Facts Look Different From Different Positions (Newsletter)*

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Looking at a set of facts or observations and coming up with opposite interpretations is standard in legal proceedings. It also results in the unfortunate "dueling experts" situations that frustrate miners and regulators. Now the same 9th US Circuit Court of Appeals that recently ruled their decisions too often dealt with science rather than procedure has directed the Bureau of Land Management (BLM) to reconsider its land use plan for about 4.5 million acres in eastern Oregon to include wilderness values. Even when the area has not been explicitly designated as protected wilderness. This has important implications for mining on public lands.

The BLM has the mission of managing a huge amount of public lands for multiple uses. This is a difficult assignment because there are conflicting values for each of the many potential uses of the land.

In this particular situation, the Oregon Natural Desert Association filed a law suit in 2003 claiming that the Bureau's 1980 management plan was too heavily biased toward grazing and ignored areas of potential wilderness value. The group said that by the 1990s, an additional 1.3 million acres had become eligible for wilderness consideration because abandoned roads and small reservoirs had reverted to native vegetation. The appeals court told the agency that "wilderness characteristics are not simply a checklist" to be used for a one-time inventory, and that the agency needs to consider wilderness (even when not formally designated as such) in a revised plan.

What is important about this decision from an ecological perspective as it affects mining and other natural resource uses of BLM-managed lands is what the environmental group presented to support their position. Specifically, that lands in the Great Basin, Intermountain West, and other high desert areas will undergo vegetation succession (one species invading, others following) and revert to a self-sustaining natural association of native species without explicit human intervention. So, while the BLM might have to reopen a 28-year-old land use plan to provide additional consideration of wilderness areas, the Court's decision strongly supports mining and other non-wilderness uses on such lands.

Since natural reclamation is well-documented for these areas, imagine how easy it is for science-based, deliberate mine reclamation to start the land toward the same wilderness characteristics. This also means that while an area currently has wilderness characteristics, it can be successfully mined and restored to the same vegetative condition (with altered topography, of course). Perhaps the BLM should embrace the decision and update their management plan for Malheur, Grant, and Harney Counties to recognize that mining, grazing, and other uses do not permanently destroy or preclude wilderness.

Natural ecosystems are inherently highly dynamic, not static. In many situations, perhaps most, disturbances such as mining are temporary and do not prevent other characteristics and values from being re-established in the future. This latest ruling from the 9th US Circuit Court of Appeals is another case where the environmental opposition to industrial land uses provides support for those uses.