for leases it owned in the Medicine Lake Highlands.[19] The BLM internally disagreed on whether to grant a forty-year lease continuation for all the unproven leases as a unit, or to divide the unit and only grant the continuation to

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[6] Robert B. Keiter, *The Old Faithful Protection Act: Congress, National Park Ecosystems, and Private Property Rights* 14 PUB. LAND L. REV. 5, 9-10 (1993).

[7] *Pit River II*, 793 F.3d at 1149-50.

[8] 30 U.S.C. § 1005(a).

[9] *Id*. § 1005(g).

[10] Pit River Tribe v. U.S. Forest Serv., 469 F.3d 768, 781-84 (9th Cir. 2006) [hereinafter *Pit River I*].

[11] *Id.*

[12] *Pit River II*, 793 F.3d at 1150–53.

[13] *Id*. at 1150–51.

[14] *Id*. at 1151.

[15] *Id*. at 1149.

[16] *Id.*

[17] *Id*. (internal citations omitted).

[18] *Id*.

[19] *Id*. at 1151.

individual proven leases.[20] Ultimately, in 1991, the BLM decided to grant a forty-year lease continuation to the single proven lease, and five-year lease extensions to the remaining unproven leases.[21] The leaseholder responded by requesting the BLM rescind its decision and grant a forty-year continuation under the Unit Agreement provisions.[22] The BLM declined this request.[23] Five years later, the leaseholder renewed its request and, in 1998, the BLM reversed its earlier decision and granted a forty-year continuation for the unproven leases as a unit.[24] At the time, the BLM did not explain why it changed its statutory interpretation of the GSA.[25]

In 2002, several of the plaintiffs in *Pit River II* filed a suit ("*Pit River I*") that challenged a separate BLM decision.[26] In *Pit River I*, the Ninth Circuit determined the GSA's lease extension provision was discretionary because it provided that geothermal leases "may" be extended rather than "shall" be extended.[27] Since the Ninth Circuit determined the decision to grant lease extensions was discretionary and the earlier considerations of the cultural and environmental impacts were inadequate, the BLM was required to conduct proper NEPA and NHPA review prior to extending the leases.[28]

While *Pit River I* was pending, the Pit River Tribe and Save Medicine Lake Coalition filed two separate suits challenging the BLM's 1998 decision to grant the forty-year lease continuation.[29] In 2012, the district court consolidated the two separate suits into *Pit River II*.[30] Pit River agreed to file an amended complaint, and stipulated to limit its cause of action to the 1998 lease extensions.[31] As a result, the district court concluded that Pit River had waived all of its GSA claims except the allegation that the BLM "unlawfully and retroactively continued the 26 leases . . . for an additional period of 40 years in May 1998 in absence of any commercial production."[32] Since the BLM does not have discretion to withhold a lease continuation if the requirements of the continuation provision are met, the district court determined that Pit River failed

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[20] *Id*.

[21] *Id.*

[22] *Id*.

[23] *Id*. at 1151–52.

[24] *Id*. at 1152.

[25] *Id*.

[26] *Id*. at 1153. The BLM's decision in *Pit River I* involved two leases located in a different unit than the leases at issue in *Pit River II*.

[27] *Pit River II*, 793 F.3d at 1153 (discussing *Pit River I*, 469 F.3d at 780).

[28] *Id*. (discussing *Pit River I*, 469 F.3d at 788).

[29] *Id*.; *see* Pit River Tribe v. Bureau of Land Mgmt., No. 04-0956 (E.D. Cal. filed May 17, 2004); Save Medicine Lake Coal. v. Bureau of Land Mgmt. No. 04-0969 (E.D. Cal. filed May 18, 2004).

[30] *Pit River II*, 793 F.3d at 1154.

[31] *Id*.

[32] *Id*. at 1157 (internal citations omitted).

to state a claim.[33] The district court entered judgment for the BLM, and dismissed Pit River's NEPA, NHPA, and fiduciary duty claims.[34]

III. ANALYSIS

Since the GSA does not provide for a private right of action, Pit River relied on the Administrative Procedure Act ("APA") to challenge the BLM's decision to continue the unproven leases as a unit.[35] To bring a cause of action under the APA, a plaintiff's interests "must be arguably within the zone of interests to be protected or regulated by the statute" at issue.[36] Often characterized as a jurisdictional "prudential standing" requirement, the zone of interests test helps determine if "'particular plaintiff[s] should be heard to complain of a particular agency decision.'"[37] In applying the test, a court will specifically focus on "Congress's intent 'to make agency action presumptively reviewable.'"[38]

Last year, the Supreme Court of the United States "rejected the 'prudential standing' label" and emphasized that the zone of interests test is not a jurisdictional analysis.[39] The zone of interests test instead requires the court to use "'traditional tools of statutory interpretation'" to establish whether a plaintiff's claim falls within a "'legislatively conferred cause of action.'"[40] It only forecloses a suit "'when a plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress authorized that plaintiff to sue.'"[41]

In order to determine the "pivotal question" of whether Pit River's claims fell within the GSA's zone of interests, the Ninth Circuit addressed Congress's purpose for enacting the GSA.[42] Instead of looking at the GSA's overall statutory scheme to decide if Congress "intended to create a cause of action encompassing Pit River's claims," the Ninth Circuit focused its analysis on the particular statutory provision.[43] In doing so, the Ninth Circuit held that Pit River's ability to challenge the leases did not arise out of the GSA's broad objectives, but rather from the GSA's discretionary lease extension provision.[44]

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[33] *Id*.

[34] *Id*.

[35] *Id*. at 1150.

[36] *Id*. (internal citations omitted).

[37] *Id*. at 1156 (quoting Clarke v. Sec. Indus. Ass'n, 479 U.S. 388, 399 (1987)).

[38] *Id*. (quoting Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 132 S. Ct. 2199, 2210 (2012)) (internal citation omitted).

[39] *Id.* (quoting Lexmark Int'l, Inc. v. Static Control Components, Inc., 134 S. Ct. 1377, 1387-88 (2014)).

[40] *Id*. (quoting *Lexmark Int'l*, 134 S. Ct. at 1387).

[41] *Id*. (quoting *Lexmark Int'l*, 134 S. Ct. at 1389) (internal citations omitted).

[42] *Id*.

[43] *Id*. at 1156-57; *Bennett v. Spear*, 520 U.S. 154 (1997) ("[T]he zone of interests test is to be determined not be reference to the overall purpose of the Act in question . . . but by reference to the particular provision of law upon which the plaintiff relies." *Id*. at 175-76).

[44] *Pit River II*, 793 F.3d at 1157.

Focusing on the district court's conclusion that Pit River had abandoned its challenge of the BLM's interpretation of the GSA's lease extension provision, the Ninth Circuit reversed, stating that Pit River clearly never limited its claims to only the lease continuation provision.[45] The district court's decision had relied heavily on its determination that Pit River's claim was entirely based on the GSA's lease continuation provision.[46] Since GSA's lease continuation provision was mandatory, it did not permit or require "consideration of environmental concerns or competing land uses."[47] As a result, the district court reasoned that Pit River's suit was not within the zone of interests because the BLM lacked discretion to consider environmental, cultural, or historic factors in determining whether to grant lease continuations.[48]

In reversing this conclusion, the Ninth Circuit found that Pit River had not abandoned its claim under the GSA lease extension provision and, therefore, the zone of interests test did not foreclose Pit River's suit.[49] This decision reinvigorated Pit River's NEPA, NHPA, and fiduciary duty claims.[50] The Ninth Circuit stated that if Pit River were to prevail on remand and the leases were determined eligible for only five-year lease extensions, the BLM would be "required to comply with NEPA and NHPA."[51] Compliance would involve additional consultation with the affected tribes, individuals, and environmental organizations.[52]

IV. CONCLUSION

Pit River II demonstrates the proper application of the U.S. Supreme Court's recent reinterpretation of the zone of interests test. Additionally, *Pit River II* reaffirms the Ninth Circuit's earlier holding in *Pit River I* by confirming the requirement for additional NEPA and NHPA compliance under the GSA's lease extension provision. As a result, geothermal leases previously granted without sufficient NEPA and NHPA analysis cannot be extended without additional consideration of environmental, historical, and cultural interests. *Pit River II* rejected the notion that geothermal lease units, comprised of individual leases, should be grouped together when deciding whether to grant a continuation or extension. According to the Ninth Circuit, the BLM must instead decide whether to grant a continuation or extension on a lease-by-lease basis. This holding ensures leaseholders cannot forego additional environmental, historical, and cultural review by contracting to have unproven leases granted long-term continuations just because they are located within a unit that contains a proven geothermal lease.

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45 *Id.*
46 *Id.*
47 *Id.* at 1155 (internal citations omitted).
48 *Id.* at 1157-58.
49 *Id.*
50 *Id.* at 1159.
51 *Id.*
52 *Id.*