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Western Organization of Resource Councils v. United States Bureau of Land Management

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***Western Organization of Resource Councils v. United States Bureau of Land Management*, 2018 U.S. Dist. LEXIS 49635, 2018 WL 1475470 (D. Mont. Mar. 26, 2018)**

Seth Sivinski

To what extent must the BLM analyze potential climate change impacts where millions of acres of public lands and federal mineral estates are being considered for coal development? *Western Organization of Resource Councils v. BLM* addresses this, setting the scope for NEPA-mandated environmental impact analysis and reasonable alternative consideration by federal agencies. Judge Brian Morris of the District of Montana eschewed BLM’s assertions that considering climate impacts would be speculative, instead requiring BLM to acknowledge scientific reality and include modern climate science in its NEPA review analysis.

I. INTRODUCTION

In *Western Organization of Resource Councils v. United States Bureau of Land Management*, several environmental groups— Western Organization of Resource Councils, Montana Environmental Information Center, and the Natural Resources Defense Council (collectively, “Plaintiffs”)—challenged the United States Bureau of Land Management (“BLM”), then-Secretary of the Department of the Interior Sally Jewell, then-BLM Director Neil Kornze, and then-Assistant Secretary of Land and Minerals Management Janice Schneider (collectively, “Federal Defendants”) regarding their consideration of climate change in planning processes, alleging BLM’s climate impacts analysis was inadequate.¹ BLM claimed its analysis was sufficient and as an expert agency, its conclusions warranted deference.² The court focused on how BLM’s conclusions affected informed decision making within National Environmental Policy Act (“NEPA”) requirements.³ Ultimately, the court found BLM’s decisions excluding climate factors from its analysis arbitrary and capricious, in violation of the Administrative Procedures Act (“APA”), but limited the analysis to that required by NEPA.⁴

II. FACTUAL AND PROCEDURAL BACKGROUND

In 2015, Federal Defendants approved Resource Management Plans (“RMP”s) for two BLM field offices in the Powder River Basin of Montana and Wyoming by Record of Decision (“ROD”). The BLM

1. *Western Org. of Resource Councils v. U.S. Bureau of Land Management*, No. CV 16-21-GF-BMM, 2018 U.S. Dist., 2018 WL 1475470 (D. Mont. Mar. 26, 2018).

2. *Id.* at *14.

3. *Id.* at *6–*16.

4. *Id.* at *3.

creates and revises RMPs to “manage the public lands under principles of multiple use and sustained yield.”⁵ The Buffalo and Miles City RMPs were drafted “to address conditions that had changed within” the two respective planning areas since those RMPs were last approved.⁶ Both RMPs covered millions of acres of federal public lands and mineral estates, and amounted to “full scale resource management plan revisions”⁷ Approving an RMP, as Federal Defendants did here, constitutes a “major federal action that significantly affects the quality of the human environment[,]” thereby requiring promulgation of an Environmental Impact Statement (“EIS”) under NEPA.⁸ An EIS must provide a complete and balanced discussion of environmental impacts and “inform decisionmakers and the public of reasonable alternatives” to the action that would mitigate negative environmental consequences.⁹ Because the Buffalo and Miles City RMPs involved federal mineral estate land, the federal Mineral Leasing Act added even more complexity to the approval process.¹⁰

In 2016, Plaintiffs filed their initial action asserting six claims under NEPA and the APA, followed by a motion for summary judgment in 2017.¹¹ Plaintiffs alleged Federal Defendants’ approval of the Buffalo and Miles City RMPs was arbitrary and capricious, thus violating the APA, and contravened NEPA’s requirements to consider: (1) reasonable alternatives “that would reduce the amount of coal available for leasing” in the Buffalo and Miles City field offices; (2) “measures that would reduce methane emissions from resource development;” and (3) “direct, indirect, and cumulative impacts of the fossil fuel development under the plans.”¹² Federal Defendants filed a cross-motion for summary judgment, broadly contesting Plaintiffs’ contentions and requesting deference to determine the scope of RMPs.¹³

At its core, *Western Organization of Resource Councils v. United States Bureau of Land Management* revolves around the NEPA process and what constitutes effective analysis as scientific understanding evolves.

II. ANALYSIS

After resolving several issues of standing raised by Federal Defendants and intervenors, the court then addressed Plaintiffs’ six claims in turn.¹⁴

5. *Id.* at *2 (quoting the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(a)).

6. *Id.* at *1. The last RMP approval for Buffalo occurred in 1985 and for Miles City in 1996. *Id.*

7. *Id.* at *1–*2 (internal quotation marks omitted).

8. *Id.* at *2 (quoting 43 C.F.R. § 1601.0-6).

9. *Id.* at *3 (quoting 40 C.F.R. § 1502.1).

10. *Id.* (citing 30 U.S.C. §§ 181, et seq.).

11. *Id.* at *1.

12. *Id.* (external citations omitted).

13. *Id.*

14. *Id.* at *3–6.

A. Issue 1: Inadequacy of Alternatives Considered

Plaintiffs first claimed the alternatives put forward by BLM were not actually alternatives because each possibility predicted identical amounts of coal production and area affected.¹⁵ Defendants argued that they “deserve considerable discretion” in determining the scope of an EIS and pointed out BLM has no duty to consider reducing land available for lease because alternatives considering less available acreage would not satisfy the purpose and need of an RMP or the management direction upon which RMPs are based.¹⁶ The court sided with the Plaintiffs, holding that BLM could not acknowledge climate change concerns in one part of an RMP revision while simultaneously ignoring alternatives that would reduce available coal.¹⁷ The court determined that because all alternatives within the RMPs made the same amount of coal available for lease, BLM could not make a reasoned decision about whether decreasing production would achieve its mandate to revise RMPs.¹⁸ The broad discretion generally granted to agency decisions and decision-making processes did not justify ignoring scenarios where less coal was extracted.¹⁹

B. Issue 2: Methane Emissions Mitigation

Second, Plaintiffs’ claimed two violations of NEPA by BLM in its analysis of methane gas emissions.²⁰ They alleged that “NEPA required BLM to consider an alternative RMP that considered imposing mandatory mitigation measures for future lessees[,]”²¹ and that “BLM violated NEPA by failing to consider cumulative and indirect impacts of the extraction of fossil fuels pursuant to the RMPs”²² The court ultimately disagreed with Plaintiffs’ assertions because “[t]he imposition of the methane mitigation measures urged by Plaintiffs would demand more of the agency than what would be needed to ‘permit a reasoned choice.’”²³ The court also noted BLM would likely consider the reduction and mitigation of methane and other greenhouse gases later, when looking at the downstream effects of resource development options.²⁴

C. Issue 3: Indirect and Downstream Effects of Greenhouse Gases and Climate Change

On the cumulative effects of climate change issue, Plaintiffs alleged that BLM failed to consider secondary future impacts from the

15. *Id.* at *6-8.

16. *Id.* at *8.

17. *Id.* at *9.

18. *Id.*

19. *Id.*

20. *Id.* at *9.

21. *Id.* at *10.

22. *Id.* at *11.

23. *Id.*

24. *Id.*

fossil fuel extractions.²⁵ The estimates BLM did give, Plaintiffs asserted, underestimated the extractions' potential impact.²⁶ The court reiterated that NEPA should be integrated at the "earliest possible time," which included supplementation of the Miles City and Buffalo RMPs and EISs with an analysis of downstream effects of resource development in each planning area.²⁷ The court further supported its stance by citing the Ninth Circuit Court of Appeals' statement that an agency may not avoid completing an EIS by claiming that issues are speculative and will be discussed in later, site-specific assessments.²⁸ Stating that such practices do not lead to informed decision making, the district court held BLM may not defer such analysis to the leasing stage.²⁹ Pointing out the detailed projections of resource extraction within the RMPs, the court held that this analysis was "reasonably possible."³⁰

D. Issue 4: Cumulative Impacts of Federal Fossil Fuel Management

Next, Plaintiffs claimed that NEPA requires analysis of foreseeable cumulative impacts, however small, of fossil fuel extraction "both regionally and nationwide" for lands that totaled from "10 to 700 million acres"³¹ According to Plaintiffs, BLM violated NEPA by limiting the area it analyzed.³² Plaintiffs proposed two methods BLM could employ to measure cumulative climate impacts as required by NEPA.³³ Both of those options included performing a cost-benefit analysis of either the "global cost" or "social cost" of greenhouse gas emissions.³⁴ Federal Defendants responded that NEPA does not require BLM to complete a cost-benefit analysis of its fossil fuel development actions' cumulative effects by either of the methods urged by Plaintiffs; the court agreed.³⁵ Federal Defendants' failure to measure those cumulative impacts thus did not constitute a "clear error of judgment" over which the this court had authority and thus could reverse.³⁶

E. Issue 5: Global Warming Potential

Plaintiffs also claimed that BLM's metrics for analyzing greenhouse gas impacts were faulty because it used outdated science and inaccurate timeframes in its analysis.³⁷ The BLM based its "global warming potential" predictions on existing EPA data which used a 100-

25. *Id.*

26. *Id.*

27. *Id.* at 13 (quoting *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1073 (9th Cir. 2002)).

28. *Id.* at 13.

29. *Id.*

30. *Id.* at 18.

31. *Id.* at 13.

32. *Id.*

33. *Id.* at 14.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* at 15.

year timeframe, rather than the 20-year period of the RMPs.³⁸ The court found BLM's choice to base its analysis on a span utilized by the United Nations in a political agreement—rather than science—failed NEPA's purpose of “fostering informed decision making.”³⁹ This constituted a violation of the requirement that an EIS provide a “full and fair discussion of significant environmental impacts” and high-quality information, with “accurate scientific analysis” informing that discussion.⁴⁰ Importantly, the court found that BLM's inclusion of alternative GWP values in the Miles City RMP and EIS showed that it understood the changing nature of climate science, rendering arbitrary BLM's decision to use the EPA data, rather than a scientific timeline.⁴¹

F. Issue 6: Cumulative Impacts on Air Quality

In their final claim, Plaintiffs asserted BLM violated NEPA by declining to analyze the combined effects of coal, oil, and gas development on air quality.⁴² Plaintiffs argued that BLM's air quality analysis was cursory and did not meet the standards required by federal guidelines.⁴³ Federal Defendants disagreed, asserting the air quality analysis used and met National Ambient Air Quality Standards (“NAAQS”), thereby fulfilling any obligation to consider cumulative effects on air quality.⁴⁴ The court sided with Federal Defendants, finding that BLM's reliance on NAAQS met NEPA's so-called “hard look requirement.”⁴⁵ The court found no authority that required an agency to analyze impacts to a greater standard than that required in NAAQS.⁴⁶

IV. CONCLUSION

In this case, the court considered how climate change considerations must properly be incorporated into the NEPA process. Before this holding, other courts had struggled to navigate this politically charged issue, leading to drastically different conclusions. The United States District Court for the District of Montana's strict procedural approach to explaining how and why climate science must play a role in NEPA analysis, on the other hand, deftly avoided such conflicts. This decision thus provided a more understandable and more practical precedent. It should assist courts in more effectively ruling on the place of climate change in NEPA analysis.

38. *Id.*
39. *Id.* at 16.
40. *Id.* at 15.
41. *Id.* at 16.
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.* at 18.
46. *Id.* at 16.