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BLM's Lease of Lands in Alaska's National Petroleum Reserve Using Programmatic-Level EIS Did Not Violate NEPA



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National Petroleum Reserve-Alaska covers 23.6 million acres of public land, which includes habitat for polar bears, grizzly bears, gray wolves, moose, caribou, and dozens of species of migratory birds. Under the National Petroleum Reserve Protection Act, the Secretary of the Interior has authority to permit oil and gas exploration, leasing, and development. In 2012, the Bureau of Land Management published a combined Integrated Activity Plan and Environment Impact Statement ("2012 EIS") designed to determine the appropriate management for all BLM-managed lands in the Reserve. The 2012 EIS analyzed five alternative proposals, including different options for the percentage of lands that would be made available for oil and gas leasing. In 2017, BLM entered into a lease with ConocoPhillips for approximate 80,000 acres of land. Plaintiffs sued, claiming BLM had conducted the 2017 lease transaction without complying with NEPA. The Court of Appeal disagreed with plaintiff's core claim that a single environmental document could not serve as a programmatic EIS for a broad-scale land management plan and also as a site-specific EIS for an oil and gas lease sale. The court observed that a single "federal action" for purposes of NEPA can be both broad-scale and site-specific, and can be evaluated at both of those levels in a single EIS. Applying this principle, the court reviewed the scope of the 2012 EIS, which stated both that it was designed to determine the appropriate management of all BLM-managed lands in the Reserve and that it would fulfill NEPA requirements for the first oil and gas lease sale. As to future lease sales, the EIS stated that "[p]rior to conducting each additional sale, the agency would conduct a determination of the existing NEPA documentation's adequacy" and could decide administratively that the analysis was adequate for

a second or subsequent sale. The court determined that this language in the 2012 EIS regarding future NEPA requirements provided reasonable notice that its intended scope encompassed the actual lease sales as well as programmatic-level analysis of overall management. It also deferred to BLM's "reasonable position" that the 2012 EIS could serve as the EIS for the 2017 ConocoPhillips lease sale. Based on this conclusion, the court held that plaintiff's claim that BLM failed to take a sufficiently hard look at the potential environmental impacts of the 2017 lease sale was barred by the statute of limitations.

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