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United States Court of Appeals
Tenth Circuit

September 15, 2017

Elisabeth A. Shumaker
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

WILDEARTH GUARDIANS; SIERRA CLUB,

Petitioners - Appellants,

v.

UNITED STATES BUREAU OF LAND MANAGEMENT,

Respondent - Appellee,

and

WYOMING MINING ASSOCIATION; BTU WESTERN RESOURCES, INC.; STATE OF WYOMING; NATIONAL MINING ASSOCIATION,

Respondents - Intervenors - Appellees.

THE INSTITUTE FOR POLICY INTEGRITY AT NEW YORK UNIVERSITY SCHOOL OF LAW,

Amicus Curiae.

No. 15-8109

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING (D.C. No. 2:13-CV-00042-ABJ)

Nathaniel Shoaff (Nathan Matthews, Sierra Club; Samanta Ruscavage-Barz, WildEarth Guardians, with him on the briefs), Sierra Club, San Francisco, California, for Petitioners-Appellants.

Daniel W. Wolff (Kirsten L. Nathanson and Sherrie A. Armstrong, Crowell & Moring, LLP, Washington, D.C.; Michael Drysdale, Dorsey & Whitney, LLP, Minneapolis, Minnesota; Andrew C. Emrich, P.C., Holland & Hart LLP, Greenwood Village, Colorado, with him on the brief), Crowell & Moring, LLP, Washington, D.C., for Respondent-Appellees BTU Western Resources, Inc., National Mining Association, and Wyoming Mining Association.

Michael T. Gray, Attorney (Philip C. Lowe, of Counsel, United States Department of the Interior, Rocky Mountain Regional Solicitor's Office; John C. Cruden, Assistant Attorney General; John S. Most and Andrew C. Mergen, Attorneys, with him on the brief), Appellate Section, Environment and Natural Resources Division, United States Department of Justice, Jacksonville, Florida, for Respondent-Appellee, United States Bureau of Land Management.

Erik E. Petersen (Michael J. McGrady, with him on the brief), Wyoming Office of the Attorney General, Cheyenne, Wyoming, for Respondents-Intervenors-Appellee State of Wyoming.

Jayni Foley Hein and Jason A. Schwartz, Institute for Policy Integrity, New York, NY, filed an amicus curiae brief on behalf of the Institute of Policy Integrity at New York University School of Law in support of Petitioners-Appellants.

Before **BRISCOE**, **McKAY**, and **BALDOCK**, Circuit Judges.

BRISCOE, Circuit Judge.

Appellants WildEarth Guardians and Sierra Club (Plaintiffs) challenge the Bureau of Land Management's (BLM) decision to approve four coal leases in Wyoming's Powder River Basin. Plaintiffs brought an Administrative Procedure Act (APA) claim arguing that the BLM failed to comply with the National

Environmental Policy Act (NEPA) when it concluded that issuing the leases would not result in higher national carbon dioxide emissions than would declining to issue them. The district court upheld the leases. We reverse and remand with instructions to the BLM to revise its Environmental Impact Statements (EISs) and Records of Decision (RODs). We do not, however, vacate the resulting leases.

I.

A. Statutory and Regulatory Background

The NEPA, 42 U.S.C. §§ 4321–4370h, and its implementing regulations promulgated by the Council on Environmental Quality (CEQ), 40 C.F.R. §§ 1500.1–1518.4, are "our national charter for protection of the environment." 40 C.F.R. § 1500.1(a). Section 102 of NEPA, in relevant part, requires federal agencies to

> include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on-
>
> (i) the environmental impact of the proposed action,
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and]
> (iii) *alternatives to the proposed action.*

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 348–39 (1989) (emphasis added) (quoting 42 U.S.C. § 4332(C)). In these EISs, agencies must analyze direct effects, reasonably foreseeable indirect effects, and effects that are

cumulative over time or aggregated with other forces outside the agency's proposed action. 40 C.F.R. § 1508.7, 1508.8.

The alternatives analysis "is the heart of the environmental impact statement." § 1502.14. Agencies "should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public," including a "no action" alternative. Id. Agencies must "rigorously explore and objectively evaluate" these alternatives "so that reviewers may evaluate their comparative merits." Id. "Without substantive, comparative environmental impact information regarding other possible courses of action, the ability of an EIS to inform agency deliberation and facilitate public involvement would be greatly degraded." New Mexico ex rel. Richardson v. BLM, 565 F.3d 683, 708 (10th Cir. 2009). Courts often characterize NEPA's procedural requirement as obliging agencies to take a "hard look" at the environmental consequences and alternatives. Methow Valley, 490 U.S. at 350; Richardson, 565 F.3d at 704; Biodiversity Conservation All. v. U.S. Forest Serv., 765 F.3d 1264, 1267 (10th Cir. 2014). NEPA does not provide a private right of action, so we review this claim under the APA. 5 U.S.C. §§ 701–706.

B. Factual and Procedural Background

The Powder River Basin (PRB) region is the largest single contributor to United States' domestic coal production. In 2008, PRB coal represented 55.5% of

the United States's surface-mined coal, and 38.5% of the country's total coal production. App. at 983, 988. The BLM controls much of the region and is often in the business of approving mining infrastructure and issuing mining leases under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701–1787, the Mineral Leasing Act, 30 U.S.C. §§ 181–287, and BLM's own regulations and plans. See 43 C.F.R. §§ 1601.0–1610.8, 43 C.F.R. §§ 3400.0-3–3487.1.

At issue in this case are four coal tracts[1] that extend the life of two existing surface mines near Wright, Wyoming: the Black Thunder mine and the North Antelope Rochelle mine. The four "Wright Area Leases" at issue here are North Hilight, South Hilight, North Porcupine, and South Porcupine. The tracts are also near, and partially within, the Thunder Basin National Grassland, a national forest.

Alone, the two existing mines account for approximately 19.7% of the United States's annual domestic coal production. App. at 637, 987.[2] The North

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[1] BLM's environmental analysis included two additional tracts, West Hilight and West Jacobs Ranch, which are not at issue in this litigation.

[2] According to BLM, the new leases will maintain the same production at these mines as in the past: 135 million tons per year at Black Thunder and 95 million tons per year at North Antelope Rochelle, for a total of 230 million tons per year. And according to the Energy Information Administration's (EIA) 2008 Energy Outlook Report, relied on heavily by all parties, the United States produced 1.16 billion tons of coal in 2006, and was predicted to produce roughly the same in 2010. Using simple division, one can arrive at the percentage. Plaintiffs cite to a declaration from a resource economist for the percentage, but

and South Hilight leases will extend the life of the Black Thunder mine by approximately four years; the North and South Porcupine leases will extend the life of the North Antelope Rochelle mine by approximately nine years. Without these leases, the existing mines would cease operations after the currently leased reserves are depleted. The North Hilight lease was never sold, although the BLM did prepare a ROD for it. Mining has already commenced under three of the four leases, as counsel stated at oral argument. In total, the tracts at issue contain approximately two billion tons of recoverable coal.

Pursuant to NEPA, BLM prepared a Draft Environmental Impact Statement (DEIS) for the leases. 74 Fed. Reg. 32,642-01 (July 8, 2009). In the DEIS, BLM compared its preferred action (denominated Alternative 2 in the DEIS) to a no action alternative in which none of the coal leases would be issued, as it was required to do under CEQ regulations. 40 C.F.R. § 1502.14. Regarding carbon dioxide emissions and impacts on climate change, BLM concluded that there was no appreciable difference between the United States's total carbon dioxide emissions under its preferred alternative and the no action alternative. BLM concluded that, even if it did not approve the proposed leases, the same amount of coal would be sourced from elsewhere, and thus there was no difference between the proposed action and the no action alternative in this respect.

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doing so is unnecessary and inadmissible as extra-record evidence. See App. at 267–68.

BLM then received comments on the DEIS, including from Plaintiffs. WildEarth Guardians commented that BLM's conclusion on carbon dioxide emissions under the no action alternative was "at best a gross oversimplification, and at worst entirely impossible." App. at 725. They argued that if the tracts were not leased, "it will be very difficult for domestic coal mines," or international coal mines, to replace that quantity of coal at the same price, making "other sources of electricity," with lower carbon dioxide emissions rates, "more competitive with coal." Id. at 725–26. WildEarth Guardians concluded that the authorization of the leases would have a significant effect on national carbon dioxide emissions as compared to the no action alternative, and that BLM therefore failed to adequately compare the alternatives. WildEarth Guardians did not provide BLM with any factual support for its argument against BLM's replacement theory, nor did they suggest that BLM use the economic modeling tools employed by other federal agencies under similar circumstances.

In its responses to comments, BLM stood by its conclusion regarding the comparative demand for coal and resulting carbon dioxide emissions. It acknowledged that cost is one factor which "determine[s] the potential for switching to non-carbon based electric generation," and that "if the demand for coal decreases nationwide, then coal production and coal mining would decrease." Id. at 48. But it did not acknowledge that denying the Wright Area Leases would have any effect on the price for coal or thereby demand for it. Instead, the BLM

concluded that because Energy Information Administration (EIA) projections indicated that population and energy demand would rise, and that coal would remain the largest fuel in the energy mix, demand for coal would remain static even in the face of the potential reduction in supply. The BLM stated that "[l]imiting one or even several points of fuel supply will not affect coal use because of the diverse group of national and international suppliers." Id. at 41.

The BLM published its Final Environmental Impact Statement (FEIS) for the Wright Area Leases in July, 2010. The FEIS acknowledges some basic presumptions that no one in this litigation contests: the quantity of coal proposed in these leases would result in approximately 382 million tons of annual carbon dioxide emissions from electricity generation, id. at 987, which is the equivalent of roughly 6% of the United States's total emissions in 2008, see id. at 984, anthropogenic carbon dioxide emissions contribute to climate change, id. at 977–80, climate change presents a litany of environmental harms disbursed throughout the globe, id. at 980–82, and if the nation's energy mix shifts towards non-coal energy sources, less carbon dioxide would be emitted. Id. at 997–98.

However, the BLM's contested conclusion regarding comparative carbon dioxide emissions from the no action alternative remained in the FEIS:

> It is not likely that selection of the No Action alternative[] would result in a decrease of U.S. CO2 emissions attributable to coal mining and coal-burning power plants in the longer term, because there are multiple other sources of coal that, while not having the cost, environmental, or safety advantages, could supply the demand

> for coal beyond the time that the Black Thunder . . . and North Antelope Rochelle mines complete recovery of the coal in their existing leases.

Id. at 988. For purposes of this conclusion, the BLM "assum[ed] that all forms of electric generation would grow at a proportional rate to meet forecast electric demand" in 2010, 2015, and 2020. Id. at 984. The FEIS relies on various governmental reports, including the EIA's Annual Energy Outlook reports from 2008, 2009, and 2010. Under these projections, coal's share of the energy mix continues to represent the largest portion of the United States's energy mix. The BLM predicted that overall demand for coal in the United States was predicted to grow during the life of the Wright Area Leases.

The BLM then concluded that, because overall demand for coal was predicted to increase, the effect on the supply of coal of the no action alternative would have no consequential impact on that demand. This long logical leap presumes that either the reduced supply will have no impact on price, or that any increase in price will not make other forms of energy more attractive and decrease coal's share of the energy mix, even slightly.

The BLM acknowledged that many forces might impact future demand for coal, but it continued to disagree that a lack of supply leading to an increase in price could be one of those forces. Additionally, BLM also repeatedly noted that PRB coal enjoys several cost advantages over coal from other regions, but again,

disavows the possibility that the no action alternative, in which half of current PRB production would stop, would impact the price of coal or the demand for it.

Following the FEIS, BLM issued a ROD for each of the four tracts, deciding to offer them for lease. Each ROD is practically identical in its discussion of the climate change implications of the no action alternative. BLM addressed this issue as follows:

> Denying this proposed coal leasing is not likely to affect current or future domestic coal consumption used for electric generation.
>
> ***
>
> Based on the[] studies [BLM consulted], even with a considerably more optimistic projection for renewable sources, coal use continues to be projected as the largest portion of the domestic electric fuel mix. As described in the Final EIS, the key determinant of energy consumption is population. As human population and activities have increased over time, coal and other carbon-based fuels have been utilized to provide for these additional energy demands.
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> ***
>
> Further, BLM disagrees with the comment that denying the proposed Federal coal leasing application would consequentially reduce the overall rate of national coal consumption by electric generators. Numerous mines located outside of the PRB extract and produce coal in the United States [and] many mines outside of the PRB have the capacity to replace the coal production generated by the Black Thunder Mine [and the North Antelope Rochelle mine].
>
> ***
>
> The inability of the Black Thunder Mine, or any other existing PRB producer, to offer reserves in the coal market would not cause electric generators to stop burning coal. Utility companies will likely operate existing coal-burning facilities until either cost or regulatory requirements render them ineffective or they are replaced

> by other reliable large scale capacity electric generation technologies capable of consistently supporting the bulk electrical demands.

Id. at 1057–58.

Finally, and somewhat contradictory to its assertions regarding replacement coal not having an effect on the market, BLM noted that:

> PRB coal has competed for an increasing share of coal sales in the market primarily because it [ha]s lower cost, [is] environmentally compliant, and [its] successful post-mining reclamation has been thoroughly demonstrated. For these reasons, over the past several decades, PRB coal has been replacing other domestic coals in the open market, and would be expected to compete similarly in the future . . . . When current reserves are depleted at these mines, their production would likely be replaced by other domestic and, potentially, international coal producers with coal that is more costly, less environmentally compliant, and has greater residual environmental impact.

Id. at 1059.

Since BLM's decision, North and South Porcupine and South Hilight have already been leased. As mentioned, North Highlight has not yet been sold. The South Hilight tract went to Ark Land Company; the Porcupine tracts are leased to BTU Western Resources, Inc.

In 2012, Plaintiffs challenged the four RODs and the FEIS in federal district court in three consolidated cases. The State of Wyoming intervened, as did a group of mining interests (BTU Western Resources, Inc., the National Mining Association, and the Wyoming Mining Association, collectively, Mining Appellees). The New York University School of Law's Institute for Policy

Integrity (the Institute) filed a motion for leave to file an amicus brief in support of the Plaintiffs' position, which we now grant. The Plaintiffs objected to BLM's no action alternative analysis before the district court, among various other issues, but the district court did not specifically address it. In the end, the district court upheld the BLM's actions as reasonable, and Plaintiffs timely appealed this narrow issue.

II.

The Mining Appellees challenge the Plaintiffs' Article III standing. See U.S. Const. Art. 3 § 2 (limiting the jurisdiction of federal courts to "cases" and "controversies"). The remaining Appellees (BLM and the State of Wyoming) do not.

The Plaintiffs must show that their individual members have standing; that is, that they (1) have suffered or will imminently suffer a concrete and particularized injury that is (2) fairly traceable to the challenged agency action, and (3) likely to be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992). Next, the Plaintiffs must demonstrate that the "interests at stake are germane to the organization's purpose" and that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc., 528 U.S. 167, 181 (2000); Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977). Article III standing must be established for

each form of relief sought, Summers v. Earth Island Inst., 555 U.S. 488, 493 (2009), and assessed "at the time the suit is filed." WildEarth Guardians v. Pub. Serv. Co. of Colorado, 690 F.3d 1174, 1185 (10th Cir. 2012) (relying on Laidlaw, 528 U.S. at 189); see also Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138, 1157 (2013) ("[W]e assess standing as of the time a suit is filed.").

The Plaintiffs have standing; they have proved every element. The environmental impacts of the Wright Area Leases are germane to the purposes of both the Sierra Club and the WildEarth Guardians. As for injury in fact, Plaintiffs presented declarations from individual members establishing harms to their personal aesthetic and recreational interests in the Thunder Basin National Grasslands, which would be adversely affected by the mining leases. The Supreme Court has repeatedly acknowledged this type of injury as sufficient. Laidlaw, 528 U.S. at 183. In a NEPA challenge, "[t]o establish causation, a plaintiff need only show its increased risk is fairly traceable to the agency's failure to comply with [NEPA]" and the agency's resulting "uninformed decisionmaking." Committee to Save the Rio Hondo v. Lucero, 102 F.3d 445, 451-52 (10th Cir. 1996). Here, the Plaintiffs pointed out that the increased risk of environmental harm is directly tied to BLM's inadequate alternatives comparison. "[T]he normal standards for redressability are [also] relaxed" in the NEPA context. Id. at 452 (quoting Defenders of Wildlife, 504 U.S. at 572 n.7). "[A] plaintiff need not establish that the ultimate agency decision would change upon

[NEPA] compliance" but "rather . . . that its injury would be redressed by . . . requiring the [agency] to comply with [NEPA]'s procedures." Id. Here, Plaintiffs argued that their injuries are redressable through the relief they seek: vacatur of the BLM's FEIS, RODs, and the resulting leases. Sierra Club v. U.S. Dep't of Energy, 287 F.3d 1256, 1265–66 (10th Cir. 2002) ("The alleged injury is the potential environmental impact of an uninformed decision to" move forward with a particular project. "This injury is redressable by a court order requiring the [agency] to undertake an NEPA . . . analysis in order to better inform itself of the consequences of its decision.").

Mining Appellees argue that Plaintiffs lack standing to litigate this appeal for two alternative reasons: (1) the Plaintiffs never had standing to challenge BLM's climate change analysis because their alleged injuries are not caused by climate change, or (2) the Plaintiffs had a form of derivative standing in the district court because they also challenged localized environmental impacts, but lost their standing on appeal by abandoning that challenge. Neither of these arguments is persuasive.

First, it is not the case that Plaintiffs' injury must be tied to the particular deficiency alleged in the FEIS, i.e., that Plaintiffs must allege a climate-change related injury in order to have standing to challenge BLM's analysis of climate change impacts. If anything, Supreme Court precedent indicates that we should focus on the *form of relief*, rather than the *arguments* upon which that relief might

be based. See Duke Power Co. v. Carolina Envtl. Study Grp., Inc., 438 U.S. 59, 72–79 (1978). In Duke Power, the Court summarized the defendants' argument, and "declined to accept" it: "Since the environmental and health injuries claimed by appellees [resulting from the construction of a new nuclear power plant in their area] are not directly related to the constitutional attack on the Price-Anderson Act [authorizing construction], such injuries, the argument continues, cannot supply a predicate for standing." Id. at 78. The Court was unconvinced because "but-for" the challenged statute, plaintiffs' injuries would not occur. Id. "Where a party champions his own rights, and where the injury alleged is a concrete and particularized one which will be prevented or redressed by the relief requested, the basic practical and prudential concerns underlying the standing doctrine are generally satisfied when the constitutional requisites are met." Id. at 80–81.

Our own precedents indicate that the legal theory and the standing injury need not be linked as long as redressability is met. See Rio Hondo, 105 F.3d at 452; S. Utah Wilderness All. v. Office of Surface Mining Reclamation & Enf't, 620 F.3d 1227, 1233–34 (10th Cir. 2010) (concluding that aesthetic and recreational environmental injuries conferred standing to challenge agency decision on whether the mining company's time window to commence mining had expired).

We have not specifically addressed whether local, non-climate injuries may support standing for a challenge to NEPA climate change analysis, but the

District of Columbia Circuit has.[3] In WildEarth Guardians v. Jewell, 738 F.3d 298 (D.C. Cir. 2013), the court concluded that WildEarth Guardians had standing to challenge inadequate NEPA analysis of climate change impacts "based on their members' aesthetic and recreational injuries caused by local pollution," and did not require climate-based injury because "[v]acatur of the BLM order would redress the Appellants' members' injuries." Jewell, 738 F. 3d at 306. Relying on Duke Power, the District of Columbia Circuit rejected the argument that "the specific type of pollution causing the Appellants' aesthetic injury be the same type that was inadequately considered." Id. at 307. Such a requirement would, in that court's words, "slice[] the salami too thin." Id.

Alternatively, Mining Appellees argue that, even if Plaintiffs had standing to challenge the climate change analysis in the district court, they lost that standing on appeal. Mining Aplee. Br. at 9–10. We disagree. We have explained

[3] Several district courts have also addressed the issue, but are not unanimous. WildEarth Guardians v. Bureau of Land Mgmt., 8 F. Supp. 3d 17, 29–30 (D.D.C. 2014), appeal dismissed, No. 14-5137, 2014 WL 3014914 (D.C. Cir. June 20, 2014) (finding Article III standing in identical situation); High Country Conservation Advocates v. U.S. Forest Serv., 52 F. Supp. 3d 1174, 1186 (D. Colo. 2014) (same); WildEarth Guardians v. U.S. Forest Serv., 828 F. Supp. 2d 1223, 1235 (D. Colo. 2011) (same); Amigos Bravos v. U.S. Bureau of Land Mgmt., 816 F. Supp. 2d 1118, 1127–36 (D.N.M. 2011) (under different facts, finding no injury or causation where injury alleged was change to New Mexico climate resulting from the oil and gas lease and there was a lack of support showing impacts to local geographic area); Kunaknana v. U.S. Army Corps of Engineers, 23 F. Supp. 3d 1063, 1081–83 (D. Alaska 2014) (affidavits did not support group's members' actual or imminent use of the area subject to proposed agency action, and rejecting the "contiguous ecosystem" argument).

that "[t]he plaintiff bears the burden to establish standing at the time the suit is filed, and if the defendant's offending conduct has ceased by that time, we dismiss for lack of redressability. But if the offending conduct ceases after the suit is filed, the defendant must establish mootness by showing that its offending conduct 'could not reasonably be expected to recur.'" WildEarth Guardians, 690 F.3d at 1185–86 (quoting Laidlaw, 528 U.S. at 189). Here, Mining Appellees point to no facts that suggest the Plaintiffs did not have standing to sue when they filed their complaint, as previously noted. Neither do the Mining Appellees argue that the facts undergirding the Plaintiffs' standing argument have changed, causing the case to moot since the Plaintiffs filed the Complaint. We therefore conclude that the Plaintiffs have standing to bring this lawsuit.

III.

Turning to the merits, the central issue in this case is whether the BLM's assumption that there was no real world difference between issuing the Wright area leases and declining to issue them because third party sources of coal would perfectly substitute for any volume lost on the open market should the BLM decline to issue the leases was arbitrary and capricious. We hold that it was.

A. Standard of Review

We apply the same standard of review as the district court in this administrative challenge: the familiar "arbitrary and capricious" standard. Richardson, 565 F.3d at 704-05; 5 U.S.C. § 706(2)(A) ("The reviewing 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."). 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." Richardson, 565 F.3d at 704 (quoting Utah Envtl. Cong. v. Troyer, 479 F.3d 1269, 1280 (10th Cir. 2007)). "[T]he arbitrary and capricious standard focuses on the rationality of an agency's decision making process rather than on the rationality of the actual decision . . . ." Colo. Wild v. United States Forest Serv., 435 F.3d 1204, 1213 (10th Cir. 2006). "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." Kobach v. United States Election Assistance Comm'n, 772 F.3d 1183, 1197 (10th Cir. 2014).

In the NEPA context, an agency's EIS is arbitrary and capricious if it fails to take a "hard look" at the environmental effects of the alternatives before it. See All Indian Pueblo Council v. United States, 975 F.2d 1437, 1445 (10th Cir. 1992). We have characterized our review of whether agencies took the requisite "hard look" as a "rule of reason standard (essentially an abuse of discretion

standard)." Utahns for Better Transp. v. U.S. Dep't of Transp., 305 F.3d 1152, 1163 (10th Cir. 2002), as modified on reh'g on other grounds, 319 F.3d 1207 (10th Cir. 2003); Richardson, 565 F.3d at 708-09. This means that "[a] court reviewing the adequacy of an EIS merely examines 'whether there is a reasonable, good faith, objective presentation of' the topics NEPA requires an EIS to cover." Holy Cross Wilderness Fund v. Madigan, 960 F.2d 1515, 1522 (10th Cir. 1992) (quoting Johnston v. Davis, 698 F.2d 1088, 1091 (10th Cir. 1983)). We have also stated that the reasons for rejecting an alternative must be "plausible." All Indian Pueblo Council, 975 F.2d at 1446. The agency may choose the more environmentally harmful alternative provided its reasons for doing so are disclosed and rational. See Forest Guardians v. United States Forest Serv., 495 F.3d 1162, 1173 (10th Cir. 2007) (The agency "acknowledged that the project would cause a number of significant environmental problems -- including dust, noise, and diesel fumes -- but, as noted by USFS, it opted to pursue the project anyway based on other considerations. Idiosyncratically, NEPA does not require more.").

B. NEPA Analysis

The Plaintiffs argue the BLM's substitution assumption rendered its comparison of the preferred alternative (issuing the leases) and the no action alternative arbitrary and capricious for two reasons: the assumption itself was arbitrary and capricious because it lacks support in the administrative record and