

CLIENT ALERT

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Included Articles:

- D.C. Circuit Upholds MSHA Jurisdiction On Mine Access Road
- MSHA's Broken Plan Approval Process: A Call For Action
- As If Things Weren't Already Bad Enough: Flagrant Violations Under The Miner Act
- Major Supreme Court Victory For Mining Industry Under Clean Water Act
- The Advantages To A Strategic Purchaser To Acquire Distressed Assets In Bankruptcy
- Seven Senior Lawyers Join C&M's Environment and Natural Resources Practice

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Surface Mining • Environmental • Health & Safety • Leasing • Labor

Inside this issue...

D.C. Circuit Upholds MSHA Jurisdiction On Mine Access Road 1

MSHA's Broken Plan Approval Process: A Call For Action 4

As If Things Weren't Already Bad Enough: Flagrant Violations Under The Miner Act 8

Major Supreme Court Victory For Mining Industry Under Clean Water Act 13

The Advantages To A Strategic Purchaser To Acquire Distressed Assets In Bankruptcy 15

Seven Senior Lawyers Join C&M's Environment And Natural Resources Practice 18

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D.C. CIRCUIT UPHOLDS MSHA JURISDICTION ON MINE ACCESS ROAD

by Dan Wolff and Tim Meares

On July 21, the U.S. Court of Appeals for the District of Columbia Circuit handed down a decision that could potentially reverberate throughout the mining industry. In *Secretary of Labor v. National Cement Company of California*, the court held that a 4.3-mile stretch of road running through the Tejon Ranch in California from a state highway to a cement plant operated by National Cement on property leased from Tejon was, in its own right, a "mine" under the Federal Mine Safety and Health Act of 1977 ("Mine Act"). The ruling is significant because the access road is used by many persons and entities, not just National Cement, including ranchers, campers, California state authorities, and even Hollywood film crews – persons over whom National Cement has no control and who have no relation to mining. Moreover, the ruling upholds a radical new MSHA interpretation of its jurisdiction, but leaves many questions unresolved and subject to further speculation.

Background

For four decades, National Cement has operated a cement plant on the Tejon Ranch, a 270,000-acre ranch located in Los Angeles and Kern Counties, in California. The only paved access to the cement plant is a 4.3-mile stretch of road running to the cement plant gate from State Route 138. Beyond the plant, the road continues, unpaved, to other areas of the ranch. The Mine Act includes within its definition of "coal or other mine" locations that constitute "private ways and roads appurtenant" to areas of land from which minerals are extracted. In 1992, MSHA cited National Cement for failing to erect guardrails on the access road, but it subsequently vacated the citation, determining on review that the road was not a mine and that MSHA therefore lacked jurisdiction over it. In 2003, MSHA returned and cited National Cement under the same standard. MSHA vacated that citation, too, but on grounds that National Cement lacked sufficient notice that MSHA intended to assert jurisdiction anew over the road. In a follow-up letter to National Cement, MSHA made its intentions clear that it considered the road a mine and would henceforth assert jurisdiction over the road. When, in 2004, MSHA issued yet another citation for the same type of violation, that citation sparked this litigation.

continued on next page

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