

# COAL PLANTS ON PUBLIC LANDS

## APPLYING NEPA

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# Introduction

- John Barth, Attorney at Law.  
Specializing in representation of  
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# Topics of Discussion

- Intro
- Background and status of cases.
- NEPA arguments

# Coal Plants on Public Land Present Unique Opportunities

- Unregulated power producer
- No alternatives/needs analysis at PUC
- Little alternatives/needs analysis in CAA-redefine the source
- NEPA requires alternatives/needs analysis
- Alternatives/needs analysis no being done by applicant
- Same tools available for other plants on federal lands

# Public Lands Being Sold to Private Companies to Develop Coal Plants

- BLM is selling public property for coal plants- White Pine (NV), Ely (NV), Toquop (NV).
- Total of around 10,000 acres in NV
- BIA is allowing lease of trust land on Navajo reservation (Desert Rock)

# Background and Status of Cases

- White Pine:
- 1,590 MW supercritical coal plant.
- Near Ely, Nevada- LS Power.
- Located entirely on BLM land.
- ROW/Land Disposal
- Plant, t'mission, water, rail, waste
- Close to GBNP
- 1<sup>st</sup> FEIS/ROD- IBLA challenge

# Background and status of cases (continued)

- Ely
- 1,500-2,250 MW-NV Energy
- Supercritical and IGCC
- Close to White Pine
- Located entirely on BLM land.
- ROW/Land Disposal
- Plant, t'mission, water, rail, waste
- Close to GBNP
- DEIS issued, comments due 4/09

# Background and status of cases (continued)

- Toquop
- 750 MW, Supercritical,
- Sithe Global Energy
- Mesquite, NV
- Located entirely on BLM land.
- ROW/Land Disposal
- Plant, t'mission, water, rail, waste
- DEIS issued, ROD in 2009

# Background and status of cases (continued)

- Desert Rock
- 1,500 MW, Supercritical,
- Sithe Global Energy
- NW New Mexico-Navajo lands
- Plant, t'mission, water, rail, waste
- DEIS issued, ROD in 2009

# FLPMA Claim

- Section 203 of FLPMA states that specific tracts of public lands may only be sold where BLM determines that:
- Disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.
- 43 USC § 1713(a)(3). *See also* 43 C.F.R. § 2710.0-3(a)(2).

- In granting rights-of-way, BLM is required to “minimize adverse environmental impacts,” and specify the boundaries of each right-of-way “as precisely as is practical” to protect public safety and avoid “unnecessary damage to the environment.” 43 U.S.C. §§ 1763, 1764(a); *see also id.* at § 1765(a)-(b).
- Failure to balance harms
- Not in public interest (global warming)

# NEPA General Claims

Improper purpose, 40 C.F.R. § 1502.13-help local economy, use of third party resources

No showing of need for power, 40 C.F.R. § 1502.13  
(failure to conduct needs analysis, no customers, no consideration of other plants)

# Programmatic EIS

Environmental impact statements should be prepared when the government undertakes a new “program” or “policy.” 40 C.F.R. § 1502.20.

Programmatic EISs are particularly appropriate when multiple government actions “are likely to have effects on the same environmental resources.” *See Council on Environmental Quality, Guidance on the Consideration of Past Actions in Cumulative Effects Analysis (June 24, 2005).*

4 new coal plants in Colorado Plateau with effects on same environmental resources

# Environmental Impacts

- Failure to take a “hard look” at impacts
- Air quality-NAAQS, MACT, BACT, AQRVs, other (BLM defers to state permitting agency before work is completed).
- Groundwater pumping and impacts to surface springs
- Ash disposal issues (hot topic)
- Wildlife
- Recreation

# National Parks Issues

- Visibility-individual and cumulative Class I impacts
- NPS adverse impact determination
- Deposition of acids, HAPs, nitrogen
- Impacts to plants and animals
- Night sky

# Alternatives analysis

- Must “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E).
- Alternatives analysis is the “heart” of the NEPA process. 40 C.F.R. § 1502.14.
- Alternatives analysis not provided by CAA or PUC (merchant)
- Too narrow scoping of alternatives
- No clean energy alternatives
- No private land alternatives
- Only two identical alternatives
- No CCS alternatives and impacts

# GHG Issues

- GHG global problem, not local
- Can't quantify GHG impact of single source
- What about cumulative impacts of all four sources?
- Societal costs of carbon, monetize harm and require mitigation
- DOI policies to ignore GHG impacts