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WILDEARTH GUARDIANS

IBLA 2019-0002 Decided January 15, 2026

Appeal from a Record of Decision issued by the Pinedale Field Office, Bureau of Land Management, approving the Normally Pressured Lance Natural Gas Development Project. DOI-BLM-WY-D010-2011-0001-EIS.

Vacated.

APPEARANCES: Samantha Ruscavage-Barz, Esq., WildEarth Guardians, Santa Fe, New Mexico, for WildEarth Guardians; Philip C. Lowe, Esq., and Kimberly Jackson, Esq., U.S. Department of the Interior, Office of the Regional Solicitor, Lakewood, Colorado, for the Bureau of Land Management; Shannon Leininger, Esq., Wyoming Attorney General's Office, Cheyenne, Wyoming, for the State of Wyoming; Kathleen L. Schroder, Esq., Gail L. Wurtzler, Esq., and Courtney M. Shephard, Esq., Davis Graham & Stubbs LLP, Denver, Colorado, for Jonah Energy, LLC.

OPINION BY ADMINISTRATIVE JUDGE GUNTER

WildEarth Guardians has appealed a Record of Decision issued by the Pinedale Field Office, Bureau of Land Management (BLM), approving the Normally Pressured Lance Natural Gas Development Project (the NPL Project).[1] WildEarth contends that BLM's approval of the NPL Project violated the Clean Air Act and the National Environmental Policy Act (NEPA). We hold that BLM's Record of Decision was not supported by a valid Clean Air Act conformity determination, and we therefore vacate the Record of Decision.

SUMMARY

The NPL Project is a natural gas development project in Wyoming proposed by Jonah Energy LLC. BLM approved the Project in a 2018 Record of Decision. BLM made a

[1] Administrative Record (AR), NPL-2717, Bureau of Land Management, Normally Pressured Lance Natural Gas Development Project, Record of Decision (Aug. 2018) (Record of Decision). BLM has filed the record on appeal as a series of PDF files, each with a document number beginning "NPL-." We cite the number of the document and its internal page numbers.

determination that the NPL Project, as approved, would satisfy the general conformity requirements of the Clean Air Act as stated in regulations promulgated by the U.S. Environmental Protection Agency (EPA) and incorporated into Wyoming's regulations and State Implementation Plan. WildEarth argues that BLM's conformity determination failed to analyze emissions from all relevant sources—specifically, Jonah Energy's portable drill rig fleet. Emissions from the drill rig fleet are authorized by a New Source Review (NSR) permit issued by Wyoming. BLM excluded the drill rig fleet from its conformity analysis in reliance on an exemption for emissions from "stationary sources" that "require a permit under the new source review (NSR) program." We hold that this exemption did not apply here. Although we do not question that the drill rig fleet may be (and was) subject to an NSR permit, the drill rigs are not "stationary sources," and the unambiguous language of the exemption therefore made it inapplicable.

WildEarth also argues that the Record of Decision violated Clean Air Act conformity requirements because BLM's conformity determination depended upon a pace of development—i.e., a number of wells approved per year—lower than the proposed action studied in the Final EIS. This argument is without merit, because that reduced pace of development was incorporated into the Record of Decision itself. BLM approved the NPL Project only as limited to a number of wells per year that, as BLM determines in future site-specific decisions, will maintain emissions below the de minimis threshold for conformity.

Finally, WildEarth argues that BLM violated NEPA by failing to analyze the cumulative greenhouse gas emissions from the NPL Project when added to the emissions from other specific similar projects that were identified in the EIS. We do not decide this question because BLM will likely have to assess its NEPA compliance again before reaching any further decision on the NPL Project, and the principles governing that NEPA compliance have materially changed since this appeal was filed. We therefore leave it to BLM to decide, in the first instance, what NEPA may require at the time of any further decision.

BACKGROUND

Jonah Energy holds Federal oil and gas leases in Sublette County, Wyoming.[2] Jonah Energy proposed to develop the NPL Project on approximately 141,000 acres in Sublette County, of which more than 96% was Federal land administered by BLM.[3] Most of the NPL Project area has been designated by BLM for oil and gas leasing and

[2] AR, NPL-2720, Bureau of Land Management, Normally Pressured Lance Natural Gas Development Project, Final Environmental Impact Statement at 1-2 (June 2018) (Final EIS); *see id.* at 2-3 (describing Jonah's acquisition of the leases from EnCana Oil & Gas (USA), Inc.).
[3] *See id.* at 1-1.

exploration along with the protection of other resource values.[4] As Jonah Energy proposed the Project, it would construct up to 350 natural gas wells per year over a 10-year period, using up to 10 drill rigs at any one time.[5] Jonah Energy anticipated that the Project would require 1 well per 40 acres in most places, but that the natural gas resource would support denser development in some places.[6]

BLM exercises approval authority over oil and gas projects on Federal lands pursuant to the Mineral Leasing Act and the Federal Land Policy and Management Act.[7] BLM typically makes multiple staged decisions about such projects, for example by deciding to issue competitive leases and then separately deciding to authorize operations on a leased parcel.[8] Here, BLM considered "whether to approve, approve with modification, or deny Jonah Energy's proposal" for a large-scale natural gas development project on leases that Jonah Energy already held.[9] Decisions about the placement of wells and other site-specific issues would be made in subsequent stages, for example, upon BLM's receipt of an Application for Permit to Drill.[10]

Before approving the NPL Project, BLM was required to ensure its compliance with a variety of legal requirements. The requirement of a Clean Air Act "conformity determination" is most relevant to this appeal.

The Clean Air Act establishes a system of cooperative federalism to regulate the nation's air quality.[11] "In broad terms," the Act "empowers the EPA to set air-quality standards" and "directs states to develop plans for meeting them."[12] So, for example, EPA establishes national ambient air quality standards (NAAQS) that are necessary to protect the public health, and it determines whether particular air quality control regions are in "attainment" or "nonattainment" with those NAAQS for particular air pollutants.[13] Each state must then develop and obtain EPA approval of a State Implementation Plan (SIP) "which provides for implementation, maintenance, and enforcement" of the NAAQS, including provisions to prohibit emissions in any amounts which will "contribute

[4] *See id.* at 1-10 to 1-11.
[5] *See id.* at 1-3.
[6] *See id.*
[7] *See, e.g.*, 30 U.S.C. § 226 (Mineral Leasing Act); 43 U.S.C. §§ 1701-1787 (Federal Land Policy and Management Act). Citations to Federal statutes and regulations are to the version in effect on the date of this Decision, except as otherwise noted.
[8] *See, e.g.*, *Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 192 IBLA 281, 286-87 (2018).
[9] Final EIS at 1-3.
[10] *See id.* at 1-3, 1-5 to 1-6.
[11] *See, e.g.*, *Ctr. for Biological Diversity v. EPA*, 129 F.4th 1266, 1268 (10th Cir. 2025); *Ctr. for Biological Diversity v. EPA*, 82 F.4th 959, 962 (10th Cir. 2023).
[12] *Ctr. for Biological Diversity*, 129 F.4th at 1268.
[13] *Id.*; *see* 42 U.S.C. §§ 7407(d)(1), 7409(b)(1).

significantly to nonattainment."[14] Under the Act's "conformity" provisions, Federal agencies must then ensure that their actions conform to the requirements of the SIP.[15] "Conformity" is defined by statute to mean that the agency's activities will not "cause or contribute to any new violation of any standard in any area," will not "increase the frequency or severity of any existing violation of any standard in any area," and will not "delay timely attainment of any standard" or other requirements.[16]

The NAAQS that is most of interest in this appeal is EPA's 2008 standard for ground-level ozone.[17] The NPL Project is expected to result in emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x), which are precursors for the formation of ground-level ozone (a key component of smog).[18] The Upper Green River Basin of Wyoming, where the NPL Project is located, has been designated as a nonattainment area for ozone.[19] Some of the parties point out that the area is in attainment for other ozone standards and that it is designated only as "marginal" nonattainment for the 2008 standard.[20] Those facts do not affect the conformity requirements for the NPL Project.[21] Wyoming has an EPA-approved SIP, incorporating standards for VOCs and NO_x, that is administered by the Wyoming Department of Environmental Quality (WDEQ).[22]

Another relevant provision of the Clean Air Act is "New Source Review" or "NSR." Any SIP that covers a nonattainment area must require permits for "the construction and

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[14] *Id.* § 7410(a)(1), (a)(2)(D)(i)(I); *see also Ctr. for Biological Diversity*, 129 F.4th at 1268; *Nat. Res. Def. Council v. U.S. Dep't of Transp.*, 770 F.3d 1260, 1264 (9th Cir. 2014).
[15] 42 U.S.C. § 7506(c)(1); *see generally Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 771 (2004).
[16] 42 U.S.C. § 7506(c)(1)(B).
[17] *See* National Ambient Air Quality Standards for Ozone, 73 Fed. Reg. 16,436 (Mar. 27, 2008).
[18] *See* Final EIS at 3-6, 4-21; *see generally Nat. Res. Def. Council v. EPA*, 777 F.3d 456, 459 (D.C. Cir. 2014).
[19] *See* Final EIS at 3-6; 40 C.F.R. § 81.351 (table for Wyoming 2008 8-Hour Ozone NAAQS).
[20] *See* BLM's Answer at 3 (filed Mar. 27, 2019) (BLM Answer); State of Wyoming's Answer at 5-6 (filed May 1, 2019) (Wyoming Answer); *see also Ctr. for Biological Diversity*, 129 F.4th at 1268 (explaining degrees of nonattainment).
[21] *See* Final EIS at 3-6 ("The [Upper Green River Basin] will remain designated nonattainment for the 2008 ozone standard until EPA issues a formal redesignation of the area to Maintenance status.").
[22] *See* EPA Approved Regulations in the Wyoming SIP, https://www.epa.gov/air-quality-implementation-plans/epa-approved-regulations-wyoming-sip (last accessed January 14, 2026) (providing Federal Register citations to various rulemaking actions approving Wyoming's SIP provisions).

operation of new or modified major stationary sources anywhere in the nonattainment area."[23] A nonattainment area NSR permit may be issued only if, considered together with offsetting emissions reductions, it will reduce total emissions sufficiently to allow for "reasonable further progress" toward attainment of the NAAQS.[24] The purpose of this provision, as EPA describes it, is to "allow an area to move towards attainment of the NAAQS while still allowing some industrial growth."[25]

Jonah Energy proposed to use a mobile drill rig fleet to drill the NPL Project wells.[26] According to Wyoming, the drill rig fleet was not required to obtain an NSR permit under either EPA or Wyoming regulations, and Jonah Energy requested a permit voluntarily.[27] According to Jonah Energy, however, Wyoming's SIP establishes permitting requirements for "existing and new or modified portable sources as well as stationary sources."[28] In any event, Wyoming concluded that imposing air quality requirements through an NSR permit would improve air quality and benefit the public.[29] It issued a permit for Jonah's drill rig fleet to operate that, in its view, satisfied the requirements for an NSR permit under Wyoming's SIP.[30]

Jonah Energy's NSR permit is important here because it affected BLM's conformity determination. EPA's regulations for determining conformity (incorporated into Wyoming's air quality regulations) establish a de minimis threshold for the emission of air pollutants. A conformity determination is required only if "the total of direct and

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[23] 42 U.S.C. § 7502(c)(5).
[24] *Id.* § 7503(a)(1)(A); *see generally Sierra Club v. EPA*, 21 F.4th 815, 819 (D.C. Cir. 2021) (citing *S. Coast Air Quality Mgmt. Dist. v. EPA*, 882 F.3d 1138, 1144 (D.C. Cir. 2018)).
[25] EPA, Nonattainment NSR Basic Information, https://www.epa.gov/nsr/nonattainment-nsr-basic-information (updated Dec. 15, 2025).
[26] *See* Final EIS at 2-24 to 2-25 (describing the use of 10 drill rigs operating simultaneously, with up to 8 rigs per 640-acre area, and transportation of the rigs between multi-well pads); *id.* at 2-31 (stating that for each rig, "initial rig-up activities would involve transportation of the drill rig" from the previous site to the new site); *id.* at 2-60 (noting that Alternative B, which BLM adopted, would be covered by these descriptions).
[27] *See* Wyoming Answer at 7.
[28] Jonah Energy, LLC's Answer at 10 (filed Apr. 15, 2019) (Jonah Energy Answer) (citing Wyoming Admin. Rules, Dep't of Env't Quality (WDEQ Rules) Ch. 6, § 2(a)(iv) (providing that a "permit to operate is also required for the operation of an existing portable source in each new location")).
[29] *See* Wyoming Answer at 7-8 (noting that Jonah's predecessor, EnCana, originally requested an NSR permit).
[30] *Id.* at 8.

indirect emissions of the criteria pollutant or precursor in a nonattainment . . . area" would exceed that threshold.[31] Furthermore, a conformity determination is not required for the "portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review (NSR) program . . . of the [Clean Air Act])."[32] In this Decision, we refer to this latter provision as the "NSR conformity exemption."

BLM's conformity determination relied on the applicability of both of these provisions.[33] BLM considered "[e]missions from construction, drilling, and the operation phase of the project," but it excluded "emission sources that are permitted through WDEQ's NSR Permit Program."[34] Because Jonah Energy's drill rigs were covered by such a permit, those emissions were "presumed to conform and were also excluded from the BLM's Conformity analysis."[35] Even when the drill rig fleet was excluded, BLM still determined that drilling 350 wells per year (as Jonah Energy proposed) would result in NO_x emissions that exceeded the de minimis threshold.[36] Those emissions would come from sources such as Jonah Energy's completion rigs, other mobile equipment used for drilling, completion, and production, and increased traffic associated with the development.[37]

Although the applicable regulations provide some mechanisms, such as offsets and emissions budgets, to demonstrate conformity, BLM did not consider those options

[31] 40 C.F.R. § 93.153(b), (c)(1); WDEQ Rules, Ch. 8, § 3(c)(ii), (iii)(A).
[32] 40 C.F.R. § 93.153(d)(1); WDEQ Rules, Ch. 8, § 3(c)(iv)(A). Because the relevant language of the EPA and WDEQ conformity exemptions is identical, we generally cite only the EPA general conformity exemption herein.
[33] *See* Record of Decision, App. B, Normally Pressured Lance Natural Gas Development Project, General Conformity Determination (July 2016) at B-1 (Conformity Determination).
[34] *Id.* at B-3.
[35] *Id.* at B-4; *see also* Final EIS at 4-21 (stating that, for the Proposed Action, "permitted sources are excluded from the conformity calculation because they are addressed under the provisions of the Clean Air Act's new source review (NSR)" program); *id.* at 4-54 (noting that air quality effects of Alternative B, which BLM ultimately selected, were assumed to be "substantially similar" to the Proposed Action). We note that the Conformity Determination also states that "Drill Rig Mobile Equipment" was included in BLM's conformity analysis. *See* Conformity Determination at B-4. Because all parties acknowledge that Jonah Energy's drill rigs were excluded from the conformity analysis to the extent they were covered by the NSR permit, we presume this statement refers to different equipment that is not relevant here.
[36] *See* Conformity Determination at B-4.
[37] *See* Final EIS at 2-7.

viable.[38] Instead, it concluded that it must "reduce and limit the pace of development in order not to exceed the annual *de minimis* emissions thresholds for NO_x and VOCs."[39] BLM concluded that "drilling up to 160 wells per year and construction of 10 well pads per year" would reduce the estimated NO_x emissions below the de minimis threshold.[40] At that "pace of development," therefore, BLM determined that the NPL Project could "demonstrate Conformity with the Wyoming SIP,"[41] although it appears more accurate to say that the NPL Project at that scale would be exempt from the conformity requirements of the Wyoming SIP because it would not result in emissions in excess of the de minimis threshold.[42]

BLM acknowledged in the Final EIS that conformity might require a reduced pace of development.[43] BLM rejected an alternative that would cap the rate of development at a fixed percentage of Jonah Energy's proposal,[44] but in describing "mitigation measures," it stated that it would "only approve a level of development below the *de minimis* emission limits."[45] That restriction, BLM said, could result in fewer wells per year over a longer period than Jonah Energy originally proposed.[46] BLM stated that it would require "emissions estimates and emissions reports" from Jonah Energy to ensure that emissions remained below the applicable threshold.[47] BLM incorporated both the restricted pace of development and the annual emissions reporting into its Record of Decision.[48]

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[38] *See* Conformity Determination at B-4; *see also* Final EIS at 2-7.
[39] Conformity Determination at B-4.
[40] *Id.* at B-5.
[41] *Id.* at B-6.
[42] *See* Final EIS at 2-6 ("Federal actions estimated to have an annual net emissions increase less than the *de minimis* threshold are not required to demonstrate conformity through additional analysis or a formal Conformity determination."); Jonah Energy Answer at 7 n.6.
[43] *See* Final EIS at 2-25 (noting that for the Proposed Action, the "exact number of wells drilled, completed, and put into production annually would depend on maintaining general conformity with air quality standards" and other factors); *id.* at 2-55 to 2-56, 2-60 (noting that the maximum number of wells would be the same for Alternative B, which BLM ultimately selected); *id.* at 4-4 to 4-5 (stating that "the pace of drilling and development within the Project Area would, if necessary, be restricted to reduce emissions" and ensure conformity).
[44] *See id.* at 2-68 (the "Paced Development Alternative").
[45] *Id.* at 4-53.
[46] *See id.*
[47] *Id.* at 4-54.
[48] *See* Record of Decision at 14 (description of approved project), 21-22 (required mitigation measures).

BLM signed the Record of Decision on August 27, 2018.[49] WildEarth appealed and petitioned for a stay of the Record of Decision. The Board denied a stay, holding that WildEarth had not "shown that surface-disturbing activities and unauthorized air emissions [were] imminent."[50] Our order did not address WildEarth's likelihood of success on the merits. We have also offered the parties an opportunity to update the Board on the status of the Project since the appeal was filed. Neither WildEarth's nor BLM's status report identified new facts that may be relevant. Jonah Energy states that since 2018, it has drilled or spudded a total of 14 wells related to the NPL Project and has 5 additional pending applications for permits to drill.[51]

ANALYSIS

I. The Conformity Determination Is Invalid Because the Drill Rig Fleet Does Not Qualify For the NSR Conformity Exemption

We begin, as do the parties, with the Clean Air Act issues. WildEarth, as the appellant, bears the burden of demonstrating that BLM's conformity determination was arbitrary, capricious, or an abuse of discretion.[52] An agency abuses its discretion when it reaches a decision that is inconsistent with the governing statute or applicable implementing regulations.[53] Where our review under this standard depends upon a question of law, we review that question de novo.[54]

WildEarth's argument is based on the plain text of EPA's regulations establishing the NSR conformity exemption. WildEarth argues that those regulations (which have also been incorporated into Wyoming's conformity regulations) exempt "major or minor new or modified stationary sources that require a permit under the new source review (NSR) program."[55] WildEarth argues that because Jonah Energy's drill rigs are not "stationary sources," this exemption does not apply to them, and BLM's omission of the drill rigs from its conformity analysis was therefore improper.[56]

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[49] *See id.* at 1.
[50] Order, Motion for Leave to File Reply Granted; Motion to Dismiss Denied; Petition for Stay Denied at 3 (Nov. 13, 2018).
[51] Jonah Energy LLC's Status Report at 2 (filed Aug. 13, 2025).
[52] *See, e.g.*, *WildEarth Guardians*, 199 IBLA 176, 186 (2025).
[53] *See Amerikohl Mining, Inc. v. OSMRE*, 191 IBLA 11, 23 (2017).
[54] *See WildEarth*, 199 IBLA at 186.
[55] Statement of Reasons and Request for Oral Argument at 13 (filed Jan. 28, 2019) (WildEarth SOR) (quoting 40 C.F.R. § 93.153(d)(1); 020-0002-008 Wyo. Code R. § 3(c)(iv)).
[56] *Id.* at 13.

This argument first raises the question whether the drill rigs meet the definition of a "stationary source." The EIS describes the use of approximately 10 drill rigs operating simultaneously and moved between multi-well locations over the NPL Project area.[57] The Clean Air Act defines "stationary source" to include any "building, structure, facility, or installation which emits or may emit any air pollutant," and it distinguishes stationary sources from motor vehicles and from "nonroad engines."[58] In comments on the 2013 Preliminary Draft EIS for the NPL Project, EPA reviewed Wyoming's regulations without finding a definitive provision that established drill rigs as falling within any of these categories.[59] Under Federal regulations, EPA determined that the drill rigs were defined as nonroad engines rather than stationary sources, and that the only applicable exception would require them to remain at a single location for more than 1 year.[60] We have identified no record information indicating that the rigs would qualify as stationary sources on that basis, and the parties defending BLM's decision do not make that claim or indeed argue that the drill rigs meet any relevant definition of a "stationary source." Although we apply these definitions de novo rather than relying solely on EPA's analysis, we have reviewed the applicable regulations that EPA cited and are similarly persuaded, based on the record before us, that the drill rigs are not stationary sources for purposes of the NSR conformity exemption.

Rather than claiming that the drill rig fleet qualifies as a stationary source, the parties defending BLM's decision argue that the drill rig fleet is exempt from the conformity determination on the sole basis that it is covered by an NSR permit. Applying the plain text of both EPA's and Wyoming's general conformity regulations and Wyoming's approved SIP, we disagree. That text exempts a portion of a relevant action from a conformity determination only if that portion includes "major or minor new or modified stationary sources," and additionally, only if those sources "require a permit under the new source review (NSR) program . . . or the prevention of significant deterioration program."[61] This unambiguous language contains no indication that these two requirements are disjunctive; both conditions must be met for emissions from a particular source to be exempt from the conformity analysis. Because Jonah Energy's drill rigs are not "major or minor new or modified stationary sources," they must be included in BLM's conformity analysis.

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[57] *See* Final EIS at 2-24 to 2-25.
[58] 42 U.S.C. §§ 7411(a)(3), 7602(z); *see also id.* §§ 7550(10) (defining "nonroad engine" with reference to 42 U.S.C. §§ 7411, 7521).
[59] AR, NPL-0787, EPA General Conformity Comments – NPL Preliminary Draft EIS at 1 (Apr. 16, 2013) (EPA General Conformity Comments).
[60] *Id*. (citing 40 C.F.R. § 1068.30 (defining "nonroad engine" to include any internal combustion engine that is "transportable, meaning designed to be and capable of being carried or moved from one location to another," unless it "remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source")).
[61] 40 C.F.R. § 93.153(d)(1).

BLM, Jonah Energy, and Wyoming focus only on the second requirement stated in the NSR conformity exemption. They argue that the drill rig fleet is exempt because it is covered by an NSR permit, and that because Wyoming has an EPA-approved SIP, it has "regulatory primacy over air quality within its borders."[62] They claim that BLM was entitled to (or was required to) rely in its conformity determination on Wyoming's SIP, and that the SIP contains adequate permitting and enforcement mechanisms to ensure that NPL Project emissions will not prevent the attainment of the ozone NAAQS.[63] With sources subject to the NSR permit excluded from the conformity analysis and at the reduced pace of development that BLM adopted, these parties assert that emissions from all other sources will remain below the de minimis threshold.[64] They also argue that WildEarth is actually challenging Wyoming's decision to include non-stationary sources in its NSR permit program, and that this appeal is an improper forum to litigate that question.[65]

These arguments largely fail to answer the central thrust of WildEarth's appeal and of our reasoning above. We express no opinion here about whether it is proper for Wyoming to require (or grant) NSR permits for non-stationary sources, nor do we assume that Wyoming will fail to appropriately administer its air quality program or that Jonah Energy will violate its permit.[66] Indeed, we recently recognized the importance of comity—a proper respect for a state's role in a statutory scheme of cooperative federalism—in holding that the Office of Surface Mining Reclamation and Enforcement was not required to act upon certain alleged permit violations that the relevant state regulatory body had not recognized.[67] That principle, however, cannot overcome the unambiguous text of a statute or regulation.[68] Under both EPA's and Wyoming's regulations, BLM may exclude from a conformity determination "stationary sources that require a permit under the [NSR] program,"[69] but it may not exclude *non-stationary* sources, even if they also require an NSR permit. Wyoming's decision to grant an NSR

[62] Jonah Energy Answer at 10.
[63] *See* BLM Answer at 13-14; Jonah Energy Answer at 8; Wyoming Answer at 10-11.
[64] *See* BLM Answer at 10-11; Jonah Energy Answer at 4-7 (citing, e.g., Final EIS at 4-21 ("In assessing whether the NPL Project emissions would be below the *de minimis* levels for VOCs and NO_x, the emissions are calculated such that the totals do not include the drill rig and production sources which will be permitted by the Wyoming DEQ.")).
[65] *See* BLM Answer at 13; Jonah Energy Answer at 11-12.
[66] *See* BLM Answer at 13-14 (citing *Duna Vista Resorts*, 187 IBLA 43, 52 (2016)); Wyoming Answer at 11; *see also* WildEarth Guardians' Reply at 9 (filed May 23, 2019) (WildEarth Reply) ("The issuance and substance of the drill rig permit is immaterial to the issue at hand.").
[67] *See WildEarth*, 199 IBLA at 193-94, 198.
[68] *Id.* at 194 (holding that when the applicable text does not unambiguously answer a question, "the weight of comity increases").
[69] 40 C.F.R. § 93.153(d)(1).

permit is insufficient to qualify a source for the NSR conformity exemption unless that source is also a "stationary source." It remains BLM's responsibility to ensure that its own actions conform to EPA's regulations and Wyoming's SIP,[70] and it must include in its conformity analysis all sources of emissions that those authorities require.

For the same reason, it makes no difference whether Jonah Energy was required to obtain an NSR permit for its drill rig fleet or whether it voluntarily sought one. Jonah Energy claims that a source may be exempt from a conformity analysis if it "*receives*" an NSR permit, and it argues that WildEarth "elevates form over substance" by arguing that the regulation applies only "if the action or source *requires*" an NSR permit.[71] Although the regulation itself uses the term "require" rather than "receive,"[72] we need not address this distinction because the rigs are still not "stationary sources."

All of the parties attempt to draw support for their respective positions from the comments, actions, or inactions of other agencies. As noted above, WildEarth argues that in its comments on the Preliminary Draft EIS for the NPL Project, EPA confirmed that the exemption "only applies to stationary emission sources," that Jonah Energy's mobile drill rigs "generally do not meet" the definition of "stationary sources," and that the drill rigs thus could not be excluded from EPA's general conformity requirements under that exemption.[73] BLM points out that in comments on a subsequent draft EIS, EPA declined to raise this issue again (although it did raise other concerns about air quality effects of the NPL Project).[74] The parties opposing WildEarth also emphasize that WDEQ interprets its SIP to allow the NSR conformity exemption for permitted non-stationary sources.[75] It makes no difference to our analysis whether EPA and WDEQ support (or do not object to) the regulatory interpretation that BLM advances here, because we must apply the plain text of the regulation in question unless it is "genuinely ambiguous."[76] The text of the NSR conformity exemption contains no hint that it may apply to non-stationary

[70] 42 U.S.C. § 7506(c)(1).
[71] *See* Jonah Answer at 15.
[72] 40 C.F.R. § 93.153(d)(1).
[73] *See* WildEarth SOR at 14 (quoting EPA General Conformity Comments at 1).
[74] *See* BLM Answer at 12 (citing AR, NPL-2212, Normally Pressured Lance Natural Gas Development Project Draft Environmental Impact Statement: EPA Region 8 Detailed Comments and Recommendations at 3 (Aug. 21, 2017) (recommending an air quality adaptive management plan "to ensure that this project does not contribute to exceedances of the NAAQS")); *see also* Wyoming Answer at 12-13; Jonah Energy Answer at 15-16.
[75] *See* BLM Answer at 12; Jonah Energy Answer at 16.
[76] *Kisor v. Wilkie*, 588 U.S. 558, 573 (2019); *cf. Marathon Oil Co.*, 139 IBLA 347, 353 (1997) ("While a regulatory preamble may be used to interpret an ambiguous regulation, it cannot derogate the plain words of the regulations or enlarge their meaning.").

sources, even if they have an NSR permit, and any views that EPA or WDEQ might express to the contrary are therefore not persuasive.

Jonah Energy defends BLM's determination in part by arguing, for two reasons, that BLM has already taken the steps necessary to analyze or to protect air quality. First, Jonah Energy emphasizes that BLM reduced the pace of development in the approved NPL Project to ensure that emissions would remain below a de minimis level for purposes of the general conformity requirements.[77] As the Final EIS explains, however, BLM excluded drill rig emissions when considering whether NPL Project emissions would be below the de minimis threshold.[78] The fact that BLM found less-than-de minimis emissions after omitting those sources does not demonstrate that it was proper to omit them.

Second, Jonah Energy argues that, because Wyoming issued an NSR permit for the drill rig fleet, the fleet's emissions are already "accounted for in Wyoming's SIP."[79] As a result, "BLM need not . . . account for these emissions[] again" in its conformity analysis, because doing so would "essentially . . . double-count these emissions."[80] We cannot accept this argument because the finding required to grant the NSR permit is different from the findings required for the conformity determination. As Jonah Energy explains, Wyoming may grant an NSR permit upon finding that the permitted sources "will not prevent the attainment or maintenance of any ambient air quality standard."[81] To approve the NPL Project under the applicable conformity regulations, in contrast, BLM must determine that the Project will not "cause or contribute to any new violation of any standard in any area," "increase the frequency or severity of any existing violation," or "delay timely attainment of any standard."[82] These criteria are similar but not identical. We recognize the possibility that, if BLM were to conduct a conformity analysis that included the drill rig fleet, Wyoming's NSR permit (or the data supporting it) might be relevant or even dispositive of the conformity determination that BLM is required to make.[83] But under the language of the applicable regulations and Wyoming's

[77] *See* Jonah Energy Answer at 6-7.
[78] *See* Final EIS at 4-21 to 4-22.
[79] Jonah Energy Answer at 14.
[80] *Id.* at 13-14.
[81] *Id.* at 10 (quoting WDEQ Rules, Ch. 6, § 2(c)(ii)); *see also* 42 U.S.C. § 7410(a)(2)(D)(i)(I) (requiring a SIP to contain adequate provisions to prohibit any source from emitting air pollutants in an amount that will "contribute significantly to nonattainment").
[82] 42 U.S.C. § 7506(c)(1)(B).
[83] *Cf. Ctr. for Cmty. Action & Env't Just. v. FAA*, 61 F.4th 633, 653 (9th Cir. 2023) (holding that, for NEPA purposes, an agency may analyze emissions conformity for a proposed project by ensuring that the project's emissions fall within a state's general conformity emissions budget).

SIP, the fact that Wyoming has issued an NSR permit is not sufficient to excuse BLM from conducting that analysis.

Because the plain text of the NSR conformity provision does not contain any exemption for non-stationary sources, even where they have received an NSR permit, BLM erred in applying such an exemption to the drill rigs. Its Record of Decision was therefore not supported by a valid Clean Air Act conformity determination and must be vacated.

II. BLM Was Entitled to Ensure Conformity by Constraining Its Future Decisions

WildEarth also argues that BLM could not approve "*as many as* 3,500 natural gas wells . . . resulting in up to 350 wells site-specifically approved per year" when its conformity determination would not support that pace of development.[84] BLM determined that emissions from the NPL Project (excluding the drill rig fleet) would fall below the de minimis threshold for conformity only at a reduced pace of development of 160 wells per year.[85] WildEarth contends that BLM did not include this limitation "in the body of its decision record," instead stating that it would "only approve a level of development below the de minimis emission limits."[86] In WildEarth's view, this does not constitute the "specific, enforceable mitigation measures required in 40 C.F.R. § 93.160."[87]

BLM responds that Applications for Permit to Drill (APDs) "would only be approved after site specific analyses and so long as the associated emissions with approved wells are within the *de minim[i]s* levels identified."[88] Similarly, Jonah Energy asserts that "the [Record of Decision] and the NPL Conformity require a reduced pace of development," and it acknowledges that it "is currently limited to a maximum of 160 wells per year."[89] It does not matter, according to Jonah Energy, that this limitation is

[84] WildEarth SOR at 18 (quoting Record of Decision at 3).
[85] *See* Conformity Determination at B-5 ("For the Conformity emission inventory . . . proposed well and pad counts were reduced in the proposed action inventory until the de minimis emission threshold was reached."); B-6 (finding conformity based on a development scenario of 160 wells per year).
[86] WildEarth SOR at 18 (quoting Record of Decision at 14); *see also* WildEarth Reply at 13 ("Only if BLM specifically restricts drilling to 160 wells per year are emissions expected to fall below de minimis levels. But, BLM fails to explicitly do so here . . . .").
[87] WildEarth SOR at 18; *see also, e.g.*, 40 C.F.R. § 93.160(f) ("Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.").
[88] BLM Answer at 16-17.
[89] Jonah Energy Answer at 19-20.

found in the conformity determination (an appendix to the Record of Decision) rather than in the Record of Decision itself.[90]

Although we held above that the conformity determination was inconsistent with the Clean Air Act, we nonetheless address this argument for BLM's benefit in the event it chooses to conduct a new conformity analysis for the NPL Project. We hold that WildEarth has not shown error in BLM's decision to make its conformity determination contingent upon a reduced pace of development.

The conformity determination states that "[t]he only option available at this time to demonstrate conformity for the NPL Project is for the BLM to reduce and limit the pace of development in order not to exceed the annual *de-minimis* emissions thresholds" for the relevant pollutants.[91] BLM made its general conformity determination based on that "reduced pace of development."[92] This constraint was then included in the Record of Decision itself. There, BLM stated that it "will not approve a level of development for the NPL Project that will exceed the *de minimis* emission limits," and that it "will only approve a level of development below the *de minimis* emission limits, which could result in a level of development less than 350 wells per year."[93] BLM required Jonah Energy to submit annual emissions data and reports to support BLM in observing this constraint.[94] Furthermore, the NPL Project that BLM approved was the Preferred Alternative discussed in the Final EIS.[95] There, too, BLM stated that it "would only approve an annual level of development at or below the *de minimis* emission levels . . . which could result in a level of development less than 350 wells per year."[96] BLM also described this reduced pace of development as a mitigation measure for the NPL Project that is necessary to ensure conformity.[97]

As described in the previous section, BLM must conduct an appropriate conformity analysis that includes all non-exempt sources. Once that appropriate conformity analysis identifies the pace of development that will have no greater than de minimis emissions, BLM may adopt a decision that limits development to that pace. We find that BLM's Decision Record here was thus limited, although it improperly excluded non-exempt sources. BLM did not make a conformity determination that depended on

[90] *See id.* at 20.
[91] Conformity Determination at B-4.
[92] *Id.* at B-6.
[93] Record of Decision at 14.
[94] *See id.*
[95] *See id.* at 3.
[96] Final EIS at 4-22 (describing the Proposed Action); *id.* at 4-54, 4-56 (noting that all alternatives would have substantially similar air quality impacts and would be subject to the same reduced pace of development).
[97] *Id.* at 4-53.

future voluntary or non-binding mitigation measures; rather, it approved a project with a reduced scope that constrained BLM's own future ability to authorize NPL Project development based on the information before it at the time of site-specific decisions. The Record of Decision leaves open the possibility that Jonah Energy may be able to drill more than 160 wells per year due to "technological improvements" or "regulatory changes" that keep emissions below the de minimis threshold,[98] but it also could require BLM to further restrict the pace of development if necessary to stay below that threshold. This constitutes BLM's "written commitment" to the mitigation measure (i.e., the reduced pace of development).[99] Subject to our holding that the particular conformity determination here was erroneous, we hold that this general approach to ensuring conformity in the future implementation of the NPL Project was not contrary to the conformity requirements of the Clean Air Act or its implementing regulations.

III. We Need Not Decide Whether BLM's Cumulative Effects Analysis Violated NEPA

In addition to its argument based on the Clean Air Act, WildEarth argues that BLM violated NEPA by failing adequately to analyze the cumulative effects of the Project together with other projects that BLM identified in the Final EIS. Under the regulations in place at the time of BLM's Record of Decision, it was required to evaluate the impacts that the NPL Project would have when considered cumulatively with "other past, present, and reasonably foreseeable future actions."[100]

The Final EIS noted that in addition to the NPL Project, there are a number of other oil and gas projects in the analysis area including the Jonah Infill, Pinedale Anticline, Moxa Arch/Blacks Fork, and Greater Natural Buttes projects approved by BLM, along with other sources of greenhouse gas emissions such as electric generation sources and other industrial processes.[101] BLM found that these projects would make "significant contributions to [greenhouse gas] emissions."[102] BLM wrote in the Final EIS that greenhouse gas emissions from "the NPL Project and all of these other sources would contribute to the global atmospheric budget," potentially affecting local and regional weather patterns, increases in temperature, changes to precipitation timing and amounts, and other aspects of climate and the environment.[103]

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[98] Record of Decision at 14.
[99] 40 C.F.R. § 93.160(b); *see also id.* § 93.160(e) (providing that mitigation measures may be modified during implementation of a project "because of changed circumstances" as long as "the new mitigation measures continue to support the conformity determination").
[100] *Id.* § 1508.7 (2018).
[101] *See* Final EIS at 4-399 to 4-412.
[102] *Id.* at 4-422.
[103] *Id.*; *see also id.* at 3-35 to 3-41 and 4-58 to 4-59.

WildEarth argues that this cumulative effects analysis was inadequate because, "although BLM includes an extensive list of oil and gas development actions near the NPL Project that it admits are 'reasonably foreseeable,'" BLM did not "actually assess the impacts from these actions."[104] It contends that BLM must provide "the necessary contextual information" to determine whether these projects would have effects that are "collectively significant," and that to do this, BLM must "quantify the cumulative greenhouse gas emissions from . . . the surrounding, reasonably foreseeable projects."[105]

Because we are vacating the Record of Decision on Clean Air Act grounds, BLM cannot approve the NPL Project without a new agency decision. That decision will likely require at least some additional analysis in light of recent developments in the regulatory interpretation and judicial application of NEPA. This is true for several reasons. First, the analysis of greenhouse gas emissions in the Final EIS was based on projections of 2020 emissions prepared in 2007.[106] Those projections are now almost 20 years old. More recent data is likely available both for Wyoming's actual statewide greenhouse gas emissions and its projected emissions.

Second, case law has continued to evolve concerning the requirements for a cumulative effects analysis of greenhouse gas emissions since BLM issued the Record of Decision in 2018. BLM relies on *WildEarth Guardians v. Jewell*, in which the D.C. Circuit upheld BLM's analysis of greenhouse gas emissions from the lease of Federal land to be added to the Antelope Mine in the Powder River Basin.[107] The court approved BLM's choice to conduct its cumulative effects analysis by quantifying the mine's contribution to statewide and nationwide greenhouse gas emissions.[108] Since that time, some Federal courts additionally have required a quantitative analysis of the cumulative effects of specific related other agency actions on greenhouse gas emissions.[109] Others have approved BLM's cumulative effects analysis, either with a quantitative component for

[104] Statement of Reasons at 20.
[105] *Id.* at 21-22.
[106] *See* Final EIS at 4-60 to 4-61.
[107] 738 F.3d 298 (D.C. Cir. 2013).
[108] *See id.* at 309; *see also Bristlecone All.*, 179 IBLA 51, 86 (2010) (approving a cumulative effects analysis that identified "single-source emissions additions" to the pool of greenhouse gas emissions).
[109] *See, e.g.*, *WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237, 249-50 (D.D.C. 2020); *WildEarth Guardians v. BLM*, 457 F. Supp. 3d 880, 891-94 (D. Mont. 2020); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77 (D.D.C. 2019); *Indigenous Env't Network v. U.S. Dep't of State*, 347 F. Supp. 3d 561, 577-79 (D. Mont. 2018).

such other actions[110] or without one.[111] Two U.S. Courts of Appeals, including the Tenth Circuit, have questioned whether the D.C. Circuit's approach in *WildEarth Guardians v. Jewell* remains valid.[112]

Finally, and perhaps most immediately relevant, the regulations that explicitly required the consideration of cumulative impacts have been rescinded.[113] BLM must continue to "make predictive and scientific judgments in assessing the relevant impacts" of its decisions, and reviewing courts will continue to assess whether "the agency has addressed environmental consequences and feasible alternatives."[114] The specific contours of those requirements, however, may well be different at the time of any new decision BLM makes with respect to the NPL Project than at the time of the Final EIS. Consistent with the Supreme Court's admonition that "an agency exercises substantial discretion" on the required scope of a NEPA analysis,[115] the proper course for this Board is to allow BLM to consider in the first instance how the evolving requirements of NEPA might affect its cumulative effects analysis for the NPL Project. We therefore find it unnecessary to decide the merits of WildEarth's NEPA argument here.

CONCLUSION

BLM's Record of Decision required the support of a valid conformity determination under the Clean Air Act. Because we find error in BLM's conformity determination, BLM approved the Record of Decision in error. The Record of Decision is therefore vacated.

DAVID GUNTER Digitally signed by DAVID GUNTER Date: 2026.01.15 08:39:07 -05'00'

David Gunter
Administrative Judge

I concur: CLIFFORD STEVENS Digitally signed by CLIFFORD STEVENS Date: 2026.01.15 09:11:28 -05'00'

Clifford E. Stevens, Jr.
Administrative Judge

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[110] *See, e.g.*, *Ctr. for Biological Diversity v. BLM*, 141 F.4th 976, 1000-01 (9th Cir. 2025); *Dakota Res. Council v. U.S. Dep't of Interior*, No. 22-cv-1853, 2024 U.S. Dist. LEXIS 51013, at *38-39 (Mar. 22, 2024); *WildEarth Guardians v. BLM*, 8 F. Supp. 3d 17, 35 (D.D.C. 2014).

[111] *See Rocky Mt. Wild v. Bernhardt*, 506 F. Supp. 3d 1169, 1182-83 (D. Utah 2020); *WildEarth Guardians v. Bernhardt*, 501 F. Supp. 3d 1192, 1211 (D.N.M. 2020); *Citizens for a Healthy Cmty. v. BLM*, 377 F. Supp. 3d 1223, 1238-39 (D. Colo. 2019).

[112] *See Diné Citizens Against Ruining Our Envt. v. Haaland*, 59 F.4th 1016, 1042-44 (10th Cir. 2023); *350 Mont. v. Haaland*, 50 F.4th 1254, 1272 (9th Cir. 2022).

[113] *See* Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10,610 (Feb. 25, 2025) (rescission of CEQ regulations); *see also* National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 29,498 (July 3, 2025) (partial rescission of Departmental NEPA regulations).

[114] *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 169, 181 (2025).

[115] *Id.* at 181.