
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT, SIERRA CLUB, NATURAL RESOURCES DEFENSE COUNCIL, NATIONAL PARKS CONSERVATION ASSOCIATION, GRAND CANYON TRUST, WILDEARTH GUARDIANS,

Plaintiffs,

v.

U.S. BUREAU OF LAND MANAGEMENT, an agency within the U.S. Department of the Interior; U.S. DEPARTMENT OF THE INTERIOR, a federal agency; JOSEPH R. BALASH, in his official capacity as Assistant Secretary for Land and Minerals within the Department of the Interior; DAVID BERNHARDT, in his official capacity as Secretary of the Department of the Interior,

Defendants,

and

ALTON COAL DEVELOPMENT LLC, and STATE OF UTAH,

Intervenor-Defendants.

MEMORANDUM DECISION AND ORDER

Case No. 2:19-cv-00256-DBB

District Judge David Barlow

Plaintiffs Utah Physicians for a Healthy Environment, Sierra Club, Natural Resources

Defense Council, National Parks Conservation Association, Grand Canyon Trust, and WildEarth

Guardians (Plaintiffs) challenge¹ Defendant U.S. Bureau of Land Management's (BLM) analysis under NEPA of environmental impacts of a proposed coal lease authorizing the expansion of Intervenor Defendant Alton Coal Development (Alton)'s coal mine onto 2,114 acres of federal land and mineral estate.

Having considered the parties' briefing,² the administrative record,³ and relevant law, the court grants in part and denies in part Plaintiffs' requested relief.

I. STANDARD OF REVIEW

In its review of agency action, the court shall "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."⁴ "The duty of a court reviewing agency action under the 'arbitrary or capricious' standard is to ascertain whether the agency examined the relevant data and articulated a rational connection between the facts found and the decision made."⁵

An agency's decision is arbitrary and capricious if the agency (1) entirely failed to consider an important aspect of the problem, (2) offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise, (3) failed to base its decision on consideration of the relevant factors, or (4) made a clear error of judgment.⁶

¹ Complaint for Declaratory and Injunctive Relief (Complaint), [ECF No. 2](#), filed April 16, 2019.

² The briefing in this case consisted of the following materials: Plaintiff's Opening Brief, [ECF No. 46](#), filed February 26, 2020; Federal Defendants' Response Brief on the Merits, [ECF No. 61](#), filed April 13, 2020, Alton Coal Development LLC's and State of Utah's Joint Response to Plaintiffs' Opening Brief, [ECF No. 62](#), filed April 13, 2020, and Plaintiffs' Reply Brief, [ECF No. 67](#), filed May 11, 2020.

³ Notice of Filing of Administrative Record (AR), [ECF No. 44](#), filed December 20, 2020.

⁴ 5 U.S.C. § 706(2)(A).

⁵ *Citizens' Comm. to Save Our Canyons v. Krueger*, 513 F.3d 1169, 1176 (10th Cir. 2008) (citation and internal quotation marks omitted).

⁶ *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 704 (10th Cir. 2009) (citation and internal quotation marks omitted).

II. STATUTORY SETTING

Congress enacted the National Environmental Policy Act of 1969 (NEPA) recognizing the “profound impact” of human activity on the natural environment, “particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances.”⁷ “The centerpiece of environmental regulation in the United States, NEPA requires federal agencies to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives.”⁸ “NEPA has two aims . . . , it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action” and “it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.”⁹ It is “strictly a procedural statute” and does not require substantive results.¹⁰

NEPA requires that “[b]efore embarking upon any ‘major federal action,’ an agency must conduct an environmental assessment (EA) to determine whether the action is likely to ‘significantly affect the quality of the human environment.’”¹¹ Where the proposed action is not likely to significantly affect the environment, the agency may issue a “[f]inding of no significant impact” (FONSI), a document explaining the findings and the reasons why an environmental impact statement (EIS) will not be prepared.¹² By contrast, an EIS is required for all “major

⁷ 42 U.S.C. § 4331(a).

⁸ *Richardson*, 565 F.3d at 703.

⁹ *Wyoming v. U.S. Dep’t of Agric.*, 661 F.3d 1209, 1236–37 (10th Cir. 2011) (citation and internal quotation marks omitted).

¹⁰ *Id.*

¹¹ *Richardson*, 565 F.3d at 703 (brackets omitted) (quoting 42 U.S.C. § 4332(2)(C)).

¹² 40 C.F.R. § 1508.13.

Federal actions significantly affecting the quality of the human environment.”¹³ An EIS must “provide full and fair discussion of significant environmental impacts and . . . inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.”¹⁴ “[I]nherent in NEPA and its implementing regulations is a ‘rule of reason,’ which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.”¹⁵

In reviewing agency action for NEPA compliance, courts look to determine whether agencies have taken a “hard look” at the environmental consequences of their decisions.¹⁶ Ultimately, the “role of the courts is simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious.”¹⁷ “This standard of review is ‘very deferential’ to the agency’s determination, and a presumption of validity attaches to the agency action such that the burden of proof rests with the party challenging it.”¹⁸

III. FACTUAL BACKGROUND

The focus of this case is the BLM’s approval of a lease expansion application by Alton. The application sought to more than double the size of Alton’s Coal Hollow Mine in southern

¹³ 42 U.S.C. § 4332(C).

¹⁴ 40 C.F.R. § 1502.1.

¹⁵ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004).

¹⁶ *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 196; *Grand Canyon Trust v. FAA*, 290 F.3d 339, 340–41 (D.C. Cir. 2002).

¹⁷ *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97–98 (1983).

¹⁸ *Kobach v. United States Election Assistance Comm’n*, 772 F.3d 1183, 1197 (10th Cir. 2014).

Utah.¹⁹ Alton’s operations would expand onto federal land and implicate federal mineral rights.²⁰ In 2004, Alton filed a Lease by Application seeking to obtain a lease for the Mine expansion.²¹ In 2011, BLM published a Draft Environmental Impact Statement (DEIS) concerning the proposed Lease by Application.²²

During the comment period for the DEIS, BLM received more than 154,000 comments.²³ Many of the comments were critical of the BLM’s analysis and urged the BLM to select the “no action” alternative regarding the proposed expansion.²⁴ Subsequent to this comment period, BLM published a supplemental DEIS (SDEIS) in 2015.²⁵ BLM received more than 39,000 comments on the SDEIS, including comments from Plaintiffs.²⁶ Plaintiffs, in their comments, also argued that the analytical information contained in the SDEIS was inadequate.²⁷

BLM published its Final Environmental Impact Statement (FEIS) in July 2018.²⁸ BLM then issued the Record of Decision (ROD) approving the Lease Application for the Mine on August 29, 2018.²⁹ The ROD incorporated by reference the alternatives and analysis set forth in

¹⁹ AR 162245.

²⁰ *Id.*

²¹ AR 159487.

²² AR162253–54.

²³ AR 162254.

²⁴ *See* AR 013068–69, 075611–6, 075543–609, and 075763–73.

²⁵ AR 159487.

²⁶ AR 162256.

²⁷ *See* AR 094950–5000.

²⁸ AR 156641.

²⁹ AR 162243.

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