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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILDEARTH GUARDIANS, *et al.*,

Plaintiffs,

vs.

BERNHARDT, *et al.*,

Federal Defendants,

and

WESTERN ENERGY ALLIANCE, *et al.*

Intervenor – Defendants.

Case No. 1:16-cv-01724-RC

STATE OF WYOMING AND STATE OF UTAH'S REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

ARGUMENT

The reply brief of Plaintiffs, WildEarth Guardians and Physicians for Social Responsibility (Advocacy Groups) plows little new substantive ground. Accordingly, the States of Wyoming and Utah will not repeat here the reasons why those arguments fail.[1] Instead, the States would like to offer their perspective on the bigger picture.

Fundamentally, the Advocacy Groups nitpick the Bureau of Land Management's supplemental environmental analysis not because the Bureau's analysis truly fails to disclose the effects of oil and gas leasing, but because the Bureau has chosen to accept these impacts as the price to be paid for leasing. *See Nat. Res. Def. Council v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975). The Advocacy Groups argue that the Bureau "has an important role to play in transitioning America's energy system away from fossil fuels" (ECF 157 at 1), but Congress has not assigned the burden of solving the problem of global climate change to the Bureau. Under the Mineral Leasing Act, 30 U.S.C. §§ 181-287, and Federal Land Management Policy Act, 43 U.S.C. §§ 1701-1784, Congress commanded the Bureau to lease public lands for oil and gas development, to collect appropriate royalties, and to do so using the principles of multiple use and sustained yield. While the Bureau must consider environmental impacts to the public lands when it chooses to lease, no statute requires the Bureau to forego leasing to address global climate change. If the Advocacy Groups want to change this reality, the appropriate vehicle for doing so is not a challenge under the National Environmental Policy Act (NEPA), but a ballot box.

[1] The States would point out, with regard to the recent decision from the District of Idaho vacating certain oil and gas leases in Wyoming, that the Idaho court recently stayed its vacatur order pending appeal in part because "there is the prospect of irreparable harm to the appealing parties as well as to states and local communities that rely on the bonus bid payment and royalties from the parcels." *W. Watersheds Project v. Zinke*, 1:18-cv-00187-REB, 2020 U.S. Dist. LEXIS 85203, at *14 (D.C. Idaho May, 12 2020) (ECF_226 at 9).

Similarly, the role of the judiciary in enforcing NEPA is not "to coax agency decisionmakers to reach certain results[,]" but merely to ensure that agencies heed the statute's procedural requirements. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 194 (D.C. Cir. 1991). For its part, NEPA "directs agencies only to look hard at the environmental effects of their decisions, and not to take one type of action or another." *Id*. This hard look is bounded by a "rule of reason" which dictates that an agency's analysis of environmental impacts should be considered sufficient unless "deficiencies are significant enough to undermine informed public comment and informed decisionmaking." *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017).

In its March 19, 2019 Order, this Court found that the Bureau's initial NEPA analyses supporting the 283 leases at issue in this case fell short of NEPA's requirements because "NEPA required more robust analyses of GHG emissions from oil and gas drilling and downstream use." (ECF_99 at 57). In response, the Bureau provided a more robust analysis, but the Advocacy Groups take issue with increasingly more insignificant aspects of that analysis which have little bearing on whether the agency's decision to proceed with the leases adequately considered the probable environmental consequences. At this point, both the public and the agency have been fully informed as to the consequences of the decision to lease these parcels, and with that knowledge the agency has decided to proceed anyway. Thus, NEPA worked as designed here.

Accordingly, the States of Wyoming and Utah request that the Court grant Defendants' and Defendant-Intervenors' cross-motions for summary judgment, deny the Advocacy Groups' cross-motions for summary judgment, and dismiss this case.

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Dated this 18th day of May 2020.

/s/ *Elliott Adler*
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of May 2020, the foregoing pleading was served by the Clerk of the U.S. District Court of Columbia through the Court's CM/ECF system, which will send notification of such filing to other participants in this case.

/s/ *Elliott Adler*
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