

SUPREME COURT OF MONTANA

Park County Environmental Council v. Montana Department of Environmental Quality

United States v. Natural Environmental, Inc., 10 OCAHO no. 1197 (OCAHO 2013) · No. DA 19-0492 · Decided December 8, 2020

SUMMARY

The Montana Supreme Court reviewed challenges to the Montana Department of Environmental Quality’s approval of Lucky Minerals, Inc.’s exploration license in Emigrant Gulch. The court held that the plaintiffs had standing and that DEQ was required to conduct additional analysis concerning road improvements, water quality, and project alternatives, but it rejected the argument that DEQ had to analyze potential full-scale mining on adjacent federal lands at the exploration-permit stage. The court affirmed in part, reversed in part, and remanded to DEQ for further analysis.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Mike McGrath; James Jeremiah Shea; Beth Baker; Laurie McKinnon; Ingrid Gustafson; Dirk M. Sandefur; Jim Rice
JURISDICTION	Montana
DECIDED	December 8, 2020
DOCKET	DA 19-0492
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from a district court judgment granting summary judgment to environmental plaintiffs and from an order vacating Lucky Minerals' exploration license.
STANDARD OF REVIEW	Summary judgment and related conclusions of law are reviewed de novo for correctness. DEQ's MEPA analysis is reviewed under whether the agency decision was arbitrary, capricious, unlawful, or unsupported by substantial evidence, including whether the agency took a hard look at relevant information and pertinent data. Agency decisions involving substantial agency expertise receive great deference.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.

PARTIES

Montana Department of Environmental Quality, Lucky Minerals, Inc.,
State of Montana, by and through the Office of the Attorney General v.
Park County Environmental Council, Greater Yellowstone Coalition

TOPICS

environmental law

administrative law

judicial review of agency action

equitable relief

mining law

PRACTICE AREAS

environmental law

administrative law

constitutional law

judicial review of agency action

remedies

mining law

QUESTIONS PRESENTED

1. Whether the environmental plaintiffs had standing to challenge DEQ's issuance of the exploration permit.
2. Whether DEQ was required to evaluate the environmental impacts of potential full-scale mining on adjacent federal lands.
3. Whether DEQ adequately analyzed the environmental impacts of expected access-road improvements.
4. Whether DEQ took the required hard look at water-quality issues.
5. Whether DEQ adequately analyzed alternatives to approving the exploration proposal under MEPA.
6. Whether Montana Code Annotated § 75-1-201(6)(c) and (d), which limit remedies for MEPA violations, violated the Montana Constitution.

HOLDINGS

1. The environmental organizations had standing because their members alleged particularized aesthetic, recreational, property, and business injuries caused by the exploration permit that could be alleviated by vacating the permit.
2. DEQ was not required at the exploration-permit stage to analyze the environmental impacts of potential future full-scale mining on adjacent federal lands because issuance of the exploration permit did not irreversibly set that mining in motion and a later DEQ approval would be required.
3. DEQ failed to take the required hard look at the impacts of expected road improvements on wildlife, particularly grizzly bears and wolverines, and supplemental review was required.
4. DEQ took the required hard look at groundwater-quality data in evaluating the likely effects of the proposed exploration, but its requirement that Lucky later develop a mitigation plan for artesian flow was inadequate and required supplemental review.
5. MEPA did not require DEQ to devise a scaled-down alternative to Lucky's privately sponsored exploration project, such as fewer drill holes. DEQ satisfied its alternatives obligation by considering alternative ways to respond to the application, including approval, approval with modifications, and denial.

6. Montana Code Annotated § 75-1-201(6)(c) and (d), which limit MEPA remedies to remand and prohibit injunctions or invalidation of permits during further review, are facially unconstitutional under Article II, Section 3, and Article IX, Section 1, of the Montana Constitution.

KEY QUOTATIONS

“The critical point by which the required environmental review must have occurred is the “go/no go” juncture, beyond which lies an “irretrievable commitment of resources” or “successive steps set into irreversible motion.”” (¶ 32)

“MEPA requires agencies to “study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.”” (¶ 47)

““Procedural,” of course, does not mean “unimportant.”” (¶ 70)

“We conclude that it has not.” (¶ 78)

“Section 75-1-201(6)(c) and (d), MCA, by seeking to deny the people of Montana these remedies, falls short of the constitutional guarantee and is therefore facially unconstitutional.” (¶ 89)

FACTUAL BACKGROUND

Lucky Minerals sought a Montana exploration license to drill up to 46 holes from 23 pads on privately owned patented mining claims in Emigrant Gulch, near the Greater Yellowstone Ecosystem and the Yellowstone River watershed. The project required improvements to an unsafe Forest Service access road and involved drilling, nighttime lighting, and potential artesian groundwater flows. DEQ issued an environmental assessment and approved the project without preparing an environmental impact statement, but it did not adequately analyze road-related wildlife impacts or specify measures to contain artesian flow. The district court found additional deficiencies concerning water quality, alternatives, and potential future mining on adjacent federal lands.

PROCEDURAL HISTORY

The Sixth Judicial District Court granted summary judgment to Park County Environmental Council and Greater Yellowstone Coalition, finding that the Montana Department of Environmental Quality failed to comply with the Montana Environmental Policy Act in evaluating road, water-quality, alternatives, and potential secondary impacts. The court later vacated Lucky Minerals' exploration license and held statutory restrictions on equitable remedies unconstitutional. The Montana Supreme Court affirmed in part, reversed in part, and remanded to DEQ for supplemental environmental analysis.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to DEQ for supplemental environmental review of the impacts of expected road improvements on wildlife and for identification and evaluation of specific measures to contain artesian flow during drilling. The district court's vacatur of Lucky's exploration license remains affirmed. The court reversed the district court's rulings requiring additional analysis of groundwater-quality data, alternatives, and potential future full-scale mining on federal lands.

CASES CITED

- Bitterrooters for Planning, Inc. v. Mont. Dep't of Env'tl. Quality, 2017 MT 222, 388 Mont. 453, 401 P.3d 712
- Clark Fork Coal. v. Mont. Dep't of Env'tl. Quality, 2008 MT 407, 347 Mont. 197, 197 P.3d 482
- Mont. Env'tl. Info. Ctr. v. Mont. Dep't of Env'tl. Quality, 2019 MT 213, 397 Mont. 161, 451 P.3d 493
- Heffernan v. Missoula City Council, 2011 MT 91, 360 Mont. 207, 255 P.3d 80
- Aspen Trails Ranch, LLC v. Simmons, 2010 MT 79, 356 Mont. 41, 230 P.3d 808
- Mont. Env'tl. Info. Ctr. v. Mont. Dep't of Env'tl. Quality, 1999 MT 248, 296 Mont. 207, 988 P.2d 1236
- Progressive Direct Ins. Co. v. Stuivenga, 2012 MT 75, 364 Mont. 390, 276 P.3d 867
- Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd., 2010 MT 26, 355 Mont. 142, 226 P.3d 567
- North Fork Preservation Ass'n v. Dep't of State Lands, 238 Mont. 451, 778 P.2d 862 (1989)
- Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983)
- Mont. Env'tl. Info. Ctr. v. Mont. Dep't of Env'tl. Quality, 2016 MT 9, 382 Mont. 102, 365 P.3d 454
- National Parks & Conservation Ass'n v. BLM, 606 F.3d 1058 (9th Cir. 2010)
- Angoon v. Hodel, 803 F.2d 1016 (9th Cir. 1986)
- Theodore Roosevelt Conservation P'ship v. Salazar, 661 F.3d 66 (D.C. Cir. 2011)
- Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir. 1991)
- Alaska Survival v. Surface Transp. Bd., 705 F.3d 1073 (9th Cir. 2013)
- Kadillak v. Anaconda Co., 184 Mont. 127, 602 P.2d 147 (1979)
- Northern Plains Res. Council, Inc. v. Mont. Bd. of Land Comm'rs, 2012 MT 234, 366 Mont. 399, 288 P.3d 169
- Citizens for Responsible Dev. v. Bd. of Cty. Comm'rs, 2009 MT 182, 351 Mont. 40, 208 P.3d 876
- Pollinator Stewardship Council v. EPA, 806 F.3d 520 (9th Cir. 2015)
- Mont. Wildlife Fed'n v. Mont. Bd. of Oil & Gas Conservation, 2012 MT 128, 365 Mont. 232, 280 P.3d 877
- Bozeman Daily Chronicle v. City of Bozeman Police Dep't, 260 Mont. 218, 859 P.2d 435 (1993)
- Williams v. Bd. of Cty. Comm'rs of Missoula Cty., 2013 MT 243, 371 Mont. 356, 308 P.3d 88
- Seven Up Pete Venture v. State, 2005 MT 146, 327 Mont. 306, 114 P.3d 1009
- Mont. Cannabis Indus. Ass'n v. State, 2016 MT 44, 382 Mont. 256, 368 P.3d 1131
- Washington State Grange v. Washington State Republican Party, 552 U.S. 442 (2008)
- Citizens United v. FEC, 558 U.S. 310 (2010)
- New York v. Ferber, 458 U.S. 747 (1982)

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