

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ALTON COAL DEVELOPMENT,	)	
LLC	)	
	)	Case No. <u>23-626 C</u>
Plaintiff,	)	
	)	
v.	)	<b><u>COMPLAINT</u></b>
	)	
THE UNITED STATES OF	)	
AMERICA,	)	
	)	
Defendant.	)	

Plaintiff Alton Coal Development, LLC (“Plaintiff” or “Alton”), through its undersigned counsel, hereby files this Complaint against the United States of America, through the Department of the Interior (“DOI”) and Bureau of Land Management (“BLM”) (collectively, the “United States”), and alleges as follows in support:

**INTRODUCTION**

1. Alton is the purchaser and owner of federal coal lease no. UTU-81895 (“Lease”) issued by the United States to Alton pursuant to The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181-287 (“MLA”). The Lease is a binding contract between the United States and Alton that grants Alton the exclusive right to mine coal deposits within certain federal mineral estates located in Kane County, Utah

(the “Alton Coal Tract”). Alton purchased the Lease in a competitive lease sale held by BLM, with BLM accepting Alton’s high bonus bid offer of \$12,323,000. Alton’s bid was predicated on BLM’s representations that it had fully complied with requirements to issue the Lease and that the Lease was valid. Neither predicate has proven to be true.

2. After the United States accepted Alton’s high bonus bid offer and Alton’s initial payment in the amount of \$2,470,327.00 (including first year rental), and issued the Lease, the Lease and BLM’s associated environmental review under the National Environmental Policy Act of 1969 (“NEPA”) were challenged for, among other reasons, the adequacy of BLM’s analysis of impacts from greenhouse gas (“GHG”) emissions.

3. In *Utah Physicians for a Healthy Environment et al v. Bureau of Land Management*, Case No. 2:29-cv-00256 (D. Utah), the United States District Court for the District of Utah held that the Final Environmental Impact Statement (“FEIS”) prepared by BLM, pursuant to NEPA, in support of BLM’s decision to hold the competitive lease sale for the Alton Coal Tract, was inadequate for failure to address the effects and quantify the costs of GHG emissions. The court remanded the FEIS to BLM to revise consistent with the court’s opinion. However, since the court’s order over one year ago, BLM has not revised the FEIS.

4. Without a revised FEIS, Alton cannot obtain the State and Federal mine permit approvals necessary to further develop the Alton Coal Tract. Alton has paid nearly \$12.4 million in bonus and rental payments to the United States for the Lease, has incurred another nearly \$500,000 for specialized air emission controls and air monitoring, and incurred over \$600,000 more in bonding, permitting, and related Coal Hollow Mine approval costs, and has otherwise complied with all material Lease terms and obligations, and yet, as a result of BLM's actions and inaction, Alton has been denied the benefit of its Lease bargain.

5. When BLM issued the FEIS and the Record of Decision ("ROD") approving the Alton Coal Tract Lease application, BLM knew that the FEIS was insufficient because it did not take a "hard look" at the impacts from GHG emissions associated with the Lease, in violation of the requirements of NEPA and the several cases BLM had already lost on that very issue. However, BLM neither advised Alton of the issue and the risks, nor did it meet the NEPA review requirements established by the case law.

6. Without disclosure, BLM knowingly marketed the Lease and conducted the sale that it knew was vulnerable regarding the adequacy of its NEPA review regarding the effects of GHG emissions, the grounds on which the BLM ultimately lost. Consequently, the fair market value ("FMV") of the Lease

determined by the BLM is flawed. The United States also misled Alton regarding the Lease value. Had Alton been informed, Alton would have concluded that the Lease was worth less and would have offered a lower bid. BLM's initial misleading Lease valuation and subsequent failure to revise the FEIS deprives Alton of the bargained-for value of its Lease.

7. The United States' inadequate NEPA review and its subsequent failure to revise the FEIS continue to cause uncertainty and increase risks for Alton resulting in continuing devaluation of the Lease, increased likelihood of additional burdens being imposed on Alton under the Lease, and increased likelihood of litigation associated with the Lease.

8. The United States has breached its contractual obligations under the Lease by depriving Alton of the exclusive right to mine the Alton Coal Tract.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action and venue is proper in this Court pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1), because Alton has an express contract with the United States, acting through DOI and BLM, which contract Alton alleges Defendant breached, causing Plaintiff monetary damages.

### **PARTIES**

10. Plaintiff Alton Coal Development, LLC is Nevada limited liability company, with a business address of 463 North 100 West, Suite No. 1, Cedar City,

Utah 84721. Alton is the operator of the Coal Hollow Mine (“Coal Hollow Mine” or “Mine”), located in Kane County, Utah, and the owner of the Lease (federal coal lease no. UTU-81895).

11. Defendant is the United States of America. The actions at issue in this lawsuit were performed by the Department’s Assistant Secretary and the BLM, an administrative agency within the DOI charged with management of the public lands of the United States, including the issuance of federal coal leases.

### **FACTUAL ALLEGATIONS**

12. Alton’s Coal Hollow Mine is a surface coal mine located near the town of Alton, Utah. The Mine has operated since 2010, with mining occurring within private and fee surface and mineral estates under a mining plan approved by the Utah Division of Oil, Gas and Mining (“DOG M”), permit number C/025/0005. Alton directly employs approximately 30 employees at the Mine.

13. Alton has nearly exhausted the coal reserves within the private and fee surface and mineral estates, as well as federal lease Block 1 (described below), at the Mine. Accordingly, continued operation of the Mine is dependent upon the Mine’s expansion into adjacent federal coal reserves within the Lease. Without a valid expansion of the Mine’s permitted boundary into these adjacent coal reserves

and the necessary mine permit approvals, Alton will be forced to shut-down operations at the Mine in 2023.

14. On November 12, 2004, Alton submitted a lease by application (“LBA”) to the BLM to lease the federal coal reserves adjacent to the Mine (LBA Case No. UTU 081895). Alton’s application was filed consistent with the process set forth in 43 C.F.R. subpart 3425 (Leasing on Application). The original application included nearly 2,683 surface acres and approximately 38 million tons of recoverable coal. The Division of Lands and Minerals, Solid Minerals Branch at the BLM Utah State Office reviewed the application and determined that it met the regulatory requirements for an LBA. BLM reconfigured the tract to exclude approximately 40 acres and to include approximately 898 additional acres. Acreage added to the tract during tract reconfiguration was based on the identification of additional recoverable coal reserves not included in the original LBA and on additional surface acreage deemed necessary for mine operations and some additional recoverable reserves. The Alton Coal Tract LBA, as reconfigured, contained approximately 3,581 surface acres and approximately 44.9 million tons of recoverable bituminous coal reserves.

**A. THE LEASE NEPA REVIEW PROCESS**

15. Upon receipt of the Alton Coal Tract LBA, BLM conducted an environmental analysis, to meet the requirements of NEPA and its implementing regulations and MLA and its implementing regulations.

16. On July 13, 2018, BLM published its Final Environmental Impact Statement (“FEIS”) for the Alton Coal Tract LBA. *See* BLM, Notice of Availability for the Alton Coal Tract Coal Lease by Application Final Environmental Impact Statement, Utah, 83 Fed. Reg. 32,683 (Jul. 13, 2018). The FEIS was prepared to evaluate the potential direct, indirect, and cumulative environmental impacts of leasing and recovering the federal coal included in the tract. The FEIS also informed BLM’s final decision as to whether to hold a competitive lease sale for the Alton Coal Tract.

17. On August 29, 2018, the BLM released its Record of Decision (“ROD”) approving the Alton Coal Tract LBA. The ROD reflected BLM’s decision to offer approximately 2,100 acres of the Alton Coal Tract for lease at a sealed-bid, competitive lease sale. In the ROD, BLM calculated that the tract included approximately 40.9 million tons of in-place coal, and an estimated 30.8 million tons of recoverable coal. Notice of the competitive lease sale was subsequently published in the *Federal Register* on November 16, 2018. *See* BLM, Notice of Federal

Competitive Coal Lease Sale, Alton Coal Tract, Utah (Coal Lease Application UTU-81895), 83 Fed. Reg. 57,746 (Nov. 16, 2018).

18. On November 28, 2018, the BLM held a sealed-bid, competitive lease sale for the Alton Coal Tract. Pursuant to the notice and applicable regulations, BLM was required to lease the Alton Coal Tract to the highest qualified bidder, provided the bid met or exceeded the BLM's estimate of the FMV of the tract. In exchange for receiving a federal coal lease, a successful lessee must pay the federal government a bonus equal to the amount it bids at the time the lease sale is held (the bonus can be paid in five yearly installments), make annual rental payments to the federal government, and make royalty payments to the federal government when the coal is sold to market.

**B. LEASE COSTS AND TERMS**

19. Alton was the highest qualified bidder for the Alton Coal Tract at the competitive lease sale, offering the high bonus bid of \$0.40 per ton of recoverable coal, totaling \$12,323,000, an amount that met or exceeded BLM's estimate of the FMV for the tract. At the lease sale, Alton paid DOI twenty percent of the bonus bid in the amount of \$2,464,000. Alton agreed to pay the remaining bonus in four annual installments. On December 7, 2018, BLM confirmed that Alton was the high bidder and that its bid had been accepted.



20. On February 22, 2019, the Assistant Secretary of the Interior issued the Alton Coal Tract Lease, UTU-81895 (the “Lease”) to Alton, effective as of February 1, 2019. The Lease is a binding contract between Alton and the United States. Under the Lease, BLM granted and leased to Alton “the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the” Alton Coal Tract. As a condition of the Lease issuance, Alton paid DOI the first year Lease rental of \$3.00 per acre for the estimated 2,100 acres of the entire Alton Coal Tract, in the amount of \$6,327.00. Alton also furnished DOI a surety bond of \$2,470,327 to secure one annual bonus installment and annual rental payment.

21. Alton is in full compliance with all Lease terms and obligations. Alton has made all required bonus payments for the Lease. The initial bonus payment in the amount of \$2,464,000 was paid to DOI at the Lease sale. Alton subsequently made bonus payments for \$2,464,000 each on January 31, 2020, January 29, 2021, February 8, 2022, and February 8, 2023. Alton has made all required annual rental payments in the amount of \$3.00 per acre totaling \$6,327.00 to DOI for the Lease, including the initial payment made at the Lease sale, and subsequent annual payments on January 30, 2020, April 27, 2021, February 8, 2022, and February 8, 2023. Alton is also in full compliance with its reclamation bond requirements. Alton

has provided all required financial assurance to BLM, having posted a surety bond for the Mine in the amount of \$3,037,327.00 on February 9, 2022, that BLM accepted as full coverage.

22. In reliance on the Lease, Alton has made significant investments in the permitting and development of the Alton Coal Tract. For instance, Alton has received a state mine plan modification and a federal mine plan approval for Alton to mine LBA Block 1, an area that includes approximately 42.6 acres of federal coal lands covered by the Lease. DOGM approved Alton's modification to Permit No. C/025/0005 on March 4, 2019. Alton secured the reclamation liability for the modification to Permit No. C/025/0005 with a reclamation bond in the amount of \$13 million payable to the State of Utah and the DOI's Office of Surface Mining Reclamation and Enforcement ("OSMRE"), a portion of which is to assure completion of reclamation on private land, as well.

23. Alton received its federal mine plan approval from the DOI on July 29, 2019. DOI's approval of the federal mine plan adopts and relies upon the ROD and FEIS that BLM prepared for the Alton Coal Tract LBA. *See Notice of Record of Decision for the Coal Hollow Mine Mining Plan*, 84 Fed. Reg. 32,214 (Jul. 5, 2019).

24. Alton has also made substantial investments to comply with Lease stipulations regarding air quality and other permit requirements. Specifically, Alton

has implemented the expensive air monitoring adaptive management strategy set forth in Section 4.3.1.1 of the FEIS. Alton has also purchased and deployed special equipment with lower air emissions to minimize air quality impacts. These efforts have cost Alton nearly \$500,000 to date and are ongoing.

25. Alton's mine plan provides for mining to progress by mine block and requires a mine plan amendment for each added mine block. Alton has nearly completed mining coal from the initial block, LBA Block 1, consisting of 42.6 acres. To progress to LBA Block 2, Alton will require additional permits and approval of a mine plan amendment from the State of Utah's DOGM and OSMRE. Alton filed its mine plan amendment application with DOGM for LBA Block 2 on January 12, 2023. DOGM deemed the mine plan amendment administratively complete on March 13, 2023. On April 6, 2023, Alton was informed that OSMRE has determined that Alton's proposed revision to Permit No. C/025/0005, Task #22005 to progress to LBA Block 2 at Coal Hollow Mine constitutes a mine plan modification requiring approval from the Assistant Secretary for Land and Minerals Management.

**C. UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT NEPA LITIGATION CHALLENGING THE LEASE**

26. On April 16, 2019, several environmental organizations filed a complaint challenging the BLM's decision approving the competitive lease sale for the Alton Coal Tract. *Utah Physicians for a Healthy Environment et al v. Bureau of*

*Land Management*, Case No. 2:29-cv-00256 (D. Utah). Specifically, Plaintiffs in that case alleged that BLM’s ROD and FEIS did not comply with the procedural requirements of NEPA.

27. On March 24, 2021, the United States District Court for the District of Utah issued a Memorandum Decision and Order. *See* Memorandum Decision and Order, Case No. 2:29-cv-00256 (D. Utah, Mar. 24, 2021) (“Order”). The Order found that BLM failed to take a sufficiently ‘hard look’ at the indirect effects and cumulative impacts of greenhouse gas emissions and remanded the FEIS to BLM for revisions consistent with the court’s opinion. *Id.* at 22. The court declined plaintiffs’ request for an order vacating the FEIS and ROD for the Alton Coal Lease Tract LBA, reasoning that “[t]he record does not suggest that BLM will fail to “substantiate its decision on remand.” *Id.*

28. Following the District of Utah’s Order, BLM has not revised the FEIS for the Alton Coal Lease Tract LBA.

29. BLM’s knowing failure to conduct adequate NEPA review and its subsequent failure to revise the FEIS in support of the Alton Coal Tract LBA deprives Alton of its exclusive right to mine the Alton Coal Tract and constitutes a breach of BLM’s contractual obligation under the Lease.

30. On information and belief, as a result of BLM's knowing failure to conduct adequate NEPA review and its continuing failure to revise the FEIS, Alton cannot obtain the federal approvals necessary for further development the Alton Coal Tract. DOI's approval of Alton's federal mine plan for LBA Block 1 is premised upon its adoption of the FEIS that the District of Utah has since found to be inadequate. *See* Notice of Record of Decision for the Coal Hollow Mine Mining Plan, 84 Fed. Reg. 32,214 (Jul. 5, 2019). On information and belief, DOI will not approve the federal mine plan modification required to expand the Coal Hollow Mine to incorporate the additional acres for LBA Block 2 or subsequent blocks into the Lease without a valid, revised FEIS.

31. Alton has nearly completed mining of LBA Block 1, having removed a total of 1,150,110.66 tons. Based upon the \$0.40 per ton bonus payment, the United States has earned \$460,044.27 of the pre-paid bonus from LBA Block 1.

32. Without the ability to expand into Block 2 and subsequent blocks of the Lease, adjacent to Alton's existing operations, Alton will be forced to shut down its Coal Hollow Mine.

33. Accordingly, as a result of BLM's knowing failure to conduct adequate NEPA review and its continuing failure to revise the FEIS, Alton has been significantly damaged. Alton's damages include the loss of bonus and other

payments made to the United States as consideration for the Lease, and reliance damages including the expenses incurred in reliance upon the right to produce the federal coal reserves from the Alton Coat Tract and the expenses and costs expended by Alton to maintain and develop the Lease, along with other damages. The loss of pre-paid bonus payments, not yet earned by the United States, alone total \$11,862,955.70.

**D. FEDERAL COAL LEASING MORATORIUM REINSTATED**

34. On January 15, 2016, then-Secretary of the Interior Sally Jewell issued Secretarial Order No. 3338 (“Jewell Order”) initiating the preparation of a new programmatic environmental impact statement (“PEIS”) and setting a moratorium on federal coal leasing, with some exemptions.

35. On March 29, 2017, following the change in presidential administration, then-Secretary of the Interior Ryan Zinke issued Secretarial Order 3348 (“Zinke Order”) “find[ing] that the public interest is not served by halting the Federal coal program for an extended time” (Zinke Order, Sec. 4), terminating the PEIS, and reversing the Jewell Order.

36. A number of environmental organizations filed suit against the Department of the Interior, the Secretary of the Interior, and BLM challenging the Zinke Order in *Citizens for Clean Energy et al. v. U.S. Department of the Interior et*

*al.*, case number 4:17-cv-00030 (D. Mont.), and a number of states filed identical challenges in *State of California et al. v. U.S. Department of the Interior et al.*, case number 4:17-cv-00042 (D. Mont.). The cases were consolidated, and the court held that the Zinke Order constituted a major federal action requiring environmental review under NEPA. *Citizens for Clean Energy v. U.S. Dep't of the Interior*, 384 F. Supp. 3d 1264, 1279 (D. Mont. 2019).

37. Consistent with the court's order in *Citizens for Clean Energy*, BLM conducted the required NEPA review of the Zinke Order and issued a Final Environmental Assessment ("Final EA") on February 25, 2020, and a Finding of No Significant Impact ("FONSI") on February 26, 2020. For purposes of its NEPA analysis, BLM assumed that the prior Jewell Order had a finite duration of three years. Further, BLM limited its NEPA analysis to four leases that BLM deemed were "traceable" to the Zinke Order, one of which was the Alton Coal Tract Lease by Application.

38. Plaintiffs in the case then supplemented their complaint to challenge the adequacy of the Final EA and FONSI.

39. On April 16, 2021, Secretary of the Interior Deb Haaland issued Secretarial Order No. 3398 ("Haaland Order") revoking the Zinke Order and

directing the relevant agencies to report their plans to “reverse, amend, or update” the policies underlying the Zinke Order. Haaland Order, Secs. 4, 5.

40. In response to the revocation of the Zinke Order, the *Citizens for Clean Energy* plaintiffs moved for summary judgment on the adequacy of BLM’s NEPA review supporting the Zinke Order.

41. On August 12, 2022, the U.S. District Court for the District of Montana issued an order reinstating the federal coal leasing moratorium. *See* Order, Case No. 4:17-cv-0030-BMM and Case No. 4:17-cv-0042-BMM (consolidated case) (D. Mont, Aug. 12, 2022) (“Moratorium Order”). In reinstating the federal coal leasing moratorium, the Montana court held that BLM’s analysis of only the four leases (including the Alton Lease) was insufficient (Moratorium Order at 15) and that BLM’s analysis of the four leases was “arbitrarily curtailed and failed to consider relevant factors.” *Id.* at 16. Holding that the “Court will require sufficient NEPA analysis before BLM resumes the Coal Leasing Program” and citing 40 C.F.R. § 1508.25, the Moratorium Order directs that “BLM must perform NEPA analysis that considers the full scope of the Zinke Order’s effect on all then-pending lease applications, and other connected, cumulative, or similar actions.” *Id.* at 17.

42. Given the reinstatement of the federal coal lease moratorium and the district court’s order, the value of Alton’s Lease has been further diminished, as it is



uncertain whether Alton will be authorized to mine coal deposits in any additional blocks beyond LBA Block 1 within the Alton Coal Tract.

**FIRST CLAIM FOR RELIEF**

**(Breach of Express Contract)**

43. Plaintiff re-alleges and incorporates by reference all the allegations contained in the preceding paragraphs as if fully set forth herein.

44. The Lease is an express contract entered into between Alton and the United States.

45. Alton has complied in all material respects with the terms of the Lease.

46. By granting the Lease, and pursuant to the provisions thereof, the United States promised that Alton would have the exclusive right to mine federal coal reserves within the Alton Coal Tract.

47. Through action and inaction, the United States has deprived Alton of the right to mine federal coal reserves within the Alton Coal Tract and has thereby breached Alton's contractually guaranteed rights under the Lease and has also breached the implied covenant of good faith by depriving Alton of the benefits of the contract.

48. As a result of the breach of the Lease by the United States, Alton has suffered damages, including the loss of bonus and other payments made to the

United States as consideration for the Lease, and reliance damages including the expenses incurred in reliance upon the right to produce the federal coal reserves from the Alton Coat Tract and the expenses and costs expended by Alton to maintain and develop the Lease.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully asks this Court to enter judgment in its favor and against Defendant and to:

- A. Award Plaintiff monetary relief for damages sustained as a result of Defendant's breach of the Lease, specifically the loss of bonus payments made to the United States as consideration for the Lease in the amount of \$11,862,955.70, exclusive of interest, costs, and attorney fees, as proven at trial;
- B. Reliance damages including the expenses incurred in reliance upon the right to mine federal coal reserves from the Alton Coal Tract under the Lease and the expenses and costs expended by Alton to maintain and develop the Lease, in an amount to be proven at trial;
- C. To the extent available, award Plaintiff pre-judgment and post-judgment interest;
- D. To the extent available, award Plaintiff costs and attorneys' fees; and

E. Award Plaintiff such other and further relief as this Court may deem necessary and proper.

Dated: May 1, 2023

Respectfully Submitted,

*s/ Alexander M. Arensberg*

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