

VCEA and SSEB Webinar

Coal: America's Vital and Endangered Resource

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Northern Plains Resource Council et al. v. U.S. Army Corps of Engineers et al., Case No. 19-cv-44 (D.C. MT)

- Court issued order vacating Nationwide Permit 12 due to lack of programmatic Endangered Species Act consultation
- Amended order to narrow scope; now on appeal to Ninth Circuit
- All users of Nationwide Permits face potential for challenge on same grounds

***County of Maui v. Hawaii Wildlife Fund*, No. 18–260, ___ S. Ct. ____, 2020 WL 1941966 (Apr. 23, 2020)**

- Supreme Court established new test for determining whether point source discharges to groundwater that reach surface waters should be subject to regulation under the Clean Water Act
- “Functional equivalent” test includes seven non-exclusive factors, emphasizing time and distance

Navigable Waters Protection Rule (April 21, 2020)

- Culmination of Repeal and Replace process by Trump Administration
- Streamlines Clean Water Act jurisdiction by narrowing the definition of “jurisdictional waters.”
- Key changes affecting mining industry: ephemeral streams not jurisdictional, waste treatment system exclusion clarified, other exclusions made more explicit, including mining related water filled depressions.

CEQ Revising National Environmental Policy Act Regulations (proposed January 10, 2020)

- Proposal seeks to streamline and reduce delays in NEPA process.
- Codifies Administration's "one federal decision" policy
- Joint schedule coordinated by one lead federal agency
- Eases use of outside data including incorporating material by reference, and allows use of data from applicants