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# WildEarth Guardians v. Zinke

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## *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41 (D.D.C. 2019)

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*WildEarth Guardians v. Zinke* marks an important decision prompting the Bureau of Land Management to seriously consider greenhouse gas emissions when performing environmental assessments for oil and gas leasing. WildEarth Guardians and Physicians for Social Responsibility, two non-profit organizations, asserted BLM improperly failed to recognize greenhouse gas emissions and their impacts on climate change when issuing oil and gas leases in three western states. The United States District Court for the District of Columbia agreed, finding that by failing to take a hard look at environmental impacts from its leasing decisions, BLM violated the National Environmental Policy Act's requirements.

### I. INTRODUCTION

WildEarth Guardians and Physicians for Social Responsibility ("Plaintiffs") sued the Bureau of Land Management ("BLM"), arguing BLM violated the National Environmental Policy Act's ("NEPA") requirements by discussing climate change only on a "conceptual level" when issuing oil and gas leases in Wyoming, Utah, and Colorado and never fully analyzing the impact greenhouse gas ("GHG") emissions would have on climate change.[1] In response, through the parties' summary judgment briefing, BLM argued there was no way to adequately predict the impact of GHG emissions from oil and gas leases, particularly at the regional level.[2] Additionally, the environmental assessments ("EA") prepared by BLM concluded that there was no guarantee that a project will move forward even after issuing a lease.[3] The United States District Court for the District of Columbia reviewed the parties' merit briefing and issued an order finding BLM's EAs and Findings of No Significant Impact ("FONSI") deficient because of BLM's failure to take a "hard look" at GHG emissions, while declining to vacate the issued leases altogether.[4]

### II. FACTUAL AND PROCEDURAL BACKGROUND

In August 2016, Plaintiffs challenged the issuance of 473 oil and gas leases, which covered more than 460,000 acres in Colorado, Utah, and Wyoming, seeking to vacate the leases and enjoin BLM from issuing new leases or authorizing drilling.[5] After trifurcating the briefing and ordering

1. WildEarth Guardians v. Zinke, 368 F. Supp. 3d 41, 55–56 (D.D.C. 2019).
2. *Id.* at 55–57
3. *Id.*
4. *Id.* at 85.
5. *Id.* at 55; *see* Pl.s' Compl. Aug. 25, 2016, No. 1:16-cv-01724.

merits briefing on Wyoming leasing decisions first, the court reviewed Plaintiffs' claims with respect to five Wyoming oil and gas lease sales ("Wyoming Lease Sales") held between May 2015 and August 2016.[6] Through the Wyoming Lease Sales, BLM issued 282 leases—covering around 303,000 acres—and prepared an EA for each of the lease sales, as well as FONSIs eliminating the necessity of new leasing stage environmental impact statements ("EIS").[7] After participating in the comment and protest periods and then suing, Plaintiffs argued BLM failed to comply with NEPA at the leasing stage in the nine different EA/FONSI[8] combinations because it did not take a hard look at the environmental consequences of its decisions by failing to adequately assess GHG emissions and climate change impacts; therefore BLM should have performed an EIS.[9]

Both parties submitted cross-motions for summary judgment.[10] Plaintiffs asked the court to: (1) declare that BLM's leases violated NEPA; (2) vacate the leases; and (3) enjoin BLM from approving the leases until BLM can conduct new NEPA analyses.[11]

Ruling in Plaintiffs' favor, the court rejected BLM's argument and remanded the case for BLM to address the court's identified deficiencies: (1) that the EAs "failed to quantify and forecast drilling related GHG emissions"; (2) that the EAs "failed to adequately consider GHG emissions from the downstream use of oil and gas produced on the leased parcels"; and (3) that the EAs "failed to compare those GHG emissions to state, regional, and national GHG emissions forecasts, and other foreseeable regional and national BLM projects."[12]

## III. ANALYSIS

The court first addressed whether Plaintiff had standing to bring a claim against BLM.[13] Next, the court discussed BLM's failure to address GHG emissions in their leases.[14] Finally, the court analyzed whether the FONSIs BLM issued were adequate.[15]

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6. *WildEarth Guardians*, 368 F. Supp. 3d at 55–57.
7. *Id.*
8. BLM acknowledged in its EAs that the leases will lead to GHG emissions, but it did not attempt to quantify those emissions, and because BLM did not find any significant impacts, BLM issued a Finding of No Significant Impact ("FONSI"), which stated an EIS was not necessary. *Id.* at 51, 56.
9. *Id.* at 55.
10. *Id.* at 57.
11. *Id.* at 59–63.
12. *Id.* at 83.
13. *Id.* at 59–63.
14. *Id.* at 63–79.
15. *Id.* at 80–83.

### *A. Standing*

First, the court reviewed BLM's argument that Plaintiffs lacked standing to challenge one of the leases and that it sufficiently analyzed the greenhouse gas emission data pursuant to NEPA.[16] The court recited that a plaintiff can demonstrate standing only if: (1) "the party has suffered an injury in fact"; (2) "the injury is fairly traceable to the challenged action of the defendant"; and (3) "it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."[17] With respect to organizational standing, the court stated that an organization may act on behalf of its members if: "'(1) at least one of its members would have standing to sue in his own right; (2) the interests the association seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires that an individual member of the association participate in the lawsuit.'"[18]

In its opinion, the court concluded that even if one of Plaintiffs' members has standing, the complaint can proceed.[19] Additionally, the court stated that environmental plaintiffs "adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity."[20] Two of Plaintiffs' members came forward, arguing that the lease sale would directly impact them because both members recreate in the affected areas, which fall within the Wind River and High Plains districts in Wyoming.[21] Accordingly, the court found sufficient evidence of aesthetic injury to Plaintiffs.[22] The court found the other two elements satisfied because "if the Court [vacated] BLM's order authorizing the Wyoming Lease Sales for violating NEPA, not only would the injuries of [Plaintiffs] be redressed, the remedy would also be limited to the inadequacy—here, the deficient EAs—that produced the injury in fact that Plaintiffs established."[23]

### *B. BLM Failed to Adequately Address GHG Emissions in its Leases*

The court began its merits discussion by reviewing Plaintiffs' first argument that BLM failed to follow NEPA when it did not adequately analyze the impacts of GHG emissions from oil and gas leasing at the

16. *Id.* at 62.

17. *Id.* at 60 (internal quotations omitted) (citing Grocery Mfrs. Ass'n v. EPA, 693 F.3d 169, 174 (D.C. Cir. 2012)).

18. *Id.* at 60–61 (quoting Sierra Club v. EPA, 292 F.3d 895, 898 (D.C. Cir. 2002)).

19. *Id*. at 61 (citing Comcast Corp. v. FCC, 579 F.3d 1, 6 (D.C. Cir. 2009)).

20. *Id.* (quoting Friends of the Earth Inc. v. Laidlaw Envt'l Servs. (TOC), Inc., 528 U.S. 167 (2000) (internal quotations omitted)).

21. *Id.* at 61–62.

22. *Id.* at 63.

23. *Id.* (quoting Sierra Club v. Fed. Energy Reg. Comm'n., 827 F.3d 36, 44 (D.C. Cir. 2016) (internal edits omitted).

leasing stage.[24] In assessing the types of impacts—direct, indirect, and cumulative—GHG emissions have on oil and gas leasing, the court reviewed the Plaintiffs' argument that leasing is an "irrevocable commitment to oil and gas drilling."[25] The court relied on *Sierra Club v. Peterson*,[26] where it found that the appropriate time for an EIS is prior to the lease in order to fully account for reasonably foreseeable impacts.[27] Reiterating the *Peterson* holding, the court stated that BLM must analyze environmental impacts at the leasing stage.[28]

Next, the court reviewed BLM's argument that it could not have reasonably foreseen the effect of GHG emissions at the leasing stage.[29] While the court agreed with BLM's argument that there was no way to measure impacts on site-specific parcels at the leasing stage, it found that BLM has the ability to comprehensively assess reasonably foreseeable impacts.[30] Because BLM had sufficient information—such as the GHG emissions produced from the number of developed wells and the GHG emissions from wells developed in other field offices and state levels, to predict GHG emissions in general—the court found that BLM failed to meet NEPA's requirements of reasonably trying to quantify GHG emissions.[31]

Then, the court analyzed Plaintiffs' argument that BLM should have quantified the GHG emissions' as "downstream emissions" that qualify as indirect impacts.[32] The court agreed with Plaintiffs' argument that BLM's analysis of downstream GHG emissions was insufficient under NEPA, but it noted it would not require BLM to quantify the emissions if it could not reasonably do so.[33]

Finally, the court held that BLM must conduct a greater detailed EA regarding the cumulative effects of GHG emissions.[34] Plaintiffs argued that BLM's cumulative effect analysis lacked adequate GHG emissions quantification and that BLM should have applied a tool to help quantify the cumulative emissions.[35] The court agreed with Plaintiffs' first point, stating, "[a]lthough BLM may determine that each lease sale individually has a de minimis impact on climate change, the agency must also consider the cumulative impact of GHG emissions generated by past, present, or

24. *Id.*

25. *Id.* (quoting 40 C.F.R. § 1508.25(c)) (explaining that direct impacts occur when the action occurs, indirect impacts are foreseeable but do not occur at the same time as the action, and cumulative actions may be minor cumulative actions.).

26. 717 F.2d 1409, 1414 (D.C. Cir. 1983).

27. *Id.*

28. *WildEarth Guardians*, 368 F. Supp. 3d at 64 (citing *Peterson*, 717 F.2d at 1414).

29. *Id.* at 67.

30. *Id.* at 68–69.

31. *Id.* at 71.

32. *Id.* at 75.

33. *Id.* at 76.

34. *Id.*

35. *Id.* at 77.

reasonably foreseeable BLM lease sales in the region and nation."[36] With respect to Plaintiff's second argument, the court deferred in part to BLM, stating that BLM can ultimately decide whether to use social cost of carbon protocol to predict cumulative impacts of GHG emissions.[37]

### *C. FONSI Deficiency*

Plaintiffs' other major argument was that the issued FONSIs were deficient, so BLM should have performed an EIS.[38] The court stated that BLM must issue an EIS if there is "significant impact" on the environment, otherwise BLM may issue a FONSI.[39] To address the FONSIs' adequacy, the court reviewed whether BLM: (1) identified the environmental concern accurately; (2) took a "hard look at the problem"; (3) was able to make a convincing case for finding no significant impact; and (4) showed that even if there is an impact of true significance, an EIS was not necessary because changes in the project sufficiently reduce the impact to a minimum.[40] The court further stated that the "hard look" analysis required BLM to "assess the 'reasonably foreseeable' impacts of a proposed action before an 'irretrievable commitment[ ] of resources' is made that would trigger those impacts."[41]

The court first looked at the issue of controversy and relied on the D.C. Circuit's ruling that "'certainly something more is required' for a highly controversial finding 'besides the fact that some people may be highly agitated and be willing to go to court over the matter."[42] The court further explained an issue is highly controversial if there are flaws in the methods that help agencies in finding a conclusion.[43] Accordingly, the court ruled that Plaintiffs failed to show a significant controversy because BLM did not have serious flaws in their findings and addressed other parties' concerns appropriately.[44]

Plaintiffs' second argument against the FONSIs was that the Wyoming Lease Sales were highly uncertain as to their unknown risks on the environment.[45] However, the court concluded that oil and gas leases are not unique in the Mountain West, so they were not highly uncertain.[46]

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36. *Id.* at 77.
37. *Id.* at 78–79.
38. *Id.* at 80.
39. *Id.*
40. *Id.* (determining significance through three factors that should be considered: (1) the degree of effects on the human environment that are likely to be controversial; (2) the degree of uncertainty the effects have on the human environment; (3) accumulation of actions impacting the environment).
41. *Id.* at 64 (citing 42 U.S.C. § 4332(2)(C)(v)); Wyoming Outdoor Council v. U.S. Forest Serv., 165 F.3d 43, 49 (D.C. Cir. 1999)).
42. *WildEarth Guardians*, 368 F. Supp. 3d at 81 (quoting National Parks Conservation Ass'n. v. Semonite, 916 F. 3d 1075,1083 (D.C. Cir. 2019)).
43. *Id.*
44. *Id.* at 82.
45. *Id.*
46. *Id.* at 81–82.

Because the court concluded that the effects of the oil and gas permits were not highly controversial nor highly uncertain, Plaintiffs failed to demonstrate that NEPA mandated an EIS for the proposed actions.[47] Notwithstanding this determination, the court held that the EAs and FONSIs were still insufficient and NEPA demanded BLM to conduct "more robust analyses of GHG emissions from oil and gas drilling and downstream use."[48]

## IV. CONCLUSION

Although Plaintiffs only challenged one aspect of the lease sales, the court voiced concerns about BLM's ability to issue leases correctly the "first time around."[49] With changes in environmental policy—and the controversy surrounding climate change— it is likely more litigation over agency discretion will occur. This case shows one instance of the federal judiciary holding an agency accountable for its failure to adequately assess GHG emission impacts. Moreover, as the court stated, there is a coming need for the government's attention when "taking action that may increase its effects" on climate change.[50]

47. *Id.* at 83.
48. *Id.*
49. *Id.* at 85.
50. *Id.* at 51.