

Judge Orders Government to Account for Climate Change Impacts before Leasing Federal Lands to Energy Developers

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The US District Court for the District of Columbia has blocked the US Bureau of Land Management (BLM) from issuing new oil and gas drilling permits on approximately 300,000 acres of federal land in Wyoming until it adequately considers climate change impacts from granting oil and gas leases. The decision could have significant implications for the development of energy projects on federal lands and is in stark contrast to the approach on climate change taken by the Trump Administration. The court's opinion rested on the fact that BLM failed to quantify and forecast potential greenhouse gas (GHG) emissions from oil and gas drilling activities.

In *WildEarth Guardians v. Zinke, et al.*, the judge found that BLM violated the federal National Environmental Policy Act (NEPA) by issuing 282 oil and gas leases under five lease sales on federal lands in Wyoming without adequately considering the climate change impacts of such. Under NEPA, a federal agency must prepare an Environmental Assessment (EA) that considers direct, indirect and cumulative environmental impacts of a proposed federal action in order to determine whether a more comprehensive environmental assessment, known as an Environmental Impact Statement (EIS), is required. If an EIS is not required, the agency must issue a finding of no significant impact (FONSI) for the proposed action. In the *WildEarth Guardians*, BLM performed EAs of its approval and issuance of oil and gas leases and determined that these lease sales did not require the issuance of EISs, so BLM issued FONSI. The court found that these EAs and FONSI failed to take a "hard look" (as required under NEPA) at the cumulative impacts of GHG emissions that would be generated by oil and gas development on the leased parcels. Specifically, the EAs failed to (1) quantify and forecast drilling-related GHG emissions, (2) adequately consider GHG emissions from the downstream use of oil and gas produced on the leased parcels, and (3) compare those GHG emissions to state, regional, and national GHG emissions forecasts, and other foreseeable BLM projects, rendering BLM's cumulative impact analyses inadequate.

BLM stated in the subject EAs that "inconsistency in results of" scientific models and a lack of scientific models used to predict climate change "limits the ability" to quantify GHG emissions and that any such quantification would have been "overly speculative". The court disagreed and found that BLM could have reasonably forecast GHG emissions from drilling activities at the leased parcels as a whole and the failure to quantify such violated

NEPA. The court noted the “thousands of pages of quantitative . . . analyses, including additional analys[e]s of GHG emission and climate change impacts” found in EISs, “an administrative record replete with information on oil and gas development and GHG emissions”, and specific estimates BLM had at its disposal regarding the number of wells to be developed and the GHG emissions from each well, among other information that BLM could have used to consider climate change impacts and reasonably forecast GHG emissions. BLM also purported in EA that the GHG emissions from these leases would not have a “measurable effect” when compared to national or global GHG emissions or would have only an “incremental contribution to the total regional and global GHG emission levels”, without having conducted any quantification of such GHG emissions. The court held that BLM is not required to quantify GHG emissions from downstream use of the drilled oil and gas, but the court requires BLM to “consider whether quantifying GHG emissions from [downstream] use is reasonably possible” and, if not, BLM must “thoroughly explain that decision.” The court also requires BLM to strengthen discussion of environmental impacts resulting from downstream use in its EAs.

On remand, the court ordered BLM to supplement the EAs for the subject 282 leases with the aforementioned information in order to satisfy its obligations under NEPA, and enjoined BLM from issuing new permits to drill at the subject federal lands in Wyoming until these obligations are satisfied and BLM “sufficiently explains its conclusion that the [issuance of the subject leases] did not significantly affect the environment.” After BLM’s work on remand, the plaintiffs may again address whether BLM complied with NEPA. The order stopped short of vacating the subject federal leases in Wyoming, unless BLM is not able to substantiate the conclusions drawn in the EAs and FONSIs, and did not require that BLM consider the social cost of carbon (i.e., quantification in monetary terms of total damages resulting from the emission of GHGs, per ton of GHGs emitted).

The decision is likely to impact the oil and gas industry by creating a new avenue for opponents to challenge NEPA decisions and BLM leases. Increased litigation related to climate change and oil and gas leasing on federal land could result. The plaintiffs in *WildEarth Guardians* filed similar claims concerning BLM leases in Utah and Colorado, which are also pending before the U.S. District Court for the District of Columbia. These Utah and Colorado lease claims could result in similar outcomes for the plaintiffs, if BLM conducted its EAs of those lease sales similarly. In contrast to the federal government’s inaction on climate change and promotion of hydrocarbon projects, the *WildEarth Guardians* decision demonstrates judicial action on climate change and a barrier to oil and gas development.

Outside of the United States, similar court decisions have taken climate change into account in Australia (see [here](#)) and the United Kingdom (see [here](#)).

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