[ORAL ARGUMENT NOT YET SCHEDULED]

Nos. 18-5340 and 18-5341

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

W.A. MONCRIEF, JR.,
Plaintiff-Appellee,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR and
DONATO JUDICE, Acting State Director,
MONTANA AND THE DAKOTAS STATE OFFICE
OF THE UNITED STATES BUREAU OF LAND MANAGEMENT,
Defendants-Appellants,

and

PIKUNI TRADITIONALIST ASSOCIATION, et al.,
Defendant-Intervenors-Appellants.

Appeal from the United States District Court for the District of Columbia

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BRIEF OF DEFENDANT-INTERVENORS-APPELLANTS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), undersigned counsel certifies as follows:

A. Parties and Amici

Defendant-intervenor-appellants are Pikuni Traditionalist Association, Blackfeet Headwaters Alliance, Glacier-Two Medicine Alliance, Montana Wilderness Association, National Parks Conservation Association, and The Wilderness Society.

Plaintiff-appellee is W.A. Moncrief, Jr.

Defendant-appellants are the U.S. Department of the Interior and Don Judice, Acting State Director, Montana/Dakotas State Office, Bureau of Land Management.

B. Ruling Under Review

The decision under review is the September 24, 2018 Memorandum Opinion and Order issued by the United States District Court for the District of Columbia (Hon. Richard J. Leon) granting the plaintiff's motion for summary judgment and denying defendants' and defendant-intervenors' motions for summary judgment. The district court decision does not have an official citation.

C. Related Cases

The related case Solenex LLC v. Bernhardt, Case Nos. 18-5343 and 18-5345, is pending before this Court.

/s/ Timothy J. Preso
Timothy J. Preso

CORPORATE DISCLOSURE STATEMENT

Defendant-intervenor-appellants Pikuni Traditionalist Association, Blackfeet Headwaters Alliance, Glacier-Two Medicine Alliance, Montana Wilderness Association, National Parks Conservation Association, and The Wilderness Society are nonprofit conservation organizations. None of the defendant-intervenor-appellant organizations has a parent corporation and no publicly held corporation owns a 10-percent or greater ownership interest in any of the organizations.

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GLOSSARY OF ABBREVIATIONS

APA:	Administrative Procedure Act
BLM:	Bureau of Land Management
EIS:	Environmental Impact Statement
Fina:	Fina Oil and Chemical Co.
NEPA:	National Environmental Policy Act
NHPA:	National Historic Preservation Act
PTA:	Pikuni Traditionalist Association

INTRODUCTION

This appeal involves an action taken by the U.S. Department of the Interior to right a legal wrong that threatened a key landscape in one of our nation's last great wild places, a landscape that also constitutes an irreplaceable cultural homeland for the Blackfeet people of northern Montana. At issue is the Interior Department's cancellation of a federal mineral lease in the Badger-Two Medicine region of public land adjoining Glacier National Park and the Blackfeet Indian Reservation. Defendant-intervenor-appellants Pikuni Traditionalist Association, et al. ("PTA"), are Blackfeet traditionalists and allied conservationists who have opposed oil and gas development in the Badger-Two Medicine region for decades, including through cancellation of this lease.

As set forth below, federal appellate precedent, administrative and congressional mineral withdrawal actions, and formal recommendations from the federal experts charged by Congress with responsibility for protecting our nation's natural and cultural heritage uniformly demonstrate both that the lease in question was illegally issued and that oil and gas development on the lease would inflict severe environmental and cultural harms. Yet when the Interior Department responded by canceling the lease, the district court held that its action arbitrarily disturbed the leaseholder's reliance interests and was barred by a statutory

protection for bona fide purchasers of federal mineral leases. The district court's rulings were erroneous and should be reversed.

STATEMENT OF JURISDICTION

(A) The district court had subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) because plaintiff W.A. Moncrief, Jr. ("Moncrief") presented claims under the Mineral Leasing Act, 30 U.S.C. § 181 et seq., the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq., and the U.S. Constitution.

(B) This Court has jurisdiction over this appeal from the final decision of the district court pursuant to 28 U.S.C. § 1291. PTA has Article III standing to seek relief from this Court, as demonstrated by the declarations of John R. Murray, Jr.; Jack Gladstone; Lou Bruno; Donna Caruso-Hirst; Jennifer Ferenstein; Kendall Flint; Michael Jamison; Casey Perkins; and Gene Sentz, which were filed in support of PTA's motion to intervene in the district court. See ECF Nos. 9-3 to 9-11.

(C) PTA noticed this appeal on November 20, 2018, within 60 days of the district court's issuance of its September 24, 2018 Memorandum Opinion and Order, as required by Federal Rule of Appellate Procedure 4(a)(1)(B).

(D) This appeal is from the district court's September 24, 2018 Order, which issued separately from the district court's Memorandum Opinion, disposed

of all parties' claims, and included no legal reasoning or authority, thereby constituting an appealable judgment under Federal Rule of Civil Procedure 58(a). See Kidd v. District of Columbia, 206 F.3d 35, 38-41 (D.C. Cir. 2000) (holding that similar order qualified as judgment under Rule 58).

STATEMENT OF THE ISSUES

I. Whether the district court erred in holding that cancellation of a federal mineral lease held by Moncrief was arbitrary and capricious because of failure to consider the leaseholder's reliance interests.

II. Whether the district court erred in holding that the Moncrief lease cancellation also was unlawful because Moncrief was shielded by the Mineral Leasing Act's protection for bona fide purchasers, 30 U.S.C. § 184(h)(2).

STATUTORY BACKGROUND

I. THE NATIONAL ENVIRONMENTAL POLICY ACT

The National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., is "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a).

> In order to "create and maintain conditions under which man and nature can exist in productive harmony," the National Environmental Protection Act (NEPA), 42 U.S.C. § 4331(a), requires any federal agency issuing a construction permit, opening new lands to drilling, or undertaking any other "major" project to take a hard look at the project's environmental consequences, id. § 4332(2)(C), including the impacts it may have on "important historic ... aspects of our national heritage," id. § 4331(b). To this end, the agency must develop an

> environmental impact statement (EIS) that identifies and rigorously appraises the project's environmental effects, unless it finds that the project will have "no significant impact." 40 C.F.R. § 1508.9(a)(1).

Nat'l Parks Conservation Ass'n v. Semonite, 916 F.3d 1075, 1077 (D.C. Cir. 2019).

Such an environmental impact statement, or EIS, "forces the agency to take a 'hard look' at the environmental consequences of its actions, including alternatives to its proposed course." Sierra Club v. FERC, 867 F.3d 1357, 1367 (D.C. Cir. 2017); see 42 U.S.C. § 4332(2)(C)(iii). "[I]t also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989). NEPA's requirement that an EIS examine "alternatives to the proposed action," 42 U.S.C. § 4332(2)(C)(iii), "seeks to ensure that each agency decision maker has before him and takes into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance." Calvert Cliffs Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n, 449 F.2d 1109, 1114 (D.C. Cir. 1971); see 40 C.F.R. § 1502.14(a), (d) (requiring EIS to "evaluate all reasonable alternatives," including "the alternative of no action"). Under NEPA, "[i]f any 'significant' environmental impacts might result from the proposed

agency action then an EIS must be prepared before the action is taken." Sierra Club v. Peterson, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (emphases in original).

II. THE NATIONAL HISTORIC PRESERVATION ACT

Congress enacted the National Historic Preservation Act ("NHPA"), 54 U.S.C. § 300101 et seq., "to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony." CTIA-The Wireless Ass'n v. FCC, 466 F.3d 105, 106 (D.C. Cir. 2006) (quotation and citation omitted). The NHPA requires that "[t]he head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking" (1) "take into account the effect of the undertaking on any historic property" and (2) afford the federal Advisory Council on Historic Preservation "a reasonable opportunity to comment with regard to the undertaking." 54 U.S.C. § 306108. An "undertaking" under the NHPA "means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including … those requiring a Federal permit, license, or approval." Id. § 300320(3).

These provisions "seek[] to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on

historic properties, commencing at the early stages of project planning," with a goal of identifying "ways to avoid, minimize or mitigate any adverse effects on historic properties." 36 C.F.R. § 800.1(a).

The NHPA's mandates display an "operational similarity" with NEPA in that both "impose procedural obligations on federal agencies after a certain threshold of federal involvement." Karst Envtl. Educ. & Prot., Inc. v. EPA, 475 F.3d 1291, 1295 (D.C. Cir. 2007) (quotations omitted). Further, "courts treat 'major federal actions' under NEPA similarly to 'federal undertakings' under NHPA." Id. at 1295-96.

III. THE MINERAL LEASING ACT

The Mineral Leasing Act, 30 U.S.C. § 181 et seq., "authorizes the leasing of lands owned by the United States for the purpose of oil and gas exploration and development." Sierra Club v. Peterson, 717 F.2d at 1411 n.2. While the Secretary of the Interior administers the federal oil and gas leasing program, the Secretary of Agriculture, acting through the U.S. Forest Service, regulates "all surface-disturbing activities conducted pursuant to any lease issued" on national forest lands. 30 U.S.C. § 226(a), (g).

Once a lease is issued, the Interior Secretary may, "in the interest of conservation of natural resources," suspend oil and gas operations and production on the lease. 30 U.S.C. § 209; see also Copper Valley Mach. Works, Inc. v.

Andrus, 653 F.2d 595, 600 (D.C. Cir. 1981) (holding that "suspending operations to avoid environmental harm is definitely a suspension in the interest of conservation"). Such a suspension tolls the leaseholder's obligation to make rental payments and extends the duration of the lease for the suspension period. See 30 U.S.C. § 209.

In addition, the Interior Secretary has authority, "under his general powers of management over the public lands," to cancel "leases issued through administrative error." Boesche v. Udall, 373 U.S. 472, 476, 481 (1963). This authority was "already firmly established" when the Mineral Leasing Act was enacted, was not altered by that statute, id., and has since been codified in an Interior Department regulation providing that "[l]eases shall be subject to cancellation if improperly issued," 43 C.F.R. § 3108.3(d). The Mineral Leasing Act provides that "[t]he right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease." 30 U.S.C. § 184(h)(2).

STATEMENT OF THE CASE

I. THE BADGER-TWO MEDICINE REGION

The Badger-Two Medicine region comprises approximately 130,000 acres of public land within the Helena-Lewis and Clark National Forest along Montana's Rocky Mountain Front, where the eastern slope of the Rocky Mountains rises from

the Great Plains. FS-Supp002154. Named for the two waterways—Badger Creek and the Two Medicine River—that wind through the area after originating in the snowfields along Montana's Continental Divide, the Badger-Two Medicine region is bounded by some of our nation's most impressive public wild lands, including Glacier National Park and the Great Bear and Bob Marshall Wilderness Areas, as well as the Blackfeet Indian Reservation. FS-Supp002158; see ECF No. 9-8 at 9-10; ECF No. 9-11 at 5-10 (declarations attaching photographs of Badger-Two Medicine area).

The Badger-Two Medicine region also constitutes an outstanding natural area in its own right. The region is almost entirely roadless and provides exceptional habitat for a variety of sensitive wildlife species, including elk, grizzly bears, wolverines, and mountain goats. BLM-M000671. Because of its generally pristine nature and impressive wildlife, the U.S. Forest Service has characterized the region as "a magnificent area to enjoy solitude, wildlife viewing, hiking, hunting, fishing, stock use, snowshoeing and cross-country skiing." FS-Supp002158. Accordingly, the agency in 2009 prohibited motorized wheeled vehicle use on all trails and all snowmobiling in the Badger-Two Medicine region to preserve its undisturbed character. FS-Supp002161, 002163.

While its environmental values alone are extraordinary, the Badger-Two Medicine region also constitutes what the governing body of the neighboring

Blackfeet Tribe has described as the "last Traditional Sacred territory" of the Blackfeet people, who have used the area for centuries. FS004250. The region is the site of the Blackfeet Tribe's creation story and many of their longstanding traditions, and tribal members continue to use the area for a variety of cultural, spiritual, and subsistence activities, including gathering of plants and minerals used in traditional ceremonies. See generally FS005944-49; see also ECF No. 9-3, ¶¶ 6-8 (Murray Decl.); ECF No. 9-4, ¶¶ 3-5, 8 (Gladstone Decl.). The area's "pristine natural conditions" and "relative isolation … from other human activity" are essential attributes of its value to Blackfeet traditionalists for these purposes. FS005947.

Acknowledging the central importance of the Badger-Two Medicine region in Blackfeet culture, the U.S. Interior Department's Keeper of the National Register of Historic Places in 2002 and 2014 declared 165,588 acres encompassing the Badger-Two Medicine region eligible for listing in the National Register as a Traditional Cultural District under the NHPA. See FS005942-59 (2002 eligibility determination); FS006462-64 (2014 eligibility determination). Pursuant to a NHPA guidance document, this designation defines an area that has an "association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community." FS003470 (U.S. Dep't of the

Interior, Guidelines for Evaluating & Documenting Traditional Cultural Properties (1998)); see FS006464 (2014 eligibility determination). In the words of the Blackfeet Tribe itself—as expressed in a series of tribal government resolutions adopted from 1973 to 2014—the Badger-Two Medicine region constitutes "Sacred Ground" that continues "to be vital to the religious, cultural and subsistence survival of the Blackfoot people." FS-HC003811 (1973 resolution); B2M-Supp-AR000097 (2014 resolution of Blackfoot Confederacy); see also HC01705-06 (1993 resolution); FS004243-45 (2004 resolution).

II. THE OIL AND GAS LEASING CONTROVERSY

Despite the Badger-Two Medicine region's environmental and cultural significance, in the early 1980s the federal government leased much of the area for oil and gas development during a controversial federal mineral leasing campaign that impacted large tracts of national forest land in the northern Rocky Mountains. See, e.g., Sierra Club v. Peterson, 717 F.2d at 1409 (lawsuit brought by conservation groups challenging oil and gas leases in Idaho and Wyoming); Conner v. Burford, 848 F.2d 1441 (9th Cir. 1988); Bob Marshall All. v. Hodel, 852 F.2d 1223 (9th Cir. 1988) (both involving similar challenges regarding leasing in Montana). Leasing in the Badger-Two Medicine region included a 7,640-acre

parcel issued to Randall L. Weeks, a predecessor in title to appellee Moncrief. See BLM-M000763 (Moncrief lease).[1]

The prospect of oil and gas development on these treasured national forest lands generated significant opposition. In 1985, an Interior Department agency, the U.S. Bureau of Land Management ("BLM"), approved a drilling project on a separate lease in the Badger-Two Medicine region that Interior issued contemporaneously with the Moncrief lease, and which was then held by Fina Oil and Chemical Co. ("Fina").[2] See FS000032-34. In response, numerous organizations and individuals—including the Blackfeet Tribe and certain members of the PTA coalition—appealed the approval to the Interior Board of Land Appeals, which set aside and remanded BLM's decision for further examination of the proposed drilling project's cultural and wildlife impacts. See FS000355-78; see also FS-HC002725; FS-HC002768 (Blackfeet opposition to drilling).

This 1985 appeal and remand constituted the first round in an eight-year series of contested administrative proceedings during which BLM repeatedly sought to reauthorize the Fina drilling project in the face of public opposition. See

[1] Mr. Weeks assigned his lease interest to the Atlantic Richfield Co. in 1983. BLM-M000757. In 1989, Atlantic Richfield Co. assigned the lease to Moncrief. BLM-M000740.

[2] This lease was subsequently transferred to Solenex LLC, and its cancellation is at issue before this Court in the related appeals in Solenex LLC v. Bernhardt, Case Nos. 18-5343 and 18-5345.

FS002300-02. During the course of these proceedings, controversy over the Fina drilling proposal extended to the validity of the underlying lease. See FS002315. In this regard, challengers cited a series of federal court decisions issued from 1983 to 1988 holding that the Forest Service and BLM violated NEPA in issuing mineral leases using the same environmental assessment process these agencies used to issue the Badger-Two Medicine leases. See id. That controversy culminated when, in response to BLM's 1993 reauthorization of the Fina project, tribal and conservation interests, including members of the PTA coalition, filed a lawsuit against Forest Service and Interior Department officials in the District of Montana claiming, among other things, that BLM and the Forest Service violated NEPA in issuing the underlying lease. See FS002278-79. The complaint also alleged violations of the NHPA and the American Indian Religious Freedom Act, 42 U.S.C. § 1996, because BLM and the Forest Service failed to consult with the Blackfeet Tribe and ensure protection of the cultural and historic significance of the Badger-Two Medicine region before issuing the lease. FS002280-81. PTA's brief in Solenex LLC v. Bernhardt, Case Nos. 18-5343 and 18-5345, fully describes these events, with citations to the record and applicable precedent, and PTA adopts and incorporates that discussion here in the interest of efficiency and avoiding unnecessary duplication.

III. THE LEASE SUSPENSIONS

The Fina drilling and lease-invalidity controversy spilled over to impact the Moncrief lease. In 1988, federal officials decided to examine the environmental impacts of the Fina drilling proposal through an EIS prepared under NEPA. See BLM-M000746; BLM-M000672. In response, the then-owner of the Moncrief lease, Atlantic Richfield Co., asked the BLM to suspend its lease pursuant to 30 U.S.C. § 209 pending completion of the EIS process. See BLM-M000746. The BLM granted that request on June 1, 1988. Id.

As discussed, however, when that EIS process concluded and BLM sought to reauthorize the Fina drilling project in 1993, conservation and tribal interests sued. A short time later, former Montana Senator Baucus introduced federal legislation to withdraw the entire Badger-Two Medicine region from mineral development and to direct agency managers to maintain the region's "currently existing wilderness qualities" and prohibit "surface disturbance" on existing leases in the area until otherwise directed by Congress. FS006083-84. To afford Congress time to consider this proposed legislation, the Interior Secretary in 1993 issued a decision to suspend all operations and production on the Fina lease parcel for one year. See FS002352-53. Because of this decision, the Interior Department also extended for one year the suspension previously granted for the Atlantic Richfield Co. lease, which by this time was held by Moncrief. BLM-M000735-37.

For the same reason, the Interior Department subsequently extended the Moncrief lease suspension through June 30, 1996 and extended the suspension to all leases in the Badger-Two Medicine area. BLM-M000727; BLM-M000730.[3]

Meanwhile, a 1993 study of the Badger-Two Medicine region by two ethnographers identified significant cultural resources of the Blackfeet Tribe, primarily in the southern portion of the region. See FS004951-52 (Greiser & Greiser report); FS005944-59 (NHPA findings). That study recommended to the Forest Service that this cultural area be considered eligible for listing in the National Register of Historic Places pursuant to the NHPA. See HC00820. To allow time for the Forest Service to address this recommendation, the Interior Department extended the Moncrief lease suspension through June 30, 1998. See BLM-M000721-24.[4]

[3] The district court's discussion of the procedural history in this case erroneously asserted that "[o]nly in 1998 did the Forest Service first cite 'legislation to conserve and protect the natural resources of the area' as the primary reason for suspending the Moncrief lease from 1993-98." ECF No. 37 at 4 n.2. In fact, BLM, not the Forest Service, corresponded with Moncrief about the suspension issue, and first cited the introduction of protective legislation for the Badger-Two Medicine region as justification for a suspension on June 30, 1993. See BLM-M000735-37.

[4] As a result of these repeated lease suspensions in the Badger-Two Medicine area, the Montana federal district court administratively terminated the lawsuit filed by tribal and conservation interests in 1993 to challenge the Fina drilling authorization, but did so "without prejudice to the rights of the parties to reopen the proceedings for good cause shown." FS002292-93.

In 1997, the Forest Service formally submitted a request to the Keeper of the National Register for an eligibility determination regarding an 89,376-acre "Badger-Two Medicine Blackfoot Traditional Cultural District" generally corresponding to the area encompassed by the 1993 ethnographic study. See FS005882-84; FS005924-25. Because the Interior Department's Keeper of the National Register was still considering that request when the then-existing Badger-Two Medicine lease suspension would have expired, the Interior Department in 1998 issued a further suspension of all such leases, including the Moncrief lease, to "remain in effect until conclusion of the historic property review." BLM-M000717-19.

In January 2002, the Keeper determined that the proposed traditional cultural district was eligible for listing in the National Register. See FS005942. As a result, the Forest Service initiated a mandatory NHPA process to evaluate and, if possible, avoid or minimize the impact on the cultural district that would result from development on the Solenex lease parcel. See FS002791; see generally 36 C.F.R. §§ 800.1-800.13 (NHPA impact-assessment process). Also following this determination, experts undertook additional ethnographic studies concerning the cultural importance of areas omitted from the traditional cultural district, supported by testimony from Blackfeet traditionalists who had been reluctant to discuss publicly their cultural and spiritual practices during an earlier BLM evaluation of

the Fina drilling proposal. See FS003772-73. These studies yielded reports in 2006, 2007, and 2012 documenting significant Blackfeet cultural interests located in, among others, portions of the Badger-Two Medicine region extending to the north of the designated cultural district. See FS005466-005605; FS005606; FS005608-005731. Based on these studies, the Keeper of the National Register decided in May 2014 to expand the Badger-Two Medicine traditional cultural district northward to encompass its present area of 165,588 acres. See FS006462-64; FS006532. The site of the Moncrief lease lies within the expanded traditional cultural district boundary. See ECF No. 37 at 4.

This same period saw significant administrative and legislative action to protect the Badger-Two Medicine region. In 1997, the Forest Service issued a decision declining to approve any further oil and gas leasing in the Badger-Two Medicine region. See BLM-M000674. In 2001, the Interior Secretary administratively withdrew an area of national forest land in Montana, including the Badger-Two Medicine region, from further location and entry under U.S. mining laws "to preserve the outstanding values of the Rocky Mountain Front." Pub. Land Order No. 7480, 66 Fed. Reg. 6,657 (Jan. 22, 2001); see 43 U.S.C. § 1714 (authorizing withdrawals). Then, also recognizing the significance of the area's natural values, Congress in 2006 enacted Public Law 109-432, permanently withdrawing an area of public lands in Montana, including the Badger-Two

Medicine region, from future federal mineral leasing and offering existing oil and gas lease holders tax incentives to retire their leases. See Tax Relief & Health Care Act of 2006, Pub. L. No. 109-432, § 403, 120 Stat. 2922 (2006) (FS006271-79). As a result of this legislation, 29 leaseholders relinquished their leases in the Badger-Two Medicine region. See BLM-M000674. Eighteen leaseholders, including Moncrief, did not do so. BLM-M000004.

IV. THE PROCEEDINGS BELOW

A. The Solenex Litigation

The proceedings in the court below regarding the Badger-Two Medicine mineral leases began on June 28, 2013 when the current holder of the former Fina lease, Solenex LLC, filed a complaint in the district court. Solenex alleged that various Interior and Agriculture Department officials had unlawfully withheld and unreasonably delayed completion of administrative action to lift the suspension of the Solenex lease so that the drilling project authorized by the Interior Department in 1993 could proceed. In response, the district court ruled for Solenex on the unreasonable delay issue and ordered the federal defendants to develop a schedule for resolution of the Solenex lease suspension. PTA adopts and incorporates its discussion of those proceedings in its brief in Solenex LLC v. Bernhardt, Case Nos. 18-5343 and 18-5345.

Meanwhile, the ongoing NHPA process to assess and, if possible, avoid or minimize the impacts of allowing a drilling project to go forward on the Solenex lease reached its final stage with issuance of comments by the Advisory Council on Historic Preservation. See FS006583-92. The Advisory Council is a federal agency that oversees the NHPA process and "consults with and comments to agency officials on individual undertakings and programs that affect historic properties." 36 C.F.R. § 800.2(b).

The Advisory Council's comments, issued on September 21, 2015, found that the Badger-Two Medicine traditional cultural district "is of premier importance to the Blackfeet Tribe in sustaining its religious and cultural traditions"; the proposed drilling "would introduce activities and intrusions incompatible" with the cultural district "and its unique qualities"; "no mitigation measures would achieve an acceptable balance between historic preservation concerns" and the drilling project; and the public had expressed "overwhelming opposition to the project" during the Advisory Council review process. See FS006587-90. Based on these findings, the Advisory Council recommended that the Agriculture and Interior Departments revoke the drilling permit for the Solenex lease parcel, "cancel the lease, and ensure that future mineral development does not occur" in the Badger-Two Medicine region. FS006590. The Advisory Council specifically recommended "that the Secretary of the Interior, working with the

Secretary of Agriculture, take the steps necessary to terminate the remaining leases in the [traditional cultural district], in a manner consistent with addressing the Solenex lease." Id. On October 30, 2015, the Agriculture Secretary concurred in the Advisory Council's recommendation to cancel all remaining leases in the Badger-Two Medicine traditional cultural district. BLM-M000673.

B. The Moncrief Lease Cancellation

On November 17, 2016, a BLM official called and sent an email to a Moncrief employee to advise that the Interior Department was considering cancellation of the Moncrief lease as recommended by the Advisory Committee and Agriculture Secretary. See BLM-M000665-67. In response, on November 23, 2016, Moncrief's attorney sent a letter to the BLM arguing that the Moncrief lease could not be lawfully canceled for a variety of reasons. See BLM-M000801-02.

On January 6, 2017, BLM issued a decision to cancel the Moncrief lease pursuant to 43 C.F.R. § 3108.3(d), which provides that "[l]eases shall be subject to cancellation if improperly issued." See BLM-M000670-82. BLM concluded that the Moncrief lease was issued in violation of NEPA because the lease "was issued without the completion of an EIS," and, even if an EIS were not required, the Forest Service's pre-leasing environmental assessment for the Badger-Two Medicine leasing decision failed "to include a proper 'no-action' alternative … of not leasing the Badger-Two Medicine area." BLM-M000676. BLM further

concluded that, even if the Forest Service had complied with NEPA, "BLM violated NEPA by failing to properly adopt" the Forest Service's environmental analysis through independent consideration of the leasing decision. BLM-M000677. BLM also concluded that the Moncrief lease was issued in violation of the NHPA because the lease was issued without a pre-leasing assessment of the impact on cultural properties. BLM-M000678. BLM concluded that these errors rendered the Moncrief lease voidable, that the errors had not been corrected, and that BLM could not now take corrective action to "in effect reissue" the Moncrief lease because Congress withdrew the Badger-Two Medicine area from mineral leasing. BLM-M000678-79. BLM therefore canceled the Moncrief lease and advised Moncrief that it was entitled to a refund of $27,874 in prior lease payments. BLM-M000680.

C. The Lease-Cancellation Litigation

On April 5, 2017, Moncrief filed a lawsuit in the district court to challenge this lease cancellation. See ECF No. 1. The complaint alleged that the Interior Department lacked authority to cancel the lease, Moncrief was entitled to the Mineral Leasing Act's protection for a bona fide purchaser, and that the cancellation decision was arbitrary and capricious, untimely, and denied Moncrief procedural due process. See id. at 18-23. On August 9, 2017, the district court

granted PTA's motion to intervene in defense of the lease cancellation. Minute Order (Aug. 9, 2017).[5]

On September 24, 2018, the district court issued a Memorandum Opinion and Order granting Moncrief's summary judgment motion and denying the federal defendants' and PTA's cross-motions. See ECF Nos. 37 & 38. The district court ruled that it need not resolve Moncrief's challenge to Interior's lease-cancellation authority because, even assuming Interior had such authority, the challenged cancellation was arbitrary because the agency failed to consider Moncrief's reliance interests in the lease. See ECF No. 37 at 10-14. The district court further concluded that the Mineral Leasing Act's protection for bona fide purchasers shielded Moncrief from lease cancellation. See ECF No. 37 at 15-16. Accordingly, the district court remanded the Moncrief lease cancellation decision to the Interior Department and ordered the lease reinstated. See ECF No. 37 at 16-

[5] In contrast to the position taken by Moncrief, the largest leaseholder in the Badger-Two Medicine region, Devon Energy, joined with Interior Department officials on November 16, 2016 to announce its agreement to the cancellation of 15 mineral leases encompassing more than 32,000 acres in the area. Devon's CEO explained: "We know how important this is to the Blackfeet people, and we appreciate the work the Interior Department has done to make it possible. For Devon, cancellation of these leases at this time is simply the right thing to do." U.S. Dep't of Interior, Secretary Jewell, Senator Tester, Blackfeet Nation and Devon Energy Announce Cancellation of Oil & Gas Leases in Montana's Lewis and Clark National Forest (Nov. 16, 2016), available at https://www.doi.gov/pressreleases/secretary-jewell-senator-tester-blackfeet-nation-and-devon-energy-announce (last visited Mar. 21, 2019).

17. Federal defendants and PTA noticed appeals on November 20, 2018. See ECF Nos. 39 & 40.

SUMMARY OF THE ARGUMENT

This Court should reverse the decision below.

First, the district court erred in concluding that the Interior Department's decision to cancel the Moncrief lease arbitrarily failed to consider the leaseholder's reliance interests. See Point II, infra. Although ignored by the district court, numerous factors undermine Moncrief's reliance interests in this case, including lease terms incorporating a federal regulation, 43 C.F.R. § 1810.3, that preserves Interior's authority to enforce public rights and protect public interests despite agency delay, see Point II.A, infra, as well as legislative and administrative actions taken during the controversy over oil and gas development in the Badger-Two Medicine region that notified Moncrief that lease development may not be permitted, see Point II.B, infra. Moreover, even assuming, for the sake of argument, that the lease cancellation did upset well-founded reliance interests held by Moncrief, the cancellation was still valid because the Interior Department's cancellation decision provided a detailed and thorough justification for the agency's decision, as required by FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009). See Point II.C, infra. The district court's contrary ruling failed to

take account of these factors, wrongly asserted that Moncrief received no notice of the lease cancellation, and relied on inapposite authority. See Point II.D, infra.

Second, the district court further erred in holding that the Interior Department's cancellation of the Moncrief lease violated Moncrief's rights as a bona fide purchaser under the Mineral Leasing Act. See Point III, infra. The Act unambiguously provides that its protection for bona fide purchasers, 30 U.S.C. § 184(h)(2), applies only where a lease is canceled due to a violation of the Mineral Leasing Act. Thus, it is inapplicable where, as here, the Interior Department cancels a lease due to violations of NEPA and the NHPA. Although the district court sought to avoid this conclusion by relying on an Interior Department regulation that implements 30 U.S.C. § 184(h)(2), rather than the statute itself, the language and history of the regulation confirms that it affords no broader protection to bona fide purchasers than the Mineral Leasing Act.

ARGUMENT

This Court should reverse the district court's order to reinstate the Moncrief lease, which threatens the natural and cultural values of the Badger-Two Medicine region.

The Interior Department canceled the Moncrief lease to rectify legal violations that threatened the sanctity of extraordinary public lands adjoining the southeast boundary of Glacier National Park that constitute the "last Traditional

Sacred territory" of the Blackfeet people. FS004250. It did so after review of a record that included official recognition of the Badger-Two Medicine's environmental and cultural values—and the threat to those values posed by oil and gas development—through administrative and legislative withdrawal actions, the Keeper's listing of the Badger-Two Medicine traditional cultural district in the National Register, the Advisory Council's formal recommendation that the lease be canceled, and the Agriculture Secretary's concurrence in that recommendation. Further, it did so after multiple lease suspensions put Moncrief on notice that development of the lease may be constrained or precluded by legislative or administrative action.

Yet when this record of administrative and congressional findings moved the Department into action, the district court asserted that the agency waited too long, thereby upsetting reliance interests and disturbing the title of a bona fide lease purchaser. In a bitterly ironic twist, the burden of this ruling falls on the Blackfeet and conservationists who for years urged Interior to take action, as they now face a renewed threat of irreparable injury to their interest in the undeveloped character of the Badger-Two Medicine region.

This district court ruling was erroneous. The district court's invocation of the leaseholder's reliance interests was flawed, both because Moncrief lacks any legitimate reliance interest in preventing Interior from vindicating the important

public policies embodied in NEPA and the NHPA, and because, in any event, Interior's lease-cancellation decision adequately accounted for any reliance interests by providing a detailed justification for its conclusions. Further, the district court's invocation of bona-fide-purchaser protections defies the plain language of the Mineral Leasing Act. Accordingly, this Court should reverse the decision below.

I. STANDARD OF REVIEW

This Court reviews the district court's decision to grant summary judgment de novo. Aera Energy LLC v. Salazar, 642 F.3d 212, 218 (D.C. Cir. 2011). In determining whether the Interior Department's action was unlawfully arbitrary and capricious, this Court considers whether the agency

> relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

II. THE LEASEHOLDERS' PURPORTED RELIANCE INTERESTS OFFERED NO BASIS TO INVALIDATE INTERIOR'S CANCELLATION DECISION

The district court wrongly concluded that the Interior Department's decision to cancel the Moncrief lease was arbitrary because of "the failure to consider the

substantial reliance interests at play." ECF No. 37 at 14. The district court overlooked legal and factual points that undermine Moncrief's reliance interests, and, even if that were not so, the cancellation decision appropriately accounted for leaseholder reliance.

A. The Lease Terms Foreclose the Asserted Reliance Interests

At the outset, the terms of Moncrief's lease contract with the government preclude any invocation of reliance interests as a bulwark against cancellation of the lease. The Moncrief lease states that it was issued "subject to all rules and regulations of the Secretary of the Interior now or hereafter in force … ." See BLM-M000763 (Moncrief lease). At the time the Interior Department issued this lease, agency regulations provided:

> (a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.
>
> (b) The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.
>
> (c) Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

43 C.F.R. § 1810.3; see Reorganization and Revision of Chapter, 35 Fed. Reg. 9,502, 9,513 (June 13, 1970) (promulgating this regulation); cf. Mobil Oil Expl. & Prod. S.E., Inc. v. United States, 530 U.S. 604, 616 (2000) (recognizing that

similar term in federal offshore mineral lease subjecting lease rights to "'all other applicable … regulations'" incorporated all "regulations already existing at the time of the contract") (quotations and citation omitted).

These regulations "reflect the Secretary's authority to review, revise and reverse actions of DOI employees determined to be contrary to the law." Silver State Land, LLC v. Schneider, 145 F. Supp. 3d 113, 133 n.16 (D.D.C. 2015), aff'd on other grounds, 843 F.3d 982 (D.C. Cir. 2016). Accordingly, the terms of the bargain with the federal government that Moncrief accepted when he took ownership of the lease put the leaseholder on notice that, among other things, the government retained authority to take action "to enforce a public right or protect a public interest," notwithstanding agency officials' "delays in the performance of their duties." 43 C.F.R. § 1810.3(a); see Griffin & Griffin Expl., LLC v. United States, 116 Fed. Cl. 163, 176-77 (2014) (holding that similar term in federal onshore mineral leases incorporated Interior's lease-cancellation regulation such that "cancellation of the leases was consistent with their provisions and cannot serve as the basis for breach of contract").

That is precisely the type of action that Interior took here. The Department's lease cancellation enforced the public rights and vindicated the public interests established and recognized by Congress in NEPA and the NHPA, which were violated when the Moncrief lease was issued, and did so to protect the public

interest in preserving the Badger-Two Medicine region's environmental and cultural values. See BLM-M000675-79; see also Nat'l Parks Conservation Ass'n, 916 F.3d at 1082 ("Congress has declared that 'preserv[ing] important historic, cultural, and natural aspects of our national heritage' constitutes an important goal of" NEPA.) (quoting 42 U.S.C. § 4331(b)(4)).

The Forest Service, the Interior Secretary, and Congress recognized the public's interest in those values in issuing their 1997-2006 no-leasing and mineral-withdrawal decisions encompassing the Badger-Two Medicine region. See BLM-M000674; Pub. Land Order No. 7480, 66 Fed. Reg. at 6,657-58; Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, § 403, 120 Stat. 2922. The Keeper of the National Register and Advisory Council on Historic Preservation also did so in determining both the cultural importance of the Badger-Two Medicine Blackfoot Traditional Cultural District and the harm that would befall the Blackfeet's interest there if oil and gas development were pursued on existing leases. See FS005944-52; FS006463-64; FS006584-91. Indeed, as this Court recently recognized, "[t]he Advisory Council, tasked as it is with preserving America's historic resources, merits special attention when it opines" about a project's impact on historic properties. Nat'l Parks Conservation Ass'n, 916 F.3d at 1085.

Because of the terms of the lease and the regulations it incorporated, Moncrief had no grounds for any reasonable reliance that the lease would be immune from federal action to enforce these public rights and protect these public interests through lease cancellation.

B. The Badger-Two Medicine Leasing Controversy and Associated Lease Suspensions Also Undermine Any Claims of Reliance

The long history of controversy over oil and gas leasing and development in the Badger-Two Medicine region and resulting lease suspensions further undermine any reliance interests that Moncrief could reasonably claim in the canceled lease. The Interior Department suspended Moncrief's lease in 1993 to allow time for Congress to consider legislation to protect the Badger-Two Medicine region by providing "that the area be managed to protect its currently existing wilderness qualities, and that no surface disturbance be permitted on existing oil and gas leases within the area until Congress determined otherwise." BLM-M000735. Accordingly, Moncrief received notice in 1993 that lease development may be precluded.

Moncrief received further such notice in 1996, when the Interior Department extended the Moncrief lease suspension to allow review of "a property eligible for the national Register of Historic Places"—i.e., the Badger-Two Medicine Blackfoot Traditional Cultural District—and told Moncrief in 1998 that this suspension "will remain in effect until conclusion of the historic property review

under Section 106 of the National Historic Preservation Act." BLM-M000717-19; see BLM-M000724-26. These suspensions put Moncrief on notice that any subsequent lease development activities would be subject to the NHPA's process to ensure that, "to the extent possible, they do not harm historic properties." McMillan Park Comm. v. Nat'l Capital Planning Comm'n, 968 F.2d 1283, 1285 (D.C. Cir. 1992).

For 23 years, Moncrief raised no objection to these suspensions, nor did he otherwise make any effort to seek development of the lease. Instead, he apparently accepted the ongoing NHPA review process and its potential for limitation on mineral development activities. These facts further diminish Moncrief's legitimate reliance interests in the canceled mineral lease.

C. In Any Event, the Interior Department's Cancellation Decision Adequately Responded to Any Leaseholder Reliance Interests

Even assuming, for the sake of argument, that the lease cancellation decision in this case did upset well-founded reliance interests held by Moncrief—which it did not for the reasons stated—the cancellation was still valid. Even where an agency's prior policy decision "has engendered serious reliance interests that must be taken into account," the consequence is not that the agency is precluded from taking action adverse to such interests, but simply that the agency must "provide a more detailed justification than what would suffice for a new policy created on a blank slate." Fox Television Stations, Inc., 556 U.S. at 515; compare Encino

Motorcars, LLC v. Navarro, 136 S. Ct. 2117, 2127 (2016) ("In light of the serious reliance interests at stake, the Department's conclusory statements do not suffice to explain its decision."); with Mingo Logan Coal Co. v. EPA, 829 F.3d 710, 727 (D.C. Cir. 2016) (upholding agency action that withdrew approval of mining permit upon finding the agency's "explanation adequate even assuming arguendo that it was required to supply 'a more detailed justification' for its [challenged] decision") (citing Fox Television Stations, 556 U.S. at 515). In other words, "reliance may spotlight the inadequacy of an agency's explanation," but it "does not overwhelm good reasons for a policy change." Encino Motorcars, 136 S. Ct. at 2128 (Ginsburg, J. concurring).[6]

Here, even assuming serious reliance interests were disturbed, which they were not, the Interior Department's lease-cancellation decision provided the detailed justification demanded by applicable principles of administrative law. The Department set forth its lease cancellation rationale in an 11-page, single-spaced letter decision that discussed in detail all relevant issues and cited extensive authority to support its conclusions. See BLM-M000670-81. This document:

1. provided an overview of the Badger-Two Medicine area and its important environmental and cultural values, BLM-M000671;

[6] Justice Ginsburg's concurring opinion in Encino Motorcars was joined by Justice Sotomayor, and their votes were necessary for the majority opinion in that case.

2. described the administrative history of leasing and drilling permit evaluation and approval in that area, BLM-M000671-72;

3. recounted the NHPA proceedings concerning the lease, including the identification and listing of the Badger-Two Medicine traditional cultural district and the Advisory Council's conclusion that oil and gas development in the area would irreparably degrade the Blackfeet Tribe's cultural interests, along with the Advisory Council's recommendation that remaining leases in the Badger-Two Medicine area should therefore be canceled and the Agriculture Secretary's agreement with that recommendation, BLM-M000672-73;

4. canvassed decisions from 1997 to 2006 by the Forest Service, the Interior Secretary, and Congress to protect the Badger-Two Medicine region from any further threat of oil and gas development, BLM-M000674;

5. discussed the scope and foundation of Interior's lease-cancellation authority, BLM-M000674-75;

6. analyzed whether issuance of the Moncrief lease violated NEPA, including by discussing the controlling rulings on this issue by this Circuit and the Ninth Circuit, and concluded that the lease, "which

was issued without the completion of an EIS, was issued in violation of NEPA," BLM-M000675-76;

7. identified another NEPA violation because the more abbreviated environmental assessment document that the government prepared to analyze issuance of the Solenex lease failed to include a legitimate no-action alternative, BLM-M000676-77;

8. identified yet another NEPA violation because the BLM conducted no independent evaluation of lease issuance before exercising its discretion to adopt the Forest Service's recommendation to issue the Solenex lease, BLM-M000677;

9. analyzed whether issuance of the Moncrief lease also violated the NHPA and federal trust obligations to the Blackfeet Tribe, and found that it did because the Forest Service and BLM failed to "fully consider the effects of leasing on cultural resources, including religious values and activities," before issuing the lease, BLM-M000678;

10. determined that these NEPA and NHPA violations had not been corrected through subsequent agency actions and analyses, BLM-M000679;

11. concluded that corrective action to remedy these violations cannot now be taken because Congress prohibited further mineral leasing in the Badger-Two Medicine area and, even if that were not so, it would not be appropriate to take such corrective action given that the Advisory Council and Agriculture Department recommended through the NHPA process that the lease be canceled, BLM-M000679; and

12. decided, based upon all of the foregoing considerations, to cancel the lease, BLM-M000680.

Further, the decision recognized and accounted for prior economic investments in the Moncrief lease by approving a refund of $27,874 in rental payments that Moncrief's predecessors in interest paid prior to the lease suspensions. See BLM-M000680.[7]

This is a far cry from the types of "conclusory statements" that fall short of satisfying administrative decision-making requirements when reliance interests are disturbed. Encino Motorcars, 136 S. Ct. at 2127. In Encino Motorcars, for

[7] The fact that Moncrief held the lease on a rent-free basis from 1989 until the 2017 cancellation decision further undermines any claimed reliance interests. Moncrief cannot credibly claim detrimental reliance based on being able to sustain rent-free maintenance of a federal mineral lease for nearly 30 years. See Heckler v. Community Health Servs. of Crawford Cty., Inc., 467 U.S. 51, 62 (1984) ("A for-profit corporation could hardly base an estoppel on the fact that the Government wrongfully allowed it the interest-free use of taxpayers' money for a period of two or three years, enabling it to expand its operation.") (footnote omitted).

example, the Supreme Court found that an agency failed to justify its departure from a longstanding policy concerning an exemption from minimum wage and overtime requirements because the agency "offered barely any explanation" and "said almost nothing" to explain the reasons for its new position. Id. at 2126-27. In particular, the agency "did not analyze or explain why the statute" at issue in that case "should be interpreted" to support its new position rather than its old one. Id. at 2127. By contrast, in Mingo Logan Coal Company, this Court held that, even if an agency's about-face in denying a coal mine permit triggered the duty to provide a more detailed justification under Fox Television, the agency fulfilled that duty by setting forth a detailed discussion of the existence and significance of "new data" concerning the project's impacts. 829 F.3d at 727-30.

This case is similar to Mingo Logan Coal, not Encino Motorcars. Here, as in Mingo Logan Coal, Interior explained in detail how "new data" support its conclusions, 829 F.3d at 730, including post-leasing administrative and congressional actions underscoring the strong public interest in preserving unimpaired the environmental and cultural values of the Badger-Two Medicine region, as well as the NHPA process that yielded listing of the Badger-Two Medicine Blackfoot Traditional Cultural District in the National Register of Historic Places and the Advisory Council's recommendation to cancel the Moncrief lease and prevent future mineral development in the area—a

recommendation with which the Agriculture Secretary concurred. See BLM-M000671-74. Further, unlike in Encino Motorcars, Interior analyzed and explained why the statutes at issue—NEPA and the NHPA—should be interpreted to support its lease-cancellation decision, including by offering a detailed discussion of this Court's and the Ninth Circuit's precedents on the issue. See BLM-M000675-78. In sum, Interior displayed awareness that it was taking a new position about the validity of the Moncrief lease, demonstrated good reasons for that position, and provided a reasoned explanation for "disregarding facts and circumstances that underlay or were engendered by" its former position. Fox Television Stations, 556 U.S. at 515. Accordingly, even if Interior's decision upset well-founded reliance interests that had not been undermined by the lease's terms and history—which it did not—the cancellation decision remains valid.

D. The District Court's Contrary Conclusion Was Erroneous

In ruling to the contrary, the district court did not consider the reasonableness of any leaseholder reliance interests in light of the lease terms incorporating Interior Department regulations, including 43 C.F.R. § 1810.3, which expressly preserves the Department's authority to enforce a public right or protect a public interest despite agency delay. Nor did it consider that the Moncrief lease suspensions put the leaseholder on notice beginning in 1993 that lease development may be limited or precluded by the powerful countervailing public

interests in preservation of the Badger-Two Medicine area, as demonstrated by proposed protective legislation, designation of a traditional cultural district, and application of the NHPA review process. See BLM-M000735-37; BLM-M000717-19. Indeed, the district court almost entirely disregarded the important public interests that were served by the lease cancellation, including enforcement of NEPA and the NHPA and protection of an irreplaceable cultural homeland for the Blackfeet people.[8]

Instead of addressing such matters, the district court focused primarily on the length of time that transpired between the Interior Department's issuance and cancellation of the Moncrief lease. ECF No. 37 at 12-14. However, governing law preserves the United States' authority to protect the public interest. "It is well settled that the United States is not … subject to the defense of laches in enforcing its rights," United States v. Summerlin, 310 U.S. 414, 416 (1940); see United

[8] The district court's only nod toward the government's interest in enforcing NEPA and the NHPA in this case was to criticize the Interior Department for "apparently ignor[ing] the discretion with which agencies apply" these statutes. ECF No. 37 at 15 n.7. However, while the district court sought to support this assertion with a lengthy string citation, it omitted any mention of Sierra Club v. Peterson, 717 F.2d at 1414, in which this Court held that issuance of a federal onshore mineral lease authorizing surface development is a major federal action triggering NEPA's EIS requirement, or Karst Environmental Education and Protection, Inc. v. EPA, 475 F.3d at 1295, in which this Court recognized the equivalence of the statutory triggers for NEPA and NHPA compliance. Ultimately, the district court made no finding "on whether there was in fact compliance with NEPA or NHPA." ECF No. 37 at 15 n.7.

States v. California, 332 U.S. 19, 39-40 (1947) (holding that California could not assert a laches defense against the United States in federal suit to enjoin the state from permitting oil and gas development on outer continental shelf). This is because the United States in such cases is not acting in the capacity of a private party but rather "holds its interests … in trust for all the people." United States v. California, 332 U.S. at 40. Here, for example, the Interior Department explicitly acted to carry out its trust obligations to the Blackfeet Tribe, which, the agency recognized, necessarily must rely on Interior's compliance with NEPA and the NHPA to ensure that "off-reservation actions" do not "adversely affect the water quality/quantity, air quality, socioeconomic/cultural resources, or property of Indian reservations." BLM-M000678.

The district court also asserted that the Interior Department's suspensions of the Moncrief lease did not provide the leaseholder with notice that "something might be amiss" and thus did not provide notice of any lease-validity issue. ECF No. 37 at 14. However, the suspensions gave Moncrief notice that lease development may be limited or prohibited by legislative or administrative action to protect the Badger-Two Medicine region's environmental and cultural values. See BLM-M000735-37; BLM-M000717-19. Accordingly, regardless of the question of lease validity, Moncrief received notice that lease development could be precluded. Moncrief's reliance interests were diminished accordingly. Moreover,

Moncrief received notice from the Interior Department on November 17, 2016 that the agency was contemplating canceling his lease. See BLM-M000665-67. That was 50 days before the Interior Department canceled the lease on January 6, 2017. Interior's notice was sufficient to enable a Moncrief lawyer to respond on November 23, 2016 with a letter objecting to the lease cancellation on most of the same grounds that Moncrief ultimately advanced in the complaint in this case. See BLM-M000801-02. These communications demonstrate that Moncrief had notice of the lease cancellation well before it occurred. The district court did not factor these communications into its conclusion that the Interior Department canceled Moncrief's lease "without notice." ECF No. 37 at 15 (emphasis in original).

The cases cited by the district court do not support its holding. The district court relied on Texas Oil & Gas Corp. v. Watt, 683 F.2d 427 (D.C. Cir. 1982), citing this Court's rejection in that case of "'a retroactive exercise of discretion to which it is impossible to ascribe any rational purpose,'" ECF No. 37 at 13 (quoting 683 F.2d at 434). However, this statement specifically referenced the particular facts of that case, in which the Interior Department had promulgated a regulation authorizing mineral leasing of military reservations and accepted applications for such leases, but subsequently issued an order rejecting applications for leases that had been filed prior to the regulation's effective date. See 683 F.2d at 434. Neither the quoted statement nor any other aspect of that case established a general

rule for assessing lease cancellations or reliance interests. In any event, there was an eminently rational purpose for Interior's lease cancellation here, which responded to, among other things, the Advisory Council and Agriculture Secretary's recommendations and an act of Congress. See BLM-M000679-80.

The district court also relied on American Wild Horse Preservation Campaign v. Perdue, 873 F.3d 914 (D.C. Cir. 2017), see ECF No. 37 at 8, 13, but that case involved an agency's change of position in circumstances where the agency "fail[ed] even to acknowledge its past practice and formal policies regarding [the issue], let alone to explain its reversal of course," 873 F.3d at 927. For this reason, it bears no resemblance to the present case, in which the Interior Department acknowledged and explained in detail the reasons for its new position. See Point II.C, supra.

The district court also cited Ivy Sports Medicine, LLC v. Burwell, 767 F.3d 81 (D.C. Cir. 2014), for the proposition that an agency's "inherent authority" to revisit past decisions must be exercised "in a timely fashion." Id. at 86; see also Prieto v. United States, 655 F. Supp. 1187, 1191 (D.D.C. 1987) (both cited in ECF No. 37 at 11, 13). However, the Interior Department did not cancel the Moncrief lease pursuant to any inherent reconsideration authority, but instead pursuant to its "authority to cancel [a] lease administratively for invalidity at its inception," which is an aspect of the Department's "general managerial powers over the public lands"

that Congress delegated through multiple enactments. Boesche v. Udall, 373 U.S. at 476 & n.6; see Cameron v. United States, 252 U.S. 450, 460 (1920) ("[T]he Secretary of the Interior, as the head of the [Land Department], is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved."). Further, the circumstances of Ivy Sports Medicine and Prieto are not akin to the situation here, where the Moncrief lease, through its incorporation of 43 C.F.R. § 1810.3, preserved Interior's authority to enforce a public right or protect a public interest and Interior expressly acted for that purpose. Also, as discussed at Points II.A and B, supra, the district court's apparent imposition of a time limitation on

the Interior Department's lease-cancellation authority in this case does not serve to protect any legitimate reliance interests.[9]

In sum, the district court failed to consider numerous relevant factors that undermine Moncrief's reliance interests in the canceled lease, as well as material aspects of the actual rationale for the Interior Department's cancellation decision.

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[9] Although the district court deemed it unnecessary to resolve the scope of Interior's lease-cancellation authority, it nevertheless suggested that this topic was the subject of lively debate, including in this Circuit. ECF No. 37 at 10-11 & n.5. However, the federal courts, including this Court, have repeatedly recognized the Interior Secretary's lease-cancellation authority in a variety of contexts. See Silver State Land, LLC v. Schneider, 843 F.3d 982, 990 (D.C. Cir. 2016) (stating that Supreme Court "confirmed the Secretary's authority to cancel a 'lease administratively for invalidity at its inception,' even after the lease had been issued") (quoting Boesche, 373 U.S. at 476); Winkler v. Andrus, 614 F.2d 707, 711 (10th Cir. 1980) ("The Secretary has broad authority to cancel oil and gas leases for violations of the Mineral Leasing Act and regulations thereunder, as well as for administrative errors committed before the lease was issued.") (citations omitted); Texaco v. Hickel, 437 F.2d 636, 641 (D.C. Cir. 1970) (recognizing Secretary of the Interior's authority to cancel a lease administratively for invalidity at its inception); Griffin & Griffin Expl., 116 Fed. Cl. at 176 (citing Boesche and stating that Interior's "right of cancellation was designed to provide the Secretary … with flexibility in managing public lands and with the ability to correct the mistakes of his subordinates"); Grynberg v. Kempthorne, No. 06-cv-01878, 2008 WL 2445564, at *4 (D. Colo. June 16, 2008) (citing Boesche to conclude that the Secretary had authority to cancel a lease improperly issued without Forest Service review); Nat. Res. Def. Council v. Hughes, 454 F. Supp. 148, 154 (D.D.C. 1978) ("The Mineral Leasing Act does not limit the Secretary's power to cancel administratively a permit or a non-competitive lease 'on the basis of pre-lease factors.'") (citation omitted). The district court cited Douglas Timber Operators, Inc. v. Salazar, 774 F. Supp. 2d 245, 257-58 (D.D.C. 2011), but that case distinguished Boesche only because the controversy it addressed—which did not involve a mineral lease—was governed by different "administrative procedures" under a different statutory scheme.

Instead of considering these matters, the district court offered a rationale that appeared to elevate Moncrief's purported reliance interests over all other considerations, suggesting that the Interior Department has no choice but to authorize oil and gas development within the "last Traditional Sacred territory" of the Blackfeet people. FS004250. For the reasons stated, neither the facts nor the law support that outcome. The district court's reasoning was erroneous and its judgment should be reversed.

III. MONCRIEF IS NOT SHIELDED BY THE MINERAL LEASING ACT'S PROTECTION FOR BONA FIDE PURCHASERS

The district court's alternative holding—that the Interior Department's cancellation of Moncrief's lease "violates his rights as a bona fide purchaser" under the Mineral Leasing Act, ECF No. 37 at 15-16—also was erroneous. The Act's bona-fide-purchaser provision protects certain lease purchasers from cancellations that are based on violations of the Mineral Leasing Act itself, not violations of NEPA or the NHPA.

The Act's protection for bona fide purchasers states, in pertinent part, that "[t]he right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser." 30 U.S.C. § 184(h)(2) (emphasis added). "The provision was added as an amendment to the Mineral Leasing Act in 1959 to protect bona fide purchasers of federal oil and gas leases who acquired their holdings in good faith

from the possible consequences of Mineral Leasing Act violations by their predecessors in title." Winkler, 614 F.2d at 711 (emphasis added).

Because the Mineral Leasing Act unambiguously limits its bona-fide-purchaser protection to the context of lease cancellations based on violations of the Act itself, the Court need look no further than the statutory language to conclude that this protection is inapplicable where, as here, a lease is canceled because its issuance violated NEPA and the NHPA. In construing a statute, this Court "must first determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. If it does, [the Court's] inquiry ends and [it] appl[ies] the statute's plain language." United States v. Villanueva-Sotelo, 515 F.3d 1234, 1237 (D.C. Cir. 2008) (quotations and citation omitted). Here, the plain language of the Mineral Leasing Act ends the Court's inquiry regarding the bona-fide-purchaser issue.

However, even if this Court were to "look beyond the text for other indicia of congressional intent," id., that would not change the outcome. The legislative history of 30 U.S.C. § 184(h)(2) confirms that Congress intended to limit its bona-fide-purchaser protection to situations where the Mineral Leasing Act itself was violated—specifically, violations of the Act by the leaseholder's predecessor in interest. Congress enacted the Mineral Leasing Act amendment codified at 30 U.S.C. § 184(h)(2) in response to the Interior Department's promulgation of a 1959

regulation addressing implementation of the Act's acreage limits for allowable lease holdings. See H.R. Rep. No. 86-1062, at 2621 (1959). Congress sought to address industry concerns that this regulation would hinder oil and gas development "because of the danger that in the chain of title of a lease one of its prior holders may have been in violation of the acreage limitation or other provisions of the Act and that the lease might be subject to cancellation for this reason." Id. (emphases added). The House Report on the resulting legislation identified three statutory purposes, each of which specifically referenced protecting innocent purchasers from lease cancellation, forfeiture, or suspension due to violations of the Mineral Leasing Act itself:

> (1) To provide that the right to cancel or declare a forfeiture of leases, interests in leases, and options to acquire leases or interests therein for violation of any provision of the act shall not be exercised in such a way as to affect adversely the interest of any bona fide purchaser who is not himself in violation of the acreage limitation provisions of the act.
>
> (2) To provide that bona fide purchasers in such situations shall have a right to be dismissed from pending or future proceedings which are based only upon a violation of the act by a predecessor in interest.
>
> (3) To provide that lease terms and rental-payment obligations shall be tolled where drilling or lease assignment rights of a party are (1) administratively suspended by the Secretary of the Interior before a decision is reached in a government contest proceeding alleging violation of the Act, or (2) voluntarily waived by the party during such a proceeding.

Id. at 2620 (emphases added). Nothing in this legislative history suggests that Congress sought to extend the Mineral Leasing Act's bona-fide-purchaser protection beyond the context of violations of the Act itself by an innocent leaseholder's predecessor in interest. See Sw. Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir. 1966) ("The legislators and witnesses particularly emphasized that one claiming to be a bona fide purchaser must not have been involved in or have knowledge of any fraud or violation of any of the provisions or regulations of the Mineral Leasing Act by his predecessor in title.") (emphasis added).

The district court sought to sidestep this statutory language and its legislative history by basing its holding not on 30 U.S.C. § 184(h)(2), but on an Interior Department regulation implementing that provision, 43 C.F.R. § 3108.4. See ECF No. 37 at 15-16. However, such a regulation

> must be interpreted so as to harmonize with and further and not to conflict with the objective of the statute it implements. Courts must construe regulations in light of the statutes they implement, keeping in mind that where there is an interpretation of an ambiguous regulation which is reasonable and consistent with the statute, that interpretation is to be preferred.

Sec'y of Labor v. W. Fuels-Utah, Inc., 900 F.2d 318, 320 (D.C. Cir. 1990) (quotations, alterations, and citation omitted). Here, the first sentence of 43 C.F.R. § 3108.4 states simply that "[a] lease or interest therein shall not be canceled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title,

may have been subject to cancellation." 43 C.F.R. § 3108.4. Although this sentence omits the language from the parallel Mineral Leasing Act provision referencing lease cancellations only for violations of that Act, the third sentence of Section 3108.4 makes clear that the regulation's scope is no broader than the statute's. Specifically, it supports the first sentence's bona-fide-purchaser protection by providing that "[p]rompt action shall be taken to dismiss as a party to any proceedings with respect to a violation by a predecessor of any provisions of the act, any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act." Id. (emphasis added). As a matter of regulatory construction, these "interrelated and closely positioned provisions are most readily harmonized" by treating the third sentence's language limiting bona-fide-purchaser protections to the context of Mineral Leasing Act violations as controlling over the scope of the first sentence as well. Rhea Lana, Inc. v. Dep't of Labor, 824 F.3d 1023, 1031 (D.C. Cir. 2016). This is especially so

because such a regulatory construction conforms to the scope of the authorizing Mineral Leasing Act provision. See W. Fuels-Utah, 900 F.2d at 320.[10]

Moreover, the history of this regulation dispels any notion that the Interior Department meant to establish a broader regulatory bona-fide-purchaser protection than that afforded by the authorizing statute. The Interior Department promulgated its bona-fide-purchaser regulation on May 7, 1960 for the explicit purpose of "incorporat[ing] in the regulations the provisions of [the 1959 Mineral Leasing Act amendment] which provided for the protection and benefit of bona fide purchases of leases." Protection of Bona Fide Purchasers of Leases from Cancellation, 25 Fed. Reg. 4,081 (May 7, 1960); see also Wyo. Outdoor Council v. U.S. Forest Serv., 165 F.3d 43, 53 (D.C. Cir. 1999) ("[W]e have often recognized that the preamble to a regulation is evidence of an agency's contemporaneous understanding of its proposed rules."). As originally promulgated, the regulatory

[10] Indeed, because of this language in the third sentence of 43 C.F.R. § 3108.4, the district court's regulatory construction creates an illogical incongruity: the district court deemed bona fide purchasers to be shielded from lease cancellation based on any illegality accruing prior to their assumption of title, yet their associated right to dismissal from agency cancellation proceedings would apply only where a violation of the Mineral Leasing Act is alleged. No basis for any such distinction appears in the corresponding statutory provisions or their legislative history. See 30 U.S.C. § 184(i) (providing for dismissal right in "proceeding with respect to a violation of any provision of this chapter"); H.R. Rep. No. 86-1062, at 2620 (describing legislative purpose to shield bona fide purchasers from cancellation based on violations of Mineral Leasing Act and to provide that "bona fide purchasers in such situations shall have a right to be dismissed") (emphasis added).

language itself explicitly referenced the 1959 Mineral Leasing Act amendment shielding bona fide purchasers from "cancellation or forfeiture for violation of any of the provisions of the act." Protection of Bona Fide Purchasers of Leases from Cancellation, 25 Fed. Reg. at 4,081 (43 C.F.R. § 191.15(a)) (emphasis added).

The Department retained this explicit reference to the limiting language of the Mineral Leasing Act in its bona-fide-purchaser regulation through 1979. See 43 C.F.R. § 3102.1-2(a) (1979). Then in 1980 Interior dropped this reference from the regulation as part of a larger overhaul and reorganization of the Department's oil-and-gas-leasing regulations. See Simultaneous Oil and Gas Leasing System, 45 Fed. Reg. 35,156, 35,163 (May 23, 1980) (promulgating 43 C.F.R. § 3108.3(c)); see also Oil and Gas Leasing, 44 Fed. Reg. 56,176, 56,178 (Sep. 28, 1979) (proposed rule). In so doing, the Interior Department offered no explanation for this change and said nothing to indicate that it intended this deletion to have substantive impact by expanding the reach of the bona-fide-purchaser regulation

beyond its statutory authorization. See Simultaneous Oil and Gas Leasing System, 45 Fed. Reg. at 35,156-57.[11]

Nor could such an unexplained regulatory deletion have accomplished that result. The mere deletion of regulatory language "cannot change the statute, and a regulation promulgated to guide the Secretary's discretion in exercising his authority under [a statute] need not also restate all related statutory language." Pub. Lands Council v. Babbitt, 529 U.S. 728, 745 (2000) (addressing Interior Department's deletion of language that paralleled authorizing provision of Taylor Grazing Act). "Ultimately it is both the [statute] and the regulations promulgated thereunder that constrain the Secretary's discretion," id. (emphasis in original), and here the Mineral Leasing Act gave the Interior Department no discretion to shield bona fide purchasers from lease cancellation based on violations of statutes other than the Act itself.

In sum, given the totality of the regulatory language and its promulgation history, there is no basis to conclude that the Interior Department intended, sub

[11] To the contrary, the 1980 regulatory amendment retained the language requiring dismissal of bona fide purchasers from proceedings "with respect to a violation of any provisions of the Act." Simultaneous Oil and Gas Leasing System, 45 Fed. Reg. at 35,163 (43 C.F.R. § 3108.3(d)). Further, the preamble to the 1980 rule explained that Interior addressed public comments concerning a different portion of the bona-fide-purchaser regulation—a provision concerning burden of proof—by modifying the regulatory language "to more closely reflect the statute." Simultaneous Oil and Gas Leasing System, 45 Fed. Reg. at 35,156.

silentio, for the regulation now codified at 43 C.F.R. § 3108.4 to depart from its authorizing statute by dramatically expanding the rights of bona fide purchasers at the expense of the public's interest in compliance with NEPA and the NHPA.

The district court nevertheless asserted that "Defendants cannot at once argue that a violation of NEPA and NHPA renders a lease 'subject to cancellation' under its regulations, see 43 C.F.R. § 3108.3(d), and at the same time deprive plaintiff of the exception in those same regulations prohibiting cancellation 'to the extent that such an action adversely affects the title or interest of a bona fide purchaser.' 43 C.F.R. § 3108.4." ECF No. 37 at 15-16. However, this reasoning assumes that 43 C.F.R. § 3108.4 confers a broader bona-fide-purchaser protection than its authorizing statute, 30 U.S.C. § 184(h)(2). As discussed, it does not. For this reason too, the district court erred and this Court should reverse its decision.

CONCLUSION

For the foregoing reasons, defendant-intervenor-appellants Pikuni Traditionalist Association, et al., respectfully request that this Court reverse the decision below.

Respectfully submitted this 4th day of April, 2019.

/s/ Timothy J. Preso

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 11,548 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2016 Times New Roman 14-point font.

/s/ Timothy J. Preso
Timothy J. Preso

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Timothy J. Preso
Timothy J. Preso

Addendum

TABLE OF CONTENTS

United States Code Annotated
Title 30. Mineral Lands and Mining
Chapter 3A. Leases and Prospecting Permits (Refs & Annos)
Subchapter I. General Provisions (Refs & Annos)

30 U.S.C.A. § 184

§ 184. Limitations on leases held, owned or controlled by persons, associations or corporations

Effective: August 8, 2005
Currentness

(a) Coal leases

No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, coal leases or permits on an aggregate of more than 75,000 acres in any one State and in no case greater than an aggregate of 150,000 acres in the United States: *Provided*, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of 150,000 acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: *Provided, further*, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits has been reduced below an aggregate of 150,000 acres within the United States.

(b) Sodium leases or permits, acreage

(1) No person, association, or corporation, except as otherwise provided in this subsection, shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, sodium leases or permits on an aggregate of more than five thousand one hundred and twenty acres in any one State.

(2) The Secretary may, in his discretion, where the same is necessary in order to secure the economic mining of sodium compounds leasable under this chapter, permit a person, association, or corporation to take or hold sodium leases or permits on up to 30,720 acres in any one State.

(c) Phosphate leases, acreage

No person, association, or corporation shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, phosphate leases or permits on an aggregate of more than twenty thousand four hundred and eighty acres in the United States.

(d) Oil or gas leases, acreage, Alaska; options, semiannual statements

(1) No person, association, or corporation, except as otherwise provided in this chapter, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska [1]. *Provided, however*, That acreage held in special tar sand areas, and acreage under any lease any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement or for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year, shall not be chargeable against such State limitations. In the case of the State of Alaska, the limit shall be three hundred thousand acres in the northern leasing district and three hundred thousand acres in the southern leasing district, and the boundary between said two districts shall be the left limit of the Tanana River from the border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth.

(2) No person, association, or corporation shall take, hold, own, or control at one time options to acquire interests in oil or gas leases under the provisions of this chapter which involve, in the aggregate, more than two hundred thousand acres of land in any one State other than Alaska, or, in the case of Alaska, more than two hundred thousand acres in each of its two leasing districts, as hereinbefore described. No option to acquire any interest in such an oil or gas lease shall be enforcible if entered into for a period of more than three years (which three years shall be inclusive of any renewal period if a right to renew is reserved by any party to the option) without the prior approval of the Secretary. In any case in which an option to acquire the optionor's entire interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. In any case in which an option to acquire a part of the optionor's interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be fully charged to the optionor and a share thereof shall also be charged to the optionee, as his interest may appear, but after the option is exercised said acreage shall be charged to the parties pro rata as their interests may appear. In any case in which an assignment is made of a part of a lessee's interest in the whole or part of the acreage under a lease or an application for a lease, the acreage shall be charged to the parties pro rata as their interests may appear. No option or renewal thereof shall be enforcible until notice thereof has been filed with the Secretary or an officer or employee of the Department of the Interior designated by him to receive the same. Each such notice shall include, in addition to any other matters prescribed by the Secretary, the names and addresses of the parties thereto, the serial number of the lease or application for a lease to which the option is applicable, and a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto and shall be subscribed by all parties to the option or their duly authorized agents. An option which has not been exercised shall remain charged as hereinbefore provided until notice of its relinquishment or surrender has been filed, by either party, with the Secretary or any officer or employee of the Department of the Interior designated by him to receive the same. In addition, each holder of any such option shall file with the Secretary or an officer or employee of the Department of the Interior as aforesaid within ninety days after the 30th day of June and the 31st day of December in each year a statement showing, in addition to any other matters prescribed by the Secretary, his name, the name and address of each grantor of an option held by him, the serial number of every lease or application for a lease to which such an option is applicable, the number of acres covered by each such option, the total acreage in each State to which such options are applicable, and his interest and obligation under each such option. The failure of the holder of an option so to file shall render the option unenforcible [2] by him. The unenforcibility [3] of any option under the provisions of this paragraph shall not diminish the number of acres deemed to be held under option by any person, association, or corporation in

computing the amount chargeable under the first sentence of this paragraph and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law. The Secretary may prescribe forms on which the notice and statements required by this paragraph shall be made.

(e) Association or stockholder interests, conditions; combined interests

(1) No person, association, or corporation shall take, hold, own or control at one time any interest as a member of an association or as a stockholder in a corporation holding a lease, option, or permit under the provisions of this chapter which, together with the area embraced in any direct holding, ownership or control by him of such a lease, option, or permit or any other interest which he may have as a member of other associations or as a stockholder in other corporations holding, owning or controlling such leases, options, or permits for any kind of minerals, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this chapter, except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other instruments of ownership or control of such association or corporation, and except that within three years after September 2, 1960 no valid option in existence prior to September 2, 1960 held by a corporation or association on September 2, 1960 shall be chargeable to any stockholder of such corporation or to a member of such association so long as said option shall be so held by such corporation or association under the provisions of this chapter.

(2) No contract for development and operation of any lands leased under this chapter, whether or not coupled with an interest in such lease, and no lease held, owned, or controlled in common by two or more persons, associations, or corporations shall be deemed to create a separate association under the preceding paragraph of this subsection between or among the contracting parties or those who hold, own or control the lease in common, but the proportionate interest of each such party shall be charged against the total acreage permitted to be held, owned or controlled by such party under this chapter. The total acreage so held, owned, or controlled in common by two or more parties shall not exceed, in the aggregate, an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this chapter.

(f) Limitations on other sections; combined interests permitted for certain purposes

Nothing contained in subsection (e) of this section shall be construed (i) to limit sections 227, 228, 251 of this title or (ii), subject to the approval of the Secretary, to prevent any number of lessees under this chapter from combining their several interests so far as may be necessary for the purpose of constructing and carrying on the business of a refinery or of establishing and constructing, as a common carrier, a pipeline or railroad to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees under this chapter or in the transportation of coal or (iii) to increase the acreage which may be taken, held, owned, or controlled under this section.

(g) Forbidden interests acquired by descent, will, judgment, or decree; permissible holding period

Any ownership or interest otherwise forbidden in this chapter which may be acquired by descent, will, judgment, or decree may be held for two years after its acquisition and no longer.

(h) Cancellation, forfeiture, or disposal of interests for violation; bona fide purchasers and other valid interests; sale by Secretary; record of proceedings

(1) If any interest in any lease is owned, or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of this chapter, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General. Such a proceeding shall be instituted in the United States district court for the district in which the leased property or some part thereof is located or in which the defendant may be found.

(2) The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, interest in a lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation. If, in any such proceeding, an underlying lease, interest, option, or permit is canceled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, the underlying lease, interest, option, or permit shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations subject to all outstanding valid interests therein and valid options pertaining thereto. Likewise if, in any such proceeding, less than the whole interest in a lease, interest, option, or permit is canceled or forfeited to the Government, the partial interests so canceled or forfeited shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations. If competitive bidding fails to produce a satisfactory offer the Secretary may, in either of these cases, sell the interest in question by such other method as he deems appropriate on terms not less favorable to the Government than those of the best competitive bid received.

(3) The commencement and conclusion of every proceeding under this subsection shall be promptly noted on the appropriate public records of the Bureau of Land Management.

(i) Bona fide purchasers, conditions for obtaining dismissals

Effective September 21, 1959, any person, association, or corporation who is a party to any proceeding with respect to a violation of any provision of this chapter, whether initiated prior to said date or thereafter, shall have the right to be dismissed promptly as such a party upon showing that he holds and acquired as a bona fide purchaser the interest involving him as such a party without violating any provisions of this chapter. No hearing upon any such showing shall be required unless the Secretary presents prima facie evidence indicating a possible violation of this chapter on the part of the alleged bona fide purchaser.

(j) Waiver or suspension of rights

If during any such proceeding, a party thereto files with the Secretary a waiver of his rights under his lease (including particularly, where applicable, rights to drill and to assign) or if such rights are suspended by

the Secretary pending a decision in the proceeding, whether initiated prior to enactment of this chapter or thereafter, payment of rentals and running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or suspension of the rights until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

(k) Unlawful trusts; forfeiture

Except as otherwise provided in this chapter, if any lands or deposits subject to the provisions of this chapter shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in any wise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, optionee, or permittee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), gas, or sodium entered into by the lessee, optionee, or permittee or any agreement or understanding, written, verbal, or otherwise, to which such lessee, optionee, or permittee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this chapter, the lease, option, or permit shall be forfeited by appropriate court proceedings.

(l) Rules and regulations; notice to and consultation with Attorney General; application of antitrust laws; definitions

(1) At each stage in the formulation and promulgation of rules and regulations concerning coal leasing pursuant to this chapter, and at each stage in the issuance, renewal, and readjustment of coal leases under this chapter, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

(2) No coal lease may be issued, renewed, or readjusted under this chapter until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with subchapter II of chapter 5 of Title 5 and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this chapter, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this chapter, the antitrust laws, and the public interest.

(3) Nothing in this chapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(4) As used in this subsection, the term “antitrust law” means--

(A) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(B) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(D) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

CREDIT(S)

(Feb. 25, 1920, c. 85, § 27, 41 Stat. 448; Apr. 30, 1926, c. 197, 44 Stat. 373; July 3, 1930, c. 854, § 1, 46 Stat. 1007; Mar. 4, 1931, c. 506, 46 Stat. 1524; Aug. 8, 1946, c. 916, § 6, 60 Stat. 954; June 1, 1948, c. 365, 62 Stat. 285; June 3, 1948, c. 379, § 6, 62 Stat. 291; Aug. 2, 1954, c. 650, 68 Stat. 648; Pub.L. 85-122, Aug. 13, 1957, 71 Stat. 341; Pub.L. 85-698, Aug. 21, 1958, 72 Stat. 688; Pub.L. 86-294, § 1, Sept. 21, 1959, 73 Stat. 571; Pub.L. 86-391, § 1(c), Mar. 18, 1960, 74 Stat. 8; Pub.L. 86-705, § 3, Sept. 2, 1960, 74 Stat. 785; Pub.L. 88-526, § 1, Aug. 31, 1964, 78 Stat. 710; Pub.L. 88-548, Aug. 31, 1964, 78 Stat. 754; Pub.L. 94-377, §§ 11, 15, Aug. 4, 1976, 90 Stat. 1090, 1091; Pub.L. 97-78, § 1(2), (5), Nov. 16, 1981, 95 Stat. 1070; Pub.L. 106-191, § 2, Apr. 28, 2000, 114 Stat. 232; Pub.L. 106-463, § 3, Nov. 7, 2000, 114 Stat. 2011; Pub.L. 109-58, Title III, § 352, Aug. 8, 2005, 119 Stat. 714.)

Footnotes

1 So in original. Probably should be followed by a colon.

2 So in original. Probably should be "unenforceable".

3 So in original. Probably should be "unenforceability".

30 U.S.C.A. § 184, 30 USCA § 184

Current through P.L. 116-5. Title 26 current through 116-9.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter I. Policies and Goals (Refs & Annos)

42 U.S.C.A. § 4332

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

Currentness

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall--

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction. [1]

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

CREDIT(S)

(Pub.L. 91-190, Title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub.L. 94-83, Aug. 9, 1975, 89 Stat. 424.)

Footnotes

1 So in original. The period probably should be a semicolon.

42 U.S.C.A. § 4332, 42 USCA § 4332

Current through P.L. 116-5. Also includes P.L. 116-8. Title 26 current through 116-9.

United States Code Annotated
Title 54. National Park Service and Related Programs (Refs & Annos)
Subtitle III. National Preservation Programs
Division a. Historic Preservation
Subdivision 5. Federal Agency Historic Preservation Responsibilities
Chapter 3061. Program Responsibilities and Authorities
Subchapter I. In General

54 U.S.C.A. § 306108
Formerly cited as 16 USCA § 470f

§ 306108. Effect of undertaking on historic property

Effective: December 19, 2014
Currentness

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

CREDIT(S)

(Pub.L. 113-287, § 3, Dec. 19, 2014, 128 Stat. 3227.)

54 U.S.C.A. § 306108, 54 USCA § 306108
Current through P.L. 116-5. Also includes P.L. 116-8. Title 26 current through 116-9.

End of Document

Code of Federal Regulations
Title 43. Public Lands: Interior
Subtitle B. Regulations Relating to Public Lands
Chapter II. Bureau of Land Management, Department of the Interior
Subchapter A. General Management (1000)
Group 1800. Public Administrative Procedures
Part 1810. Introduction and General Guidance (Refs & Annos)
Subpart 1810. General Rules (Refs & Annos)

43 C.F.R. § 1810.3

§ 1810.3 Effect of laches; authority to bind government.

Currentness

(a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

(b) The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

(c) Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

AUTHORITY: 43 U.S.C. 1740.

Notes of Decisions (11)

Current through March 22, 2019; 84 FR 10720.

End of Document

Code of Federal Regulations
Title 43. Public Lands: Interior
Subtitle B. Regulations Relating to Public Lands
Chapter II. Bureau of Land Management, Department of the Interior
Subchapter C. Minerals Management(3000)
Part 3100. Oil and Gas Leasing (Refs & Annos)
Subpart 3108. Relinquishment, Termination, Cancellation (Refs & Annos)

43 C.F.R. § 3108.3

§ 3108.3 Cancellation.

Currentness

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only after notice to the lessee in accordance with section 31(b) of the Act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply.

(b) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, and if the leasehold contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by judicial proceedings in the manner provided by section 31(a) of the Act.

(c) If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of the act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, only by judicial proceedings in the manner provided by section 27(h)(1) of the Act.

(d) Leases shall be subject to cancellation if improperly issued.

Credits
[45 FR 35163, May 23, 1980; 53 FR 22840, June 17, 1988; 53 FR 31868, Aug. 22, 1988]

AUTHORITY: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359 and 1751; 43 U.S.C. 1732(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub.L. 109–58).

Notes of Decisions (21)

Current through March 22, 2019; 84 FR 10720.

End of Document

Code of Federal Regulations
Title 43. Public Lands: Interior
Subtitle B. Regulations Relating to Public Lands
Chapter II. Bureau of Land Management, Department of the Interior
Subchapter C. Minerals Management(3000)
Part 3100. Oil and Gas Leasing (Refs & Annos)
Subpart 3108. Relinquishment, Termination, Cancellation (Refs & Annos)

43 C.F.R. § 3108.4

§ 3108.4 Bona fide purchasers.

Currentness

A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers shall be charged with constructive notice as to all pertinent regulations and all Bureau records pertaining to the lease and the lands covered by the lease. Prompt action shall be taken to dismiss as a party to any proceedings with respect to a violation by a predecessor of any provisions of the act, any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented that the purchaser is not a bona fide purchaser.

Credits
[48 FR 33662, July 22, 1983; 48 FR 39225, Aug. 30, 1983; 53 FR 17357, May 16, 1988]

AUTHORITY: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359 and 1751; 43 U.S.C. 1732(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub.L. 109–58).

Notes of Decisions (1)

Current through March 22, 2019; 84 FR 10720.

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