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Holland & Hart Scores Win for Mancos Shale Oil & Gas Operators; No Drilling Moratorium During Well Approval Process

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In a detailed opinion,¹ U.S. District Court Judge James O. Browning of the District of New Mexico sided squarely with the Bureau of Land Management (BLM) and the oil and gas operators, represented by Holland & Hart's Environmental and Natural Resources Litigation team in a challenge to approximately 300 approvals (APDs) for wells in the Mancos Shale of the San Juan Basin. Judge Browning rejected claims by the Plaintiff group, including WildEarth Guardians and the Natural Resources Defense Council, that BLM had failed to take a "hard look" under the National Environmental Policy Act (NEPA) at the environmental impacts of horizontal drilling and hydraulic fracturing technology. The decision affirms, consistent with prior court rulings, that BLM's decision to initiate a Resource Management Plan (RMP) amendment does not require a moratorium on drilling under the existing RMP, so long as ongoing development remains within the scope of the existing RMP and supporting NEPA analysis.

BLM's existing RMP for the San Juan Basin, which encompasses the "Greater Chaco" area, was implemented largely before the Mancos Shale development began. It did not specifically address horizontal Mancos Shale development, though it did address basin-wide development, particularly vertical wells. For this reason, BLM did not stop approving Mancos Shale wells while the RMP amendment was pending. Instead, the BLM continued to conduct site-specific environmental assessments (EAs), tiered to the existing RMP analysis.

Plaintiffs initially requested injunctive relief, and asked the Court to stop all APD approvals until the amendment process was complete. Judge Browning denied that request earlier in the lawsuit. In his final decision issued last week, he determined that BLM had complied with NEPA and the NHPA. Judge Browning specifically held that:

- BLM had taken a "hard look" under NEPA at the environmental impacts of horizontal drilling and hydraulic fracturing, and appropriately tiered its analysis to the 2003 EIS.
- BLM satisfied the public process requirements for the EAs, by providing notice of the EAs on its website, hosting public meetings, and sending notice of the meetings to affected parties.
- BLM complied with the NHPA because it abided by the New

Mexico State Protocol in defining the direct and indirect areas of potential effect (APEs), identifying historical sites within the APEs, and explaining how those sites would be avoided or mitigated.

Judge Browning's decision endorses BLM's tiered NEPA approach, and affirms BLM's continuing well-by-well evaluations under the existing RMP while proposed amendments are pending. The decision affirms that BLM is on strong footing relying on an EIS evaluating the impacts of vertical drilling to approve horizontal drilling on federal lands nationwide.

If you have any questions about this decision or the potential impacts on oil and gas permitting and development, please contact Dessa Reimer, John Shepherd, or Brad Berge.

¹Diné Citizens Against Ruining our Environment et al. v. Jewell, ___ F. Supp. 3d ___, 2018 WL 1940992 (D.N.M. Apr. 23, 2018).

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