

**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS**

WILDEARTH GUARDIANS,)	
)	IBLA No. 2013-0172
)	
Appellant)	Notice of Appeal, El Segundo Mine Coal
)	Lease by Application, NMNM-126813,
)	EA #DOI-BLM-NM-F010-2013-0139-EA,
)	McKinley County, New Mexico
)	

APPELLANT’S STATEMENT OF REASONS

On June 24, 2013, Appellant WildEarth Guardians (“Guardians”) filed a Notice of Appeal of the decision by U.S. Bureau of Land Management (“BLM”) New Mexico State Director Jesse Juen to authorize the sale and issuance of coal lease by application NMNM-126813, described as the “El Segundo Mine Coal Lease by Application” in McKinley County in northwestern New Mexico. The decision is documented in a Finding of No Significant Impact (“FONSI”) signed by Mr. Juen on May 24, 2013. The FONSI adopted the Proposed Action as documented in the Environmental Assessment for the El Segundo Mine Lease by Application, DOI-BLM-NM-F010-2013-0139-EA (“EA”), and authorized the sale and issuance of the El Segundo Coal Lease (“El Segundo Lease” or “the Lease”), which includes 640 acres and 9.2 million tons of deliverable coal. 78 Fed. Reg. 41,420 (July 10, 2013). BLM assumes Peabody Natural Resources Company will be the successful bidder and that the lease will facilitate expansion of the El Segundo Mine in northwestern New Mexico. EA at 2-1.

On July 19, 2013, Guardians requested an extension of time to file its Statement of Reasons by August 23, 2013. On July 31, 2013, the Interior Board of Land Appeals (“IBLA”) granted Guardians’ request. Pursuant to 43 C.F.R. § 4.412, Guardians now files the following Statement of Reasons in support of its Notice of Appeal.

I. INTRODUCTION

Guardians challenges BLM's authorization of the El Segundo Lease on the grounds that BLM failed to take a hard look at the indirect and cumulative impacts of its leasing decision to air quality and climate as required by the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.* Although BLM recognizes that impacts from "end use of coal" is an important issue and states that it will address these impacts in the EA, EA at 1-6, there is no actual analysis or assessment of the potentially significant impacts associated with the end use of the coal from the El Segundo mine in the EA. Such impacts are not speculative. Coal is mined to be burned. As Guardians pointed out in comments on the BLM's EA, coal from the existing El Segundo Mine is, in fact, burned in a number of nearby power plants in eastern Arizona, including the Apache Station, Cholla Power Plant, Coronado Power Plant, and the Springerville Power Plant.¹ As discussed in more detail below, all of these power plants emit greenhouse gases and other air pollutants when they burn coal. Therefore, in making its decision whether to authorize the El Segundo lease, BLM was required to take into account the indirect effects of coal combustion on air quality and climate. BLM did not. BLM was also required to consider the cumulative impacts of coal mining and coal combustion on air quality and climate. BLM did not. In fact, BLM did not include any analyses of the potentially significant impacts of coal combustion or the cumulative impacts of coal mining and combustion in the EA. For these reasons, Guardians requests the IBLA hold the BLM's leasing decision to be in violation of NEPA and reverse the decision to issue the El Segundo Lease.

¹ Guardians' comments on the BLM's EA were submitted September 4, 2012. They are hereby attached as Exhibit 1.

II. APPELLANT IS A PARTY WHO IS ADVERSELY AFFECTED BY BLM'S LEASING DECISION

To maintain an appeal, an Appellant must (1) be a party to the case; and (2) be adversely affected by the decision being appealed. 43 C.F.R. § 4.410(a). Guardians satisfies both of these requirements. Guardians is a registered non-profit corporation whose purpose is the conservation of natural resources. With more than 40,000 members and e-activists, Guardians' mission is to protect and restore the wildlife, wild places, and wild rivers of the American West. Guardians is headquartered in Santa Fe, New Mexico, and has offices in Denver, Colorado and Tucson, Arizona. Through its Climate and Energy Program, Guardians works to safeguard the climate, clean air, and communities of the American West by promoting a sensible transition to renewable energy.

To be a party to the case, a person or group must have actively participated in the decisionmaking process regarding the subject matter of the appeal. 43 C.F.R. § 4.410(b). Here, Guardians submitted comments to BLM on September 4, 2012 regarding the El Segundo Lease during the public comment period provided by BLM. *See* Exhibit 1.² Guardians comments were submitted via electronic mail to Farmington District Manager, David Evans, Farmington Field Office Manager, Gary Torres, and Mining Engineer and NEPA contact, Shannon Hoefler. Thus, Guardians satisfies the "party to a case" qualification.

To demonstrate that it will "be adversely affected by the decision being appealed," a party must demonstrate a legally cognizable "interest" and that the decision appealed has caused or is substantially likely to cause injury to that interest. *Glenn Grenke v. BLM*, 122 IBLA 123, 128 (1992); 43 C.F.R. § 4.410(d). This requisite "interest" can be established by cultural,

² Guardians also submitted follow up comments to the BLM notifying the Agency of procedural discrepancies regarding the processing of the El Segundo Coal Lease. This comment letter is attached as Exhibit 2.

recreational, or aesthetic uses as well as enjoyment of the public lands. *Southern Utah Wilderness Alliance*, 127 IBLA 325, 326 (1993); *Animal Protection Institute of America*, 117 IBLA 208, 210 (1990). The IBLA does not require a showing that an injury has actually occurred. Rather, a colorable allegation of injury suffices. *Powder River Basin Resource Council*, 124 IBLA 83, 89 (1992). Moreover, it is not necessary for a party to show that it has actually set foot on the impacted parcel or parcels to establish use or enjoyment for purpose of demonstrating adverse effects. Rather, “one may also establish he or she is adversely affected by setting forth interests in resources or in other land or its resources affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests.” *Coalition of Concerned National Park Retirees, et al.*, 165 IBLA 79, 84 (2005).

The declaration of Guardians member Mike Eisenfeld is attached as Exhibit 3. Mr. Eisenfeld personally uses and enjoys the area that will be directly and indirectly affected by the El Segundo Lease, as well as areas and resources that will be affected by actions related to the El Segundo Lease (e.g., coal burning at nearby power plants), for recreational, aesthetic, educational, and conservation purposes, and that he intends to return to the area for enjoyment. *See* Exhibit 3, Eisenfeld Declaration at ¶¶ 7-13, 15-16. Mr. Eisenfeld has established that BLM’s authorization of the El Segundo Lease will adversely affect his recreational, aesthetic, educational, and conservation interests, which are legally cognizable, in these areas through increased air pollution and other environmental impacts. *See id.* at ¶ 17-19. Mr. Eisenfeld also establishes that BLM’s leasing decision will adversely affect Guardians.

III. STATEMENT OF REASONS

For the following reasons, Guardians requests that the IBLA set aside and remand BLM’s

decision to offer for sale and issuance the El Segundo Lease.

A. The Requirements of NEPA.

The IBLA has set forth BLM's duties under NEPA in many proceedings. *See, e.g., Center for Native Ecosystems*, 170 IBLA 331, 344-345 (2006). Noting that "NEPA is designed to 'insure a fully informed and well-considered decision,'" the IBLA has explained that NEPA requires a consideration of the potential environmental impacts of a proposed action, including a consideration of the adverse impacts of a proposed action, alternatives to it, the relationship between short-term uses of the environment and its long-term productivity, and irreversible commitments of resources from implementing a proposed action. *Id.* Where BLM prepares an EA and concludes that an Environmental Impact Statement ("EIS") is not required, the IBLA has held that such decisions will comply with NEPA:

if the record demonstrates that the agency has considered all relevant matters of environmental concern, taken a 'hard look' at potential environmental impacts, and made a convincing case that any potentially significant impact will be reduced to insignificance by imposing appropriate mitigation measures.

National Wildlife Federation, 170 IBLA 240, 244 (2006). The IBLA has held that "[a]n appellant seeking to overcome a FONSI bears the burden of demonstrating, with objective proof, that the BLM has failed to adequately consider an environmental question of significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA." *Id.* Here, BLM failed to comply with the requirements of NEPA in its authorization of the El Segundo Lease because it completely failed to address (1) the impacts of coal combustion on air quality and climate, and (2) the cumulative impacts of coal mining and coal combustion on air quality and climate.

B. BLM Failed to Take a Hard Look at the Indirect and Cumulative Impacts to Air Quality and Climate Caused by Coal Mining and Combustion.

1. BLM Was Required to Analyze the Indirect Effects of Burning Coal from the El Segundo Lease.³

Coal-fired power plants are large sources of greenhouse gases and other air pollutants that endanger human health and the environment. For example, all four of the eastern Arizona power plants that burn coal from the El Segundo Mine emit high levels of nitrogen oxide (“NO_x”), sulfur dioxide (“SO₂”), and carbon dioxide (“CO₂”). *See* Exhibit 4, EPA, Emissions Report for Apache, Cholla, Coronado, and Springerville Power Plants, queried from EPA’s Air Markets Program Database, <http://ampd.epa.gov/ampd/> (last visited Aug. 23, 2013) (showing total NO_x, SO₂, and CO₂ emissions from facilities). Nitrogen oxide (“NO_x”) pollution can adversely affect human respiratory health, aggravate heart disease, lead to the formation of fine particle pollution that can cause premature death, and contribute to the formation of ground-level ozone, the key ingredient of smog. *See e.g.* 75 Fed. Reg. 6,474, 6,479-83 (Feb. 9, 2010) (explaining health effects of NO_x, including nitrogen dioxide, a key component of NO_x). The U.S. Environmental Protection Agency (“EPA”) has noted that “electricity generating units” are among the top three sources of NO_x emissions in the United States. *Id.* at 6,476. Sulfur dioxide (“SO₂”) is also a respiratory irritant. Studies show that short-term exposure to SO₂ pollution can lead to increased visits to emergency rooms for respiratory illness. 75 Fed. Reg. 35,520, 35,525 (June 22, 2010). Similar to NO_x, SO₂ can also form fine particle pollution. *Id.* at 35,588.

³ In its comments on the EA, Guardians commented on the failure of the BLM to analyze the environmental impacts of the combustion of coal mined from the El Segundo Lease. Exhibit 1 at 2.

Carbon dioxide (“CO₂”) is the leading cause of climate change and the most emitted greenhouse gas in the United States.⁴ According to the most recent inventory of U.S. greenhouse gas emissions prepared by the EPA the U.S. emitted 6,702.3 million metric tons (6.7 billion metric tons) of greenhouse gases in 2011. *See* Exhibit 5, EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2011* (April 2013) at ES-7.⁵ Of this total, CO₂ comprises more than 83 percent of total U.S. greenhouse gas emissions, or 5,612.9 million metric tons. *Id.* at ES-5. According to the EPA, this comprises 18% of global CO₂ emissions. *Id.* at ES-8. EPA also found in its most recent greenhouse gas inventory that the electricity generation sector is the largest source of greenhouse gases in the U.S., largely due to CO₂ emissions. *Id.* at ES-5. According to the EPA, in 2011, coal-fired power plants released 1,722.7 million metric tons of CO₂, 80 percent of all CO₂ from the electricity generation sector. *See* Exhibit 5 at 3-12. This makes coal-fired power plants and the mines that supply them the largest source of CO₂ in the country.

Although it is common knowledge that coal combustion releases high levels of these dangerous pollutants, BLM failed to analyze the indirect impacts to air quality and climate resulting from burning the coal recovered from the El Segundo Lease. This is significant because BLM’s hard look at the environmental impacts of the El Segundo Lease required a

⁴ Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are recognized as greenhouse gases. The U.S. Environmental Protection Agency (“EPA”) most recently found that these “six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations.” 74 Fed. Reg. 66496 (Dec. 15, 2009).

⁵ We attach only the Executive Summary and Chapter 3 given the voluminous size of the report and given that these sections of the EPA’s greenhouse gas inventory provide data relevant to this Appeal. The complete report is available on the EPA’s website at <http://www.epa.gov/climatechange/ghgemissions/usinventoryreport.html> (last visited Aug. 23, 2013).

discussion of “indirect effects and their significance.” 40 C.F.R. § 1502.16(b). Indirect impacts “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b). By mandating a hard look at the indirect effects of BLM’s leasing authorization, NEPA obligates BLM to look beyond the *direct* impacts to air quality and climate from coal mining and to address the reasonably foreseeable impacts of air pollutants from coal *combustion*. See *Humane Soc’y v. Johanns*, 520 F. Supp. 2d 8, 22 (D.D.C. 2007) (“Indirect impacts need only to be ‘reasonably foreseeable’ to require an assessment of the environmental impact.”) (citation omitted); *Powder River Basin Resource Council*, 180 IBLA 119, 132 (2010) (stating that BLM was required “to consider the potential indirect effects of leasing the [West Antelope II coal] tracts.”).

Burning coal mined from the El Segundo Lease is a reasonably foreseeable consequence of lease authorization. See *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2004) (“[A]n environmental effect is reasonably foreseeable if it is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”). Although NEPA requires BLM to address the impacts of reasonably foreseeable coal combustion on air quality and climate, the agency did not consider greenhouse gas levels or other air pollutant levels that would result from burning the coal mined from the El Segundo Lease. Indeed, in the EA for the El Segundo Lease, there is absolutely no discussion of the reasonably foreseeable air quality and climate impacts of coal combustion. The only hint BLM gives that coal from the El Segundo Mine is burned is on page 3-38 of the EA in a discussion of “Traffic and Transportation” affected environment, where the Agency acknowledges that, “El Segundo...use[s] rail to transport coal to the Cholla Generating Station near Joseph City, Arizona; and the Springerville Generating Station near Springerville, Arizona.” EA at 3-38.

Despite BLM's acknowledgement that coal from the El Segundo Mine is burned in Arizona power plants, there is no analysis or assessment of the impacts associated with this burning.⁶

There is no excuse for this omission. In *Mid States Coalition*, the Court rejected on NEPA grounds the Surface Transportation Board's approval of a railroad expansion for shipping coal from Wyoming mines to various power plants when the Board failed to consider the indirect effects of coal combustion. *Id.* at 549. The Court concluded that even though the Board might not know where new power plants receiving the coal would be built or how much coal the new plants might need, the Board did know the total amount of coal that would be shipped and, therefore, the total amount of coal that would be burned, allowing the Board to analyze the adverse effects that would occur from coal combustion. *Id.* Thus, the Court held that even if the *extent* of the effect was speculative, the *nature* of the effect, i.e. coal combustion, was far from speculative and was appropriately analyzed as an indirect effect of the Board's approval of the rail line that would transport the coal. *Id.*

Here, the extent of coal combustion does not appear to be speculative at all. As Guardians pointed out in comments, coal from the El Segundo Mine is burned in power plants in Arizona. *See* Exhibit 1 at Exhibit 2. That coal from the mine is burned in Arizona power plants is confirmed by more recent data from the Energy Information Administration ("EIA"), which continues to demonstrate that the El Segundo coal mine fuels the Apache, Cholla, Coronado, and Springerville power plants in Arizona. According to the EIA data, which is presented as Form

⁶ There is further no analysis or assessment of the impacts of hauling coal by rail to Arizona power plants, despite the EA's recognition that such impacts are a reasonably foreseeable impact. The BLM appears to assert in the EA that there will be "no transportation or traffic impacts." EA at 4-21. This is absurd for the simple reason that the logical consequence of the BLM's decision will be that 9.2 million tons of deliverable coal will be hauled via rail to Arizona power plants that would otherwise not be delivered.

923, Schedule 2 data, in 2012, coal from El Segundo Mine continued to fuel these power plants.⁷ See Exhibit 6, EIA Form 923, Schedule 2 Data for the El Segundo Coal Mine.

At the least, the nature of the impact of burning coal from the El Segundo Mine is certain. Accordingly, BLM's failure to take a hard look at the indirect effects of coal combustion as a reasonably foreseeable consequence of its El Segundo lease authorization violated NEPA. Furthermore, this failure underscores that BLM's FONSI and decision not to prepare an EIS are unsupported.

2. BLM Failed to Analyze the Cumulative Impacts of its Leasing Decision on Climate and Air Quality.⁸

Council on Environmental Quality regulations implementing NEPA define "cumulative impacts" as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. *Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

40 C.F.R. § 1508.7 (emphasis added). Thus, even if the environmental impacts of an individual coal lease such as EL Segundo would be minimal, these impacts may be significant when added to environmental impacts from existing and future coal mining, coal combustion, and other resource extraction activities. See *Powder River Basin Resource Council*, 180 IBLA at 132 (stating that BLM "was required to consider the potential cumulative effects of leasing the [West

⁷ According to the EIA, Form 923 data presents, "detailed electric power data—monthly and annually—on electricity generation, fuel consumption, fossil fuel stocks, and receipts at the power plant and prime mover level." See EIA, "Form EIA-923 detailed data," website available at <http://www.eia.gov/electricity/data/eia923/> (last visited August 23, 2013).

⁸ In its comments on the EA, Guardians commented on the failure of BLM to analyze the cumulative impacts, in particular the cumulative air quality impacts, of the El Segundo Lease. Exhibit 1 at 2-3.

Antelope II coal] tracts.”). *Grand Canyon Trust* described the elements of a sufficient cumulative impacts analysis:

[a] meaningful cumulative impacts analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.

Grand Canyon Trust, 290 F.3d at 345 (citations omitted). Accordingly, BLM was required to analyze not just the effects of the El Segundo Lease’s emissions on air quality and climate in isolation, but also the effects of those emissions combined with emissions from all past present and reasonably foreseeable actions in the project area. Because BLM has not done this, the agency violated NEPA.

In the “Cumulative Impacts” chapter of the EA, BLM included a list of all past, present, and reasonably foreseeable projects in the region encompassing the proposed action. EA at 5-3 to 5-5 (Table 5.1-1 listing all actions purportedly included in BLM’s cumulative impacts analysis for the El Segundo Coal Lease). The list includes a number of actions that generate NO_x, SO₂, and greenhouse gas emissions (namely CO₂)—five active coal mines, three coal-fired power plants, and six existing or proposed oil and gas development projects. Yet BLM does not discuss or analyze the cumulative effects of these actions’ emissions on air quality and climate nor does the agency even disclose the levels of NO_x, SO₂, and greenhouse gas emissions from these actions. BLM’s list of actions in Table 5.1-1, without more, does not satisfy NEPA’s requirement for a cumulative impacts analysis. *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 972-74 (9th Cir. 2006) (holding that a list and descriptions of other mining projects in area

of proposed action did not constitute an adequate cumulative impacts analysis when there was no discussion of the environmental impacts of each project).

BLM's discussion of cumulative impacts to air quality does not discuss the incremental effects of pollutant emissions from mining the lease in combination with emissions from the actions listed in Table 5.1-1. BLM does present some disclosure of air emissions in Appendix D to the EA, EA at D-4, but it does not take the next required step of analyzing impacts to ambient air quality standards. For example, BLM does not address the impacts of mining operations at the El Segundo Mine to ambient air quality standards for ground-level ozone, the key ingredient of smog. And although BLM claims to analyze the potentially significant impacts to recently adopted nitrogen dioxide ambient air quality standards, EA at 4-2, the analysis is hardly even qualitative; BLM simply asserts that because of low nitrogen oxide emissions and low emission heights, that the air quality standards will be protected and there will be no effect to air quality. *Id.* There is no support for this assertion and even this qualitative statement lacks a reasonable foundation. Moreover, simply because the BLM believes that present conditions or activities will stay the same, does not mean that there are no impacts.⁹ This is especially true where, as here, BLM has never analyzed nitrogen dioxide and ozone impacts in relation to the new air quality standards. It is especially critical that BLM adequately address ozone and nitrogen dioxide impacts in the EA given that the 2003 Farmington Resource Management Plan was adopted prior to the promulgation of these standards, demonstrating that BLM has never

⁹ In fact, as already explained, this conclusion is absurd. BLM's decision will lead to the production of 9.2 million tons of coal that would not otherwise be produced. The EA expressly discloses that the El Segundo Lease will enable the El Segundo Mine to produce at higher rates (up to 1.85 million tons of additional production in 2015) between 2014 and 2024. *See* EA at 2-5—2-6.

undertaken a programmatic analysis of direct, indirect, and cumulative field office-wide impacts to these particular air quality standards.¹⁰

BLM's discussion of cumulative impacts to climate consists of repeating a disclosure from elsewhere in the EA that current greenhouse gas emissions from the El Segundo Mine total 112,000 metric tons annually, and that "total GHG emissions from all future El Segundo operations would not change." EA at 5-6 to 5-7. Although this assertion is extremely suspect given that BLM's decision will enable increased production rates at the El Segundo Mine (*see* EA at 2-5—2-6 (displaying increased annual production rates that would be achieved as a result of the El Segundo Lease), this discussion of direct environmental consequences of the proposed action in isolation, without any discussion of the incremental effects of these emissions when added to the actions listed in Table 5.1-1. This does not comply with NEPA's requirement that BLM analyze cumulative impacts. Furthermore, simply because impacts may remain the same going forward does not mean that these impacts are not significant, or, more importantly, that cumulative impacts have remained the same.

BLM has no excuse for ignoring cumulative impacts to climate from El Segundo's greenhouse gas emissions combined with emissions from other projects in the region. "The impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct." *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008). Although BLM disavows any responsibility for assessing climate change impacts from direct greenhouse gas emissions

¹⁰ EPA promulgated the current ozone standard in 2008, limiting concentrations of ozone on an 8-hour basis to no more than 0.075 parts per million. *See* 73 Fed. Reg. 16,436 (March 27, 2008); *see also* 50 C.F.R. § 50.15. EPA promulgated the current one-hour standard for nitrogen dioxide, limiting concentrations to no more than 100 parts per billion, in 2010. *See* 75 Fed. Reg. 6474 (Feb. 9, 2010); *see also* 50 C.F.R. § 50.11(b).

from the El Segundo Lease because of the small quantity of estimated emissions, EA at 4-4, BLM cannot use that excuse for failing to assess climate impacts from cumulative greenhouse gas emissions from regional sources when BLM did not provide information about these emissions levels to determine whether the agency could address the magnitude of their contribution to climate change.¹¹ Such information appears to have been readily available to the BLM. For example, CO₂ emissions from the nearby Four Corners Power Plant, San Juan Generating Station, and Escalante Generating Station, which are all located in northwestern New Mexico, can be queried on the EPA's Air Markets Program Database. According to this data, these coal-fired power plants released 27,780,792.5 tons of CO₂. See Exhibit 7, EPA, Emissions Report for Escalante, Four Corners, and San Juan coal-fired power plants in northwestern New Mexico, queried from EPA's Air Markets Program Database, <http://ampd.epa.gov/ampd/> (last visited Aug. 23, 2013) (showing total NO_x, SO₂, and CO₂ emissions from facilities).

Moreover, “the fact that climate change is largely a global phenomenon that includes actions that are outside of the agency’s control does not release the agency from the duty of assessing the effects of *its* actions on global warming within the context of other actions that also affect global warming.” *Ctr. for Biological Diversity*, 538 F.3d at 1217. BLM must make the effort to assess cumulative impacts to climate or else explain why it is unable to do so. BLM has done neither here and, therefore, has violated NEPA.

¹¹ In the EA, BLM outlined some of the general impacts of climate change to the American West including changes in runoff and snowfall patterns, increases in invasive species, and increased air temperatures. EA at 3-5. BLM did not analyze the contribution of greenhouse gas emissions from burning the coal recovered from the El Segundo Lease or the combined contribution of greenhouse gas emissions from five other coal mines, three coal-fired power plants, and current oil and gas operations in maintaining and/or exacerbating these impacts.

BLM's complete failure to analyze the indirect effects of coal combustion on climate and the cumulative effects of the El Segundo lease on climate distinguishes this case from other cases where the IBLA held that the agency had adequately disclosed impacts to climate from coal leasing. In *Bristlecone Alliance*, 179 IBLA 51, 53-54 (2010), environmental groups appealed BLM's approval of a right-of-way and land sale for construction of a coal-fired power plant on the basis that the agency had not adequately evaluated the impacts of the power plant on global climate change. However, BLM did address the indirect impacts of its land approvals by estimating the greenhouse gas emissions from the power plant and extrapolating mean global temperature increase from those emissions using a comparable analysis from the EPA. *Id.* at 79. The IBLA also found BLM's analysis of cumulative impacts to climate adequate where the agency considered the impacts of greenhouse gas emissions from the future plant in "the context of other similar types of emissions" in the analysis area. *Id.* at 86. The IBLA reached similar conclusions in *Powder River Basin Resource Council*, 180 IBLA 119 (2010). There, BLM "estimated the likely emissions of [carbon dioxide] and other GHGs [greenhouse gases] from plants burning coal from the Mine and other coal Mines in the [Powder River] Basin." *Id.* at 133.

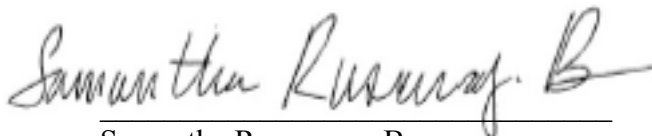
Here, BLM did neither of these indirect and cumulative impacts analyses for the El Segundo Coal Lease. Unlike *Powder River Basin Resource Council* where BLM recognized that coal from the West Antelope leases would be burned in coal-fired power plants to generate electricity and estimated these emissions, *id.* at 133, BLM does not even acknowledge that the end use of coal from the El Segundo Lease will be as fuel in coal-fired power plants. In Chapter 1 of the EA BLM states that one of the issues it will address is end use of coal, EA at 1-6, but then omits any mention of this issue in subsequent chapters of the EA. BLM also does not

analyze the cumulative emissions from the El Segundo Lease with other similar types of emissions as it did in *Bristlecone Alliance*. BLM's air quality and greenhouse gas analyses are limited to direct emissions from mining the lease. BLM's failure to analyze indirect and cumulative effects to climate and air quality does not allow BLM to conclude that the proposed action will not significantly affect the environment. These omissions of analyses required by NEPA show that BLM "has failed to adequately consider an environmental question of significance to the proposed action," in violation of NEPA. *National Wildlife Federation*, 170 IBLA at 244. Therefore, the IBLA must reverse BLM's authorization of the El Segundo Coal Lease as the Agency has not justified its FONSI and decision not to prepare an EIS.

IV. CONCLUSION

For the foregoing reasons, Guardians requests that the IBLA set aside and remand BLM's decision authorizing the El Segundo Lease. BLM failed to take the requisite "hard look" at the potentially significant indirect and cumulative impacts of the proposed lease, in turn rendering the EA and FONSI, as well as the BLM's decision not to prepare an EIS, legally inadequate.

Respectfully submitted this 23rd day of August 2013,



Samantha Ruscavage-Barz
Staff Attorney
WildEarth Guardians
516 Alto St.
Santa Fe, NM 87501
Phone: (505) 401-4180
Fax: (505) 213-1895
sruscavagebarz@wildearthguardians.org

TABLE OF EXHIBITS

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2. WildEarth Guardians' September 7, 2013 Follow up Comments to BLM on El Segundo Coal Lease by Application.
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4. EPA, Emissions Report for Apache, Cholla, Coronado, and Springerville Power Plants, queried from EPA's Air Markets Program Database, <http://ampd.epa.gov/ampd/> (last visited Aug. 23, 2013).
5. EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2011* (April 2013), Executive Summary and Chapter 3.
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7. EPA, Emissions Report for Escalante, Four Corners, and San Juan coal-fired power plants in northwestern New Mexico, queried from EPA's Air Markets Program Database, <http://ampd.epa.gov/ampd/> (last visited Aug. 23, 2013) (showing total NO_x, SO₂, and CO₂ emissions from facilities).

CERTIFICATE OF SERVICE

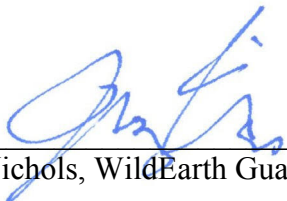
I certify that on August 23, 2013, I served this Statement of Reasons by certified mail, return receipt requested, upon:

U.S. Department of Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St.
MS 300-QC
Arlington, VA 22203

Bureau of Land Management
New Mexico State Office
PO Box 27115
Santa Fe, NM 87502

U.S. Department of the Interior
Office of the Solicitor
Regional Solicitor, Southwest Region
U.S. Department of Interior
505 Marquette Ave., NW, Suite 1800
Albuquerque, NM 87102

Peabody Natural Resources Company
El Segundo Mine
PO Box 757
Grants, NM 870202



Jeremy Nichols, WildEarth Guardians