



Coal Leasing Moratorium on Federal Lands Lifted by Ninth Circuit Court of Appeals

In an unpublished [opinion](#) filed on February 21, 2024, the U.S. Court of Appeals for the Ninth Circuit lifted the moratorium on leasing coal on federal lands established in an August 2022 [order](#) issued by Chief District Court Judge Brian Morris in Montana.

Where the U.S. Gets Its Coal

The U.S. Energy Information Administration publishes [coal production statistics](#) for the entire country. In 2022, about 594 million short tons of coal were produced in 21 U.S. states. Surface mines were the source of 63% of total U.S. coal production and accounted for 65% of the total number of producing mines.

Five states accounted for 73% of total U.S. coal production in 2022. Wyoming is number one (41%) followed by West Virginia (14%), Pennsylvania (7%), Illinois (6%), and Kentucky (5%).

The western coal region includes Alaska, Arizona, Colorado, Montana, New Mexico, North Dakota, Utah, Washington, and Wyoming. About 56% of total U.S. coal production was mined in the western coal region. Wyoming produced 41% of total U.S. coal production and 73% of the coal mined in the western coal region. Seven of the top ten U.S. coal-producing mines were in Wyoming, and all of those mines are surface mines. Surface mines produced 92% of the coal in the western coal region.

For perspective, about 400 million tons of coal was mined on federal land in 2014. That dropped substantially to about 260 million tons by 2022. About half of the country's coal production comes from private companies operating on federal lands. And most of that mining occurs in the western coal region including Wyoming, Montana, and Colorado.

History of the Moratorium

In January 2016, President Obama's Secretary of Interior Sally Jewell ordered the Bureau of Land Management (BLM) to prepare a programmatic environmental impact statement (PEIS) and established the moratorium on new coal leases on federal lands. The PEIS was to identify and assess potential reforms for the federal coal leasing program – a program that had not been reevaluated in over three decades. The primary considerations for the PEIS were to address climate change, fair returns on federal leases, and market conditions. Secretary Jewell stated that the moratorium on new coal leases would avoid locking in the future development of large quantities of coal on unfavorable financial terms.

In 2017, the new Interior Secretary Ryan Zinke reversed the moratorium, terminated the ongoing PEIS National Environmental Policy Act (NEPA) review and directed BLM to resume issuing coal leases expeditiously.

That decision was challenged by several environmental groups, the Northern Cheyenne Tribe, and the states of California, Washington, New York, and New Mexico. In his initial ruling in 2019, (*Citizens for Clean Energy v. U.S. Dep't of the Interior*)¹, Chief Judge Morris had determined that the Zinke Order constituted a major federal action under NEPA and ordered the BLM to conduct a NEPA analysis.

The Court's August 12, 2022, order dealt with the resulting challenge to the BLM's NEPA analysis where Chief Judge Morris ruled that before the BLM can resume leasing, the agency must update its NEPA analysis.

Specifically, the Court ruled that, in approving certain coal leases, the BLM's NEPA analysis was "arbitrarily curtailed and failed to consider relevant factors." Those factors included, for example, (1) the final Environmental Analysis (EA) improperly stated that the leases would yield no change in greenhouse gas emissions or climate impacts; (2) there would be no "appreciable market effects impacting usage or emissions over any period"; (3) there would be no socioeconomic impacts; and (4) there would be no impacts on water resources.

The court issued an Order of Vacatur and remanded the final EA and the associated Finding of No Significant Impact (FONSI) back to the BLM for further NEPA analysis. In addition, the Court reinstated the coal leasing program moratorium established by Secretary Jewell's Order until completion of a sufficient NEPA review analyzing the

Trump Administration's revocation of the moratorium.

Ninth Circuit Opinion – The Case Is Moot

The National Mining Association, and the states of Wyoming and Montana intervened and asked the Court of Appeals to reverse the 2019 district court decision that BLM had violated NEPA by failing to conduct an environmental review in connection with the Zinke Order that rescinded the Jewel moratorium. The intervenors also challenged the district court's 2022 decision finding that the resulting NEPA analysis was arbitrary and capricious as well as Chief Judge Morris's decision that the case was not moot. The mootness issues arose because in April 2021, the Biden Administration's Secretary of Interior Deb Haaland revoked the Zinke Order.

And the mootness argument carried the day:

Nothing about the Zinke Order can be changed through further NEPA analysis when the Zinke Order is legally non-existent. Under these circumstances, "it is impossible for a court to grant any effectual relief whatever to the prevailing party." . . .

Any injury that appellees claim to suffer relating to the lack of a formal coal leasing moratorium is not fairly traceable to the defunct Zinke Order and cannot be remedied through relief relating to that Order, which has been revoked.

The three-judge panel, thus, vacated Chief Judge Morris's judgment and remanded the case with instructions to dismiss the case as moot.

Even though the appellate court resolved the matter based on what some will refer to as a "legal technicality," Rich Nolan, President and CEO of Intervenor National Mining Association was pleased:

This is a victory for American-mined energy, and we are pleased with the court's recognition of the need to dismiss this irreparably flawed ruling. With this ruling, important projects can once again advance and support the production of affordable, reliable power to the grid, while creating jobs and economic development across the country, helping federal, state, and localities with

necessary funding by contributing hundreds of millions each year in revenues to state and local governments.

William Walksalong of the Northern Cheyenne Tribe asked the Biden Administration to act:

The Tribe is disappointed in the court's ruling, but we will fight tirelessly to protect our reservation and its air and waters and the Cheyenne way of life. Now that the court has ruled that the Trump administration decision to restart coal leasing was revoked, we need the Biden administration to step up and live up to its promises to protect our climate, conduct a long overdue review of the federal coal leasing program, and make thoughtful plans for the future of public lands.

This post was drafted by [John Watson](#), an attorney in the Denver, Colorado office of Spencer Fane LLP. For more information, visit www.spencerfane.com.

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[-384 F. Supp. 3d 1264, 1279 \(D. Mont. 2019\)](#)