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EPA, BLM clash over environmental rules

Agencies in a fight over compliance with NEPA provisions

The Environmental Protection Agency and the Bureau of Land Management are in a dispute over whether the EPA needs to comply with federal environmental and historic preservation laws for “remedial investigation” and removal actions it has ordered on the Bonita Peak Mining District Superfund Site.

In a Dec. 20, 2018 memorandum, attorneys for the EPA determined the agency did not need to conduct reviews under the National Historic Preservation Act or the National Environmental Policy Act to issue an order to Sunnyside Gold Corp. to drill into the American Tunnel and conduct other investigative and removal operations associated with the Superfund site.

The EPA argued that the limited scope and the “exigencies of the situation” made environmental and historic preservation reviews unnecessary.

But in an April 4 memo to EPA officials, a lawyer for the Bureau of Land Management said the agency “disagrees with the EPA’s position,” and argued that the EPA must comply with the environmental rules on BLM land.

BONITA PEAK MINING DISTRICT SUPERFUND SITE

“As one of the federal land managers within the Bonita Peak Mining District Site, BLM has the expertise and the responsibility as land manager to determine the potential impacts of a removal action on BLM land and to identify what steps should be taken to avoid or mitigate any such adverse impacts,” wrote Nathalie Doherty, a Department of Interior lawyer representing the BLM in the matter.

In its Dec. 20 memo, EPA lawyers argued that NEPA rules “must only be complied with to the extent practicable considering the urgency of the situation and the scope of the response action.”

The memo states that the “EPA has determined that it is not practicable, given the scope of the remedial investigation as contemplated, to comply with the substantive provisions of the NEPA — including cultural resource surveys.”

The agency argued that the scope of the proposed action is limited.

“The wells installed on BLM-managed lands ... will not be permanent, and the wells and well pads can be removed when the remedial investigation and subsequent remedial actions associated with this investigation have been completed.”

The EPA also argued that the wells were urgently needed.

Doherty’s response to the EPA:

“EPA has identified no immediate risk to public health and the environment that would result from delaying” the proposed actions.

The scope of the work includes construction of roadways and potentially two drill pads for drilling into the American Tunnel, installing meteorological stations, installing flumes for surface water monitoring, and conducting field infiltration tests.

Kevin Roach, Sunnyside Gold’s director of Reclamation Operations, in an April 10 letter to Steve Turner, state historic preservation office, said that the EPA has proposed “26 ground-disturbing ‘interim

remedial actions’ with no demonstrable benefit and ordered SGC to undertake extensive on-the-ground action that would have significant impacts on the environment and potentially significantly degrade cultural and historic resources.”

San Juan County Commissioner Scott Fetchenhier, who serves on the Superfund site’s workgroup, said in his view, the EPA needs to comply with the NEPA rules.

“They still have to do it,” Fetchenhier said. “At least I think they do.”