IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 17-cv-3025-PAB
HIGH COUNTRY CONSERVATION ADVOCATES, *et al.*
Plaintiffs,

v.

UNITED STATES FOREST SERVICE, *et al.*
Federal Defendants,

and

MOUNTAIN COAL COMPANY LLC,
Intervenor-Defendant.

MOUNTAIN COAL COMPANY'S OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION TO ENFORCE REMEDY

Plaintiffs style their Motion as one to "Enforce the Remedy," but the Court fully and completely enforced the remedy in its Minute Order of June 15, 2020, in granting Plaintiffs' unopposed motion to vacate the North Fork Coal Mining Area Exception ("North Fork Exception") to the Colorado Roadless Rule ("CRR") 36 C.F.R. § 294.43(c)(1)(ix). *High Country Conservation Advocates v. U.S. Forest Serv.*, 951 F.3d 1217, 1229 (10th Cir. 2020) ("*HCCA 2020*"). As a result, Plaintiffs' Motion is in fact a request for a *new*, additional remedy, based on new, extra-record evidence, outside the bounds of the mandate and barred by the law of the case. Moreover, all the complained-of past and planned actions are fully lawful under valid lease rights and express provisions of the CRR. Plaintiffs further request injunctive relief without

even attempting to satisfy the applicable four-part test, and which they cannot satisfy. The Court should therefore deny Plaintiffs' Motion.

FACTUAL AND PROCEDURAL BACKGROUND

This Court previously described the extensive litigation history surrounding the North Fork Exception and Lease Modifications COC-1362 and 67232 ("Lease Modifications") in *High Country Conservation Advocates v. United States Forest Service*, 333 F. Supp. 3d 1107 (D. Colo. 2018) ("*HCCA 2018*"). Specifically, Plaintiffs sought review under the Administrative Procedure Act ("APA") of four separate decisions:

(1) United States Forest Service ("USFS") promulgation of the North Fork Exception, following preparation of a Supplemental Final Environmental Impact Statement ("North Fork Exception SFEIS") under the National Environmental Policy Act ("NEPA");

(2) USFS consent to issuance of the Lease Modifications;

(3) The Bureau of Land Management's ("BLM") issuance of the Lease Modifications, after preparation of an additional environmental impact statement ("Leasing SFEIS"), that tiered to and relied upon the North Fork Exception SFEIS, while also analyzing site-specific impacts; and

(4) BLM approval of an Exploration Plan for the Lease Modifications.

Amended Complaint, Dkt. 39 at Prayer for Relief ¶¶ 3–8.

Plaintiffs alleged a wide array of NEPA deficiencies. Notably, Plaintiffs argued that the invalidation of an agency rule or decision *necessarily* invalidates decisions predicated upon it, such that invalidation of the North Fork Exception would necessarily invalidate the USFS consents, the Lease Modifications, and Exploration Plan. Dkt. 47 at 45.

This Court upheld all the challenged decisions. *High Country 2018*, 333 F. Supp. 3d at 1133. Plaintiffs appealed. Dkt. 64. Plaintiffs presented *only two* issues on appeal: (1) evaluation of a proposed "Pilot Knob Alternative" in the North Fork Exception SFEIS; and (2) the USFS's and BLM's decision to defer consideration of the safety and economic feasibility dimensions of methane flaring as mitigation until the mine planning and permitting stage. *HCCA 2020*, 951 F.3d at 1221. Plaintiffs *did not appeal* this Court's determination that the USFS consent to the Lease Modifications was valid. Plaintiffs requested that the Tenth Circuit vacate the North Fork Exception "and/or" the Lease Modifications. App'ls' Brief p. 50.

The Tenth Circuit addressed both issues on appeal, ultimately finding the North Fork Exception SFEIS arbitrary and capricious but upholding the Lease Modifications. *HCCA 2020*, 951 F.3d at 1228-29. Judge Kelly's opinion concurring in part and dissenting in part confirmed the two distinct holdings—"concur[ring] in the court's decision that NEPA did not require consideration of the methane flaring alternative but respectfully dissent[ing] from the conclusion that U.S. Forest Service was required to consider the Pilot Knob alternative in detail." *Id* at 1229-30 (Kelly, J. concurring/dissenting). Using its "traditional equitable powers," the Tenth Circuit remanded for the limited and defined purpose of "entry of an order vacating the North Fork Exception." *Id.* at 1229. The Tenth Circuit did not invalidate the Lease Modifications and did not authorize this Court to take further action regarding the Lease Modifications. *See id.* Instead, all three judges explicitly agreed and upheld this Court's determination that their issuance was not arbitrary or capricious. The mandate issued on April 24, 2020.

Following review of the decision, Mountain Coal concluded that it had the right to continue roadbuilding, as necessary to access the coal in the Lease Modifications, under the

Mineral Leasing Act ("MLA"), the express terms of the Lease, and a separate exception to the CRR that allows roadbuilding when roads are needed to exercise statutory rights. 36 C.F.R. § 294.43(c)(1)(i). Before commencing any work, Mountain Coal confirmed with the USFS that its consents remained valid and USFS did not oppose resumption of roadbuilding. Declaration of Weston Norris ("Norris Decl.") ¶ 5. Mountain Coal did not receive any communications from Plaintiffs. Declaration of Michael Drysdale ("Drysdale Decl.") ¶ 2. On June 2, 2020, Mountain Coal commenced construction on the next phase of roads needed to comply with its statutory duty to diligently mine the coal. Norris Decl. ¶ 6.

Plaintiffs contacted Mountain Coal for the first time on June 3, 2020, and the parties discussed their differing views on June 4, 2020. Drysdale Decl. ¶¶ 2-3. They were unable to reach agreement on a briefing schedule, because Plaintiffs demanded an indefinite cessation of *all* surface-disturbing activity, including activity not regulated by or expressly permitted under the CRR. *Id.* ¶ 4. Nevertheless, Mountain Coal has not undertaken any roadbuilding in the Lease Modifications since June 4, 2020. Norris Decl. ¶ 6. Mountain Coal has undertaken other non-roadbuilding work, *id.* ¶ 7, which as discussed below is permitted under the CRR.

ARGUMENT

Plaintiffs' Motion should be denied because it seeks relief that this Court is not authorized to grant in light of the procedural posture of the case and because it fails on the merits. Mountain Coal's authority to build roads and construct drill pads is not dependent upon

the North Fork Exception but rather arises under consents that were upheld by this Court and not appealed, and Lease Modifications upheld by the Tenth Circuit.[1]

I. Plaintiffs' Motion Seeks Relief Beyond the Court's Authority.

The Tenth Circuit's mandate direct the Court to enter an order vacating the North Fork Exception to the CRR and restrict the Court from entering relief inconsistent with the mandate and Tenth Circuit's opinion. Nonetheless, Plaintiffs ask this Court to enter a much broader and inconsistent order, requiring the USFS to temporarily and then permanently withdraw its consent to the Lease Modifications and order Mountain Coal to cease roadbuilding, tree cutting, and any other surface-disturbing activity such as drill pad construction. Dkt. No. 77 at 13; 77-4. Notably, Plaintiffs do not request invalidation of the Lease Modifications themselves. Plaintiffs' requested relief cannot be granted for two reasons: (1) it exceeds the Court's authority under the mandate rule; (2) it is barred by the law of the case.

A. The Mandate Rule Bars this Court from Entering Any Order on the Claims in the Complaint that Does More than Vacate the North Fork Exception.

The Tenth Circuit's instructions on remand are clear. This Court may only enter "an order vacating the North Fork Exception." *HCCA 2020*, 951 F.3d at 1229. The Plaintiffs newly requested relief would exceed the scope of the mandate and, therefore, violate the mandate rule.

Under the mandate rule, a district court's authority on remand is limited to entering of "a judgment according to the mandate" from the appellate court and carrying "that judgment into

---

[1] As explained herein, Mountain Coal commenced roadbuilding because it has the right to do so independently of the vacatur of the North Fork Exception. In addition, all roadbuilding to date preceded the June 15, 2020 vacatur, and even the June 11, 2020 motion to vacate. *See* Norris Decl. ¶ 6. For that additional reason, all Mountain Coal's actions have been entirely lawful.

execution." *Colo. Interstate Gas Co. v. Natural Gas Pipeline Co.*, 962 F.2d 1528, 1534 (10th Cir. 1992). The "mandate" includes the Circuit's express instructions to the district court as well as the entire opinion, *Walker*, 918 F.3d at 1144, and bars reconsideration of issues "expressly or impliedly disposed of on appeal," *P&G Co. v. Haugen*, 317 F.3d 1121, 1126 (10th Cir. 2003)

Depending on the specifics of the mandate, that may or may not leave with the Court with a degree of discretion. As the Court explained in *Entek GRB LLC v. Stull Ranches LLC, 113* F. Supp. 3d 1113, 1116 (D. Colo. 2015), *aff'd*, 840 F.3d 1239 (10th Cir. 2016):

> [T]he scope of the mandate on remand in the Tenth Circuit is carved out by exclusion: unless the district court's discretion is specifically cabined, it may exercise discretion on what may be heard. Thus, when a remand is general, the district court is free to decide anything not foreclosed by the mandate. In other words, although the district court is bound by the mandate, and the mandate controls all matters within its scope, ... a district court on remand is free to pass upon any issue which was not expressly or impliedly disposed of on appeal.

(Internal citations and quotations omitted).

This case does not involve a general remand, but rather provides specific and narrow instructions. The mandate and accompanying decision also expressly and impliedly dispose of all the relief Plaintiffs request. The USFS consents were not appealed, and consequently have not been re-opened for review by the mandate. The Lease Modifications were affirmed, and thus cannot be revisited. Where, as is the case here, the Tenth Circuit's "ruling le[aves] nothing for the district court to address beyond the 'ministerial dictates of the mandate'" the district court lacks "authority to depart from an appellate mandate." *Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah*, 114 F.3d 1513, 1521 (10th Cir. 1997).

Because the Tenth Circuit expressly ruled on Plaintiffs' challenge to the Lease Modifications, it is not within the scope of this Court's authority to reconsider the Lease

Modifications on remand. *See SOLIDFX, LLC v. Jeppesen*, 11-cv-1468, 2018 U.S. Dist. LEXIS 21661 (D. Colo. Feb. 9 2018) ("But this is neither an open-ended general remand nor a circumstance where the Court of Appeals was not presented with the issues now re-raised . . . on remand."); *see also Colo. Interstate Gas Co.*, 962 F. 2d at 1534 ("Following appellate disposition, however, the judgment is no longer subject to district court amendment beyond the ministerial dictates of the mandate, which encompasses the full scope of jurisdictional power granted to the district court on remand.").

Conversely, the Court does have the authority to consider, should it choose, Mountain Coal's ability to build roads under the statutory-rights exception to the CRR, 36 C.F.R. § 294.43(c)(1)(i), or Lease terms, *infra.* Argument Section 2, because neither of these issues were expressly or impliedly addressed by the Tenth Circuit mandate or opinion. Put another way, the issue of what rights Mountain Coal possesses under the combination of vacatur of the North Fork Exception and affirmance of the Lease Modifications is new legal terrain, not barred by the mandate rule. There may be prudential or other reasons not to venture into that territory, such as the limited scope of APA record review or the lack of citizen-suit provisions under the National Forest Management Act, *Utah Envtl. Cong. v. Troyer*, 479 F.3d 1269, 1280 (10th Cir. 2007) and Organic Act of 1897, 16 U.S.C. §§ 473-75, 477-78, 482, 479, 480-82, 551. But the mandate rule does not foreclose the exercise of that authority.

B. Plaintiffs' Arguments to the Contrary Disregard the Tenth Circuit's Holding on the Lease Modifications and Therefore Fail.

Plaintiffs spend substantial time in their Motion arguing that vacatur eliminates the existing North Fork Exception, leaving the CRR otherwise intact. But Plaintiffs fail to address

the Tenth Circuit's decision not to vacate the Lease Modifications pursuant to which Mountain Coal has engaged in roadbuilding. Of course it is true that after vacatur the North Fork Exception no longer exists and the USFS could not authorize new actions under that authority. But it is also true that, although the Tenth Circuit clearly could have invalidated and vacated the Lease Modifications because of their reliance on North Fork Exception, the Circuit did not. *HCCA 2020*, 951 F. 3d at 1229. The Tenth Circuit also could have given this Court discretion to consider the effect of vacating the North Fork Exception on the Lease Modifications, but it did not. *Id.* Instead, the Tenth Circuit exercised its "traditional equitable powers to fashion appropriate relief," and affirmed the Lease Modifications and handed down a narrow instruction focused only on the North Fork Exception. *Id.* Thus, Plaintiffs' argument that vacatur of the North Fork Exception eliminates rights conferred by other decisions is contrary to the clear equitable determination of the Tenth Circuit and must be rejected.

Plaintiffs are simply incorrect when they contend that a NEPA violation necessarily requires invalidation of the resulting action or of other actions premised upon the rule or decision. Plaintiffs' contention is contradicted by *HCCA 2020* itself and, more extensively, by *WildEarth Guardians v. United States Bureau of Land Management*, 870 F.3d 1222, 1239-40 (10th Cir. 2020). A federal appeals court has a broad range of equitable authority to fashion a remedy following a finding of an APA violation, including but not limited to allowing the affected decisions to stand (*see id.* at 1240 ("we decline to vacate the leases")), which it may exercise itself or convey with instructions to the district court on remand. Were it true that invalidation of the North Fork Exception necessarily required invalidation of the Lease

Modifications or USFS consent, then the Tenth Circuit would surely have done so in its mandate or afforded the Court the opportunity to consider the issue. It did neither.

Moreover, under Plaintiffs' theory, the entirety of the second half of *HCCA 2020* was dicta. Judge Kelly's concurrence then begins by stating that he concurs "in the court's *decision* that NEPA did not require consideration of the methane flaring alternative." *Id.* at 1230 (Kelly, J., concurring) (emphasis added). Had vacatur of the North Fork Exception resulted in vacatur of the USFS consents or Lease Modifications, then mining would have to halt and the viability of the Methane Flaring Alternative would be moot. Consequently, Judge Kelly would not have needed to address it and would simply have written a dissent.

Focusing on a point that Mountain Coal argued rather than what the Tenth Circuit held, Plaintiffs contend that the Court should invalidate the USFS consents under the doctrine of judicial estoppel. Judicial Estoppel is a discretionary doctrine that applies when three factors are satisfied: (1) "a party's subsequent position [is] 'clearly inconsistent' with its former position;" (2) "the suspect party succeeded in persuading a court to accept [its] former position;" and (3) "the party seeking to assert an inconsistent position would gain an unfair advantage in the litigation if not estopped." *Eastman v. Union Pac. R.R.*, 493 F.3d 1151, 1156 (10th Cir. 2007) (citing *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001)). None of these criteria are satisfied. Mountain Coal did not articulate a position as to what the consequence of would be if the Tenth Circuit vacated the North Fork Exception and in the same decision affirmed the Lease Modifications that relied upon the Exception. Mountain Coal was anticipating what the Tenth Circuit would order (vacatur of the Lease Modifications), based on what Plaintiffs were contending. The Tenth Circuit *did not grant that relief.* Furthermore, Mountain Coal made the

statement in question in furtherance of its argument *against* vacatur of the entire North Fork Exception. It did not prevail on that argument, so there can be no concern that Mountain Coal "succeeded in persuading a court to accept [its] former position" and there can be no "perception that either the first or the second court was misled." *Eastman*, 493 F.3d at 1156. And there is no unfairness in Mountain Coal exercising rights that were affirmed on appeal.

C. The Law of the Case Also Bars Plaintiffs' Requested Relief.

Even if the mandate did not limit the Court as argued herein, this Court's decision on the validity of the Lease Modifications and, necessarily the USFS's consent to those modifications, is the law of the case. The law of the case doctrine is a corollary to the mandate rule and specifies that a final legal determination by a district court governs the case. *See McIlravy v. Kerr McGee Coal Corp.*, 204 F.3d 1031, 1034 (10th Cir. 2000). The doctrine serves the interests of finality and judicial economy. *See id.* at 1035. It applies whether the prior ruling is explicit or implicit. *Id.* at 1036 (quoting *Rishell v. Jane Phillips Episcopal Memll Med. Ctr.*, 94 F.3d 1407, 1410 (10th Cir. 1996)) ("Law of the case applies to issues that are resolved implicitly as well as to those decided explicitly.").

Here, this Court fully resolved Plaintiffs' challenge to the adequacy of the Lease Modification SFEIS and the USFS's consent to the Lease Modifications, *HCCA 2018*, 333 F. Supp. 3d at 1133. On appeal, Plaintiffs challenged the validity of the Leasing SFEIS and Lease Modifications. *See HCCA 2020*, 951 F.3d at 1227. The Tenth Circuit rejected their theory, concluding that "[b]ecause the Leasing SFEIS contains sufficient discussion of the relevant issues, we are convinced that the agencies took a hard look at the Methane Flaring Alternative." *Id.* at 1228. And being presented with no other express challenge to the Lease Modification

SFEIS or the lease modifications, the Tenth Circuit declined to disturb the district court ruling. *See id.* at 1229. Therefore, this Court's final legal determination upholding the Lease Modifications and the consents thereto governs this case, and Plaintiffs' request that the Court impose a remedy contrary to that prior determination should be denied for that reason.

II. The Statutory-Rights Exception to the CRR and Lease Terms Permit the Roadbuilding.

Given that the Lease Modifications were upheld on appeal, both the CRR's statutory-rights exception and the Lease terms permit roadbuilding. Separate from the North Fork Exception, the CRR allows roadbuilding if "[a] road is needed . . . as provided for by statute."[2] 36 C.F.R. § 294.43(c)(1)(i). The MLA authorizes the Secretary of Interior to lease federal coal and requires that all federal coal leases be "subject to the conditions of diligent development and continued operation of the mine." 30 U.S.C. § 207(b)(1). It has repeatedly been confirmed that roadbuilding is necessary to develop the coal covered by the Lease Modifications, and is uncontested here. *See, e.g., WildEarth Guardians v. U.S. Forest Service,* 828 F. Supp.2d 1223, 1227 (D. Colo. 2011). Thus, "[a] road is needed . . . as provided for by statute."

The preamble to the CRR explains the purpose behind the statutory-rights exception:

> The rule allows motorized and non-motorized access into [Colorado Roadless Areas] and does not affect reasonable exercise of . . . statutory . . . rights of access, occupancy and use of [national forest system] lands within [Colorado Roadless Areas] when the Agency lacks legal discretion to forbid such activities, for example exploration and mining of locatable minerals under the 1872 Mining Law.

---

[2] Contrary to the Conservation Group's suggestion, Pl.'s Emergency Mot. at 11 n.1, Mountain Coal does not argue that it has the right to build roads "pursuant to reserved or outstanding rights," which must predate the Rule. Rather, Mountain Coal may build roads because they are "needed . . . as provided for by statute." 36 C.F.R. § 294.43(c)(1)(i).

Special Areas; Roadless Area Conservation; Applicability to the National Forest in Colorado, 77 Fed. Reg. 39,576, 39,585 (July 3, 2012). Although Mountain Coal's rights derive from the MLA, not the 1872 Mining Law, the USFS similarly lacks legal discretion to forbid roadbuilding once the Lease Modifications were issued and upheld. Again, the Tenth Circuit *could* have ordered vacatur of the Lease Modifications, which would have extinguished Mountain Coal's rights and obligations and prevented roadbuilding. But because, in its equitable discretion, the Tenth Circuit invalidated the North Fork Exception, while expressly upholding the Lease Modifications, the USFS has no discretion to deny Mountain Coal the beneficial use of the Lease Modifications. Stated another way, the USFS and BLM may not require rental payments from Mountain Coal and mandate that it diligently develop the Leases, while at the same time preventing Mountain Coal from developing the Leases by prohibiting roadbuilding. Under the Lease Modifications, the USFS has no discretion to deny the roadbuilding so long as Mountain Coal remains in compliance lease terms. For this reason, the CRR permits roadbuilding, independently of the vacatur of the North Fork Exception. 36 C.F.R. § 294.43(c)(1)(i).

The Leases themselves further confirm these rights. USFS's lease stipulation mandating compliance with all USFS regulations is qualified by a special stipulation. That stipulation provides, "The permittee/lessee must comply with all the rules and regulations . . . set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) *when not inconsistent with the rights granted . . . in the permit.*" FSLeasing-0069933 (emphasis added). Plaintiffs argue that this stipulation effectively incorporates the CRR into the Lease Modifications to prohibit roadbuilding. Dkt. 77 at 11-12. But they have it backwards. In fact, the stipulation *exempts* Mountain Coal from the CRR where

application of the CRR would be inconsistent with rights conferred under the Lease. As explained, Mountain Coal cannot exercise its rights to access the leased coal without roads. Once the Lease Modifications were affirmed by the Tenth Circuit, any USFS regulation categorically prohibiting roadbuilding, including the CRR, is "inconsistent with the rights granted by the Secretary of the Interior in the" Lease Modifications. FSLeasing-0069933. Therefore, neither the CRR nor the lease stipulation bars the challenged roadbuilding.

III. Plaintiffs Have Not Satisfied Any of the Requirements for Injunctive Relief.

Plaintiffs seek both temporary and permanent injunctive relief. Dkt. 77-4. Such relief requires them to satisfy all the traditional elements for issuance of an injunction. *See Monsanto v. Geertson Seed Farms*, 561 U.S. 139, 157 (2010); *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008). This requires a showing of a likelihood of success (or actual success) on the merits, a demonstration of irreparable harm, and confirmation that the extraordinary relief of an injunction is warranted by the public interest and the balancing of interests. *Coal. of Concerned Citizens v. Fed. Transit Admin. of U.S. DOT*, 843 F.3d 886, 901 (10th Cir. 2016) (quoting *Winter*, 555 U.S. at 20). They have not even attempted to do so.

The foregoing arguments demonstrate why Mountain Coal has the right to build roads. In addition, Plaintiffs' request is wildly overbroad. Plaintiffs seek an injunction against all "surface-disturbing activities," but the CRR does not purport to regulate all such conduct. For the first time in the near-decade of litigation involving the CRR in this area, Plaintiffs argue that "tree-cutting" in the Lease Modifications is banned under 36 C.F.R. § 294.42(c), but tree-cutting is expressly permitted when it is incidental to an approved management activity, such as coal mining in this portion of the Forest under a federal coal lease. *Id.* § 294.42(c)(5).

The degree of harm to Plaintiffs is minimal. The Court had to confront this issue in considering Plaintiffs' request for temporary injunctive relief at the commencement of this action in 2017. In that proceeding, the Court determined that surface disturbance can constitute irreparable harm, but the Court must also evaluate the *quantum* of harm threatened. Dkt. 26. The North Fork Exception encompassed 19,700 acres. *HCCA 2020*, 951 F.3d at 1227. The total surface disturbance accrued since the Tenth Circuit's decision totals 1.3 acres of roads and a single acre of methane drainage well pads, all within the Lease Modification area. Norris Decl. ¶¶ 6-7. Remaining planned disturbance consists of another 1.3 acres of roads and 5.2 acres of well pads, all in necessary furtherance of extracting leased federal coal. Norris Decl. ¶ 3.

In contrast, the degree of harm to Mountain Coal and the surrounding economy from granting the relief Plaintiffs request would be severe. If Mountain Coal is unable to drill methane ventilation boreholes this construction season, it will be unable to fulfill its obligations under the Lease Modifications, experience a several month shutdown of the Mine, and require layoffs of a large percentage of the Mine's 316 employees. Norris Decl. ¶ 8.

The equities weigh even more acutely against Plaintiffs when the public interest and balancing of interests are considered. Importantly, one of Plaintiffs' central arguments throughout this litigation (made persuasively to the Tenth Circuit) was that the exclusion of Pilot Knob Roadless Area should have been evaluated more thoroughly in the North Fork Exception SFEIS, because exclusion of Pilot Knob *would allow roadbuilding* for coal mining and exploration throughout the remainder of the North Fork Valley, and thereby meet the purpose and need for the Rule. *HCCA 2020*, 951 F.3d at 1224 ("And the Pilot Knob Alternative would appear to fit within the stated project goals: it provides for conservation in one roadless area and

facilitates the development of coal resources in two others, [including the Sunset Roadless Area]") (emphasis added). The Tenth Circuit concluded that it did not have the authority to sever Pilot Knob from the remainder of the North Fork Exception Area, but did employ its equitable authority to uphold the Lease Modifications. *HCCA 2020*, 951 F.3d at 1229. Plaintiffs cannot now claim the equities favor them when roadbuilding entirely outside of Pilot Knob is occurring under valid lease rights, as they expressly argued would be allowed. Of course, the Court can no more narrow the remedy ordered by the Tenth Circuit than it can expand it as requested by Plaintiffs. But the reason for invaliding the North Fork Exception is certainly relevant to the advisability and scope of any injunctive relief the Court might order following vacatur. That reason weighs strongly against Plaintiffs' request.

Plaintiffs have not met their burden to obtain injunctive relief, and the facts and law show each element of the test favors Mountain Coal and the Federal Defendants.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion should be denied.

DATED this 23rd day of June, 2020.

DORSEY & WHITNEY LLP

s/ Michael Drysdale

Michael Drysdale
DORSEY & WHITNEY LLP
50 South Sixth Street, Ste. 1500
Minneapolis, MN 55402-1498
Telephone: (612) 340-5652
Facsimile: (612) 340-8800
Email: drysdale.michael@dorsey.com

Attorneys for Mountain Coal Company LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2020, I caused the foregoing document, **MOUNTAIN COAL COMPANY'S OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION TO ENFORCE REMEDY,** to be electronically filed with the Clerk of the Court using the CM/ECF system on counsel of record.

s/ *Vanessa Thompson*