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Montana Environmental Information Center v. Montana Department of Environmental Quality

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***Montana Environmental Information Center v. Montana Department of Environmental Quality*, ___ P.3d ___, 382 Mont. 102 (Mont. 2016)**

Hannah R. Seifert

In *MEIC II*, the Montana Supreme Court held MEIC’s claims regarding the extent of reclamation required under the MMRA were procedurally barred. In affirming application of issue preclusion to two of MEIC’s three claims, the Court relied on a 2011 district court decision resolving, arguably, identical claims against MEIC. The Court found that, even though MEIC had not raised its statutory argument before, the claim was barred because its consideration would require the court to revisit the previously litigated constitutional issue. Ultimately, the Court upheld the reclamation plan adopted by the DEQ in conjunction with the expansion of an open pit gold mine near Whitehall, Montana.

I. INTRODUCTION

At issue in *Montana Environmental Information Center v. Montana Department of Environmental Quality* (“*MEIC I*”) was whether the Montana Environmental Information Center’s (“MEIC”) constitutional and statutory arguments against approval of the expansion of a gold mine were procedurally precluded and whether the Montana Department of Environmental Quality’s (“DEQ”) reclamation plan for the expansion site complied with the criteria set forth in the Montana Metal Mine Reclamation Act (“MMRA”).¹ MEIC challenged the DEQ’s decision approving the expansion of a gold mine owned by Golden Sunlight Mines, Inc. (“GSM”) to include a smaller nearby pit.² MEIC asserted that the reclamation plan failed to, first, fully restore the site to its previous condition, violating Article IX, Section 2 of the Montana Constitution and the MMRA; and second, comply with the MMRA’s criteria for approval of reclamation plans.³ The Montana Supreme Court affirmed the Fifth Judicial District Court of Montana’s order granting summary judgment in favor of the DEQ and GSM, finding MEIC’s arguments precluded and the DEQ’s decision supported by the evidence under the MMRA criteria.⁴

II. FACTUAL AND PROCEDURAL BACKGROUND

MEIC II arose from MEIC’s challenge to the DEQ’s approval of GSM’s 2012 application to amend its gold mine operating permit.⁵ The

1. Mont. Env’tl. Info. Ctr. v. Mont. Dep’t of Env’tl. Quality, ¶¶ 2-3, ___ P.3d ___, 382 Mont. 102 (Mont. 2016) [hereinafter *MEIC II*]; see Mont. Code Ann. §§ 82-4-301 to 82-4-390 (2015).

2. *MEIC II*, ¶ 2.

3. *Id.*

4. *Id.* ¶ 4.

5. *Id.* ¶ 6.

operating permit would allow for the expansion of GSM's gold mine, located on the southern edge of the Bull Mountains near Whitehall, Montana, to include development of the nearby North Area Pit.⁶ The North Area Pit was estimated to cover roughly 49.4 acres and would allow GSM to mine an additional 4.2 million tons of gold ore, extending GSM's mining operation by two years.⁷

Pursuant to the proposed North Area Pit expansion, GSM submitted a reclamation plan to the DEQ.⁸ In 2013, the DEQ issued a draft Environmental Impact Statement ("EIS") analyzing the advantages and disadvantages of four alternative reclamation plans in light of the criteria set forth in the MMRA: first, the No Action Alternative, reflecting GSM's current mining operation with no management plan for any additional disturbance caused by the North Area Pit; second, the GSM Proposed Reclamation Alternative, requiring GSM to continue to operate its external dewatering wells after closure of the mine and install a backup underground in-pit sump to prevent groundwater contamination; third, the Agency-Modified Alternative, mirroring the GSM Proposed Reclamation Alternative and including additional modifications developed by the DEQ to further mitigate the mine's environmental impacts; and fourth, the North Area Pit Backfill Alternative, requiring GSM to use 9.2 million tons of waste rock from the mine to backfill the North Area Pit but excluding the installation of an in-pit sump as an added protection against groundwater contamination.⁹

After a public hearing and comments, the DEQ issued a final EIS identifying the Agency-Modified Alternative as the preferred alternative because, as opposed to the North Area Pit Backfill Alternative, it provided adequate assurance that pollution of the local aquifers and surface waters would be prevented.¹⁰ The DEQ determined that the benefits associated with the Backfill Alternative—structural stability, increased wildlife habitat, and added aesthetic value—did not outweigh its failure to sufficiently mitigate the risk of groundwater contamination since it did not permit GSM to install an in-pit sump.¹¹

In 2014, MEIC filed a complaint challenging the DEQ's approval of the North Area Pit expansion, alleging that the Agency-Modified Alternative violated the Montana Constitution and the MMRA, and that the DEQ's decision was arbitrary and capricious because it did not satisfy the MMRA criteria.¹² MEIC contended that the Montana Constitution and the MMRA require all land disturbed by a mining operation to be "fully reclaimed" to its previous condition.¹³ Defendants, the DEQ and GSM, and defendant-intervenor Jefferson County (collectively "Defendants")

6. *Id.*

7. *Id.*

8. *Id.* ¶ 7.

9. *Id.*

10. *Id.* ¶ 8.

11. *Id.*

12. *Id.* ¶ 9.

13. *Id.*

argued that MEIC’s constitutional and statutory claims were precluded because the issue had already been litigated in 2011.¹⁴ In *Montana Environmental Information Center v. Montana Department of Environmental Quality* (“*MEIC I*”), MEIC challenged the DEQ’s adoption of its reclamation plan for the Mineral Hill Pit, an open pit mine located at GSM’s mine, claiming that the plan was unlawful under the Montana Constitution and the MMRA because it failed to “fully reclaim” the land disturbed by mining operations to its previous condition.¹⁵ The Fifth Judicial District Court in *MEIC I* disagreed with MEIC’s interpretation and concluded that the Montana Constitution does not require disturbed land to be returned to its previous condition, but rather that the Legislature is authorized to provide “reasonable” standards for the reclamation of disturbed lands.¹⁶

The district court granted summary judgment in favor of the DEQ and GSM on the basis that MEIC was precluded from relitigating its constitutional and statutory claims under *MEIC I* and that the Agency-Modified Alternative satisfied the criteria under the MMRA.¹⁷ The Montana Supreme Court affirmed the district court’s order.¹⁸

III. ANALYSIS

A. MEIC I Precludes MEIC from Relitigating the Issue of Whether the Montana Constitution and the MMRA Require “Full Reclamation” of Land Disturbed by the Taking of Natural Resources.

MEIC asserted that issue preclusion was inapplicable because the issue raised in *MEIC II* was not identical to the issue decided in *MEIC I*, a necessary element of the four-element issue preclusion test.¹⁹ Specifically, MEIC argued that, first, it advanced different constitutional standards in each case, and second, factual differences in the two actions created different issues.²⁰ Defendants maintained that the legal issue was the same and MEIC was attempting to reframe the same constitutional issue on appeal to avoid issue preclusion.²¹

The Montana Supreme Court agreed with Defendants, finding that, despite a variation in phrasing, MEIC was advocating the same constitutional standard—“full reclamation”—in both *MEIC I* and *MEIC II*.²² Further, the Court stated that, even if it accepted MEIC’s argument that

14. *Id.* ¶ 10; *see* Mont. Env’tl. Info. Ctr. v. Mont. Dep’t of Env’tl. Quality, No. DV-08-10896, 2011 Mont. Dist. LEXIS 99 (5th Judicial Dist. Ct. Mont. June 30, 2011) (order granting summ. j.) [hereinafter *MEIC I*].

15. *MEIC I*, 2011 Mont. Dist. LEXIS 99, at *12.

16. *Id.* at *11-14.

17. *MEIC II*, ¶ 12.

18. *Id.* ¶ 36.

19. *Id.* ¶ 17.

20. *Id.*

21. *Id.* ¶ 19.

22. *Id.* ¶ 20.

it was asserting a new standard, MEIC's argument would still be precluded because it failed to raise the new standard in *MEIC I*.²³ The Court recognized that the constitutional standard was conclusively addressed in *MEIC I*, where MEIC had a full opportunity to advance its legal theories or appeal the district court's decision that the Montana Constitution requires "reasonable reclamation" as opposed to "full reclamation."²⁴

The Court further disagreed with MEIC that the factual differences between *MEIC I* and *MEIC II* were legally significant.²⁵ Despite MEIC's contention that the Mineral Hill Pit and the North Area Pit were "materially different,"²⁶ the Court analogized to both federal and state precedent where factual differences such as location and year of the occurrence did not bar issue preclusion because the differences had no bearing on how the issue was resolved.²⁷ Specifically, the physical characteristics between the two mines were "wholly immaterial to the legal issue presented."²⁸

Similarly, the Court held that MEIC was precluded from advancing its argument that the MMRA requires full reclamation.²⁹ Even though MEIC did not advance the theory in *MEIC I*, the Court extended its earlier analysis and reasoned that, because MEIC's statutory argument was based entirely on its constitutional argument, it necessarily would require the district court to revisit the constitutional issue in order to decide the statutory issue.³⁰ Ultimately, the Court found that allowing MEIC to relitigate its constitutional and statutory claims would frustrate the purpose of issue preclusion—to relieve parties and the judicial system of the expense of multiple lawsuits.³¹

B. The DEQ's Selection of the Agency-Modified Alternative was Reasonable and Consistent with the Criteria Set Forth in the MMRA.

Although MEIC was precluded from challenging the district court's interpretation of the Montana Constitution requiring only that the MMRA must achieve reasonable, as opposed to full reclamation, MEIC challenged the DEQ's application of the MMRA's statutory criteria to the facts of the North Area Pit.³² MEIC claimed that the DEQ's decision to select the Agency-Modified Alternative for reclamation did not satisfy MMRA's enumerated criteria.³³

23. *Id.* ¶ 21.

24. *Id.* ¶ 22.

25. *Id.* ¶ 23.

26. *Id.*

27. *Id.* ¶¶ 25-26.

28. *Id.* ¶ 27.

29. *Id.* ¶ 31.

30. *Id.*

31. *Id.* ¶ 16.

32. *Id.* ¶ 31.

33. *Id.* ¶ 33; *see* Mont. Code Ann. § 82-4-336(9)(b).

The Court found that the DEQ extensively analyzed the Agency-Modified Alternative pursuant to the MMRA criteria.³⁴ In particular, the Agency-Modified Alternative provided for specific precautionary and proactive measures, including fencing around the pit and growth media on the pit benches, to protect public safety, the surrounding environment and wildlife habitat, and aesthetic concerns.³⁵ Moreover, unlike the North Area Pit Backfill Alternative, the Agency-Modified Alternative provided for the installation of an underground sump pump, which would prevent groundwater contamination in the event the external dewatering wells were to fail.³⁶ The Court concluded that the DEQ's decision was consistent with the relevant MMRA criteria and affirmed the district court in upholding the DEQ's decision.³⁷

IV. CONCLUSION

Despite factual differences between the North Area Pit and the Mineral Hill Pit, the Montana Supreme Court upheld application of issue preclusion, finding such differences lacked legal significance.³⁸ Because the constitutional and statutory issues in *MEIC II* were “specifically raised, litigated, and decided” by the district court in *MEIC I*, the Court characterized MEIC's claims in this case as an attempt to relitigate the district court's previous ruling.³⁹ The Court noted that, for reasons unknown, MEIC did not appeal the adverse ruling in *MEIC I*.⁴⁰ Further, the Court made clear that issue preclusion can extend to issues not specifically raised in earlier litigation when deciding the new issue would require the Court to revisit the previously decided issue.⁴¹ Finally, after holding that MEIC was precluded from challenging the constitutional sufficiency of the MMRA, the Court upheld the DEQ's chosen reclamation plan as consistent with current MMRA criteria.⁴²

34. *MEIC II*, ¶ 34.

35. *Id.*

36. *Id.* ¶ 35.

37. *Id.* ¶ 36.

38. *Id.* ¶ 24.

39. *Id.* ¶ 28.

40. *Id.* ¶ 11.

41. *Id.* ¶ 31.

42. *Id.* ¶ 36.