

In an important ruling this morning, the Tenth Circuit rejected the government's assertion that it could ignore carbon emissions tied to renewing coal leases. In [WildEarth Guardians v. BLM](#), the court also rejected the mining company's attack on the standing of environmental groups to raise this claim. The mines in question are in the Powder River Basin, which is the source of almost 40% of coal production. The mines involved in the case are massive, producing 230 million tons of coal a year, or 20% of annual production. So the case has not only legal but practical significance. The government's environmental impact statement, however, claimed that the U.S. would use the same amount of coal regardless of whether the leases were renewed, so the renewal would have no effect on carbon emissions or climate change.

The court began by rejecting the mining companies' standing challenge. According to the court, "it is not the case that Plaintiffs' injury must be tied to the particular deficiency alleged in the FEIS [Final Environmental Impact Statement], 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." Thus, it was enough that the mines would cause other environmental impacts on the plaintiffs, and that a court's remedy in the case would also indirectly address those other impacts. This position was previously taken by the D.C. Circuit, so this part of the decision is not pathbreaking. Nevertheless, it provides important support to a principle that should greatly assist plaintiffs in establishing standing. Showing standing based on climate impacts is more difficult because climate harms involve complex chains of causation, and it is hard to show that any particular carbon source will have a measurable effect on the plaintiffs. But these courts seem right that plaintiffs have other, easier ways of establishing standing, which they can then use to raise climate-related issues.

The court then turned to the merits. It had no problem rejecting as economically irrational the premise that eliminating an important part of the supply of coal would have no effect on consumption. There was no evidence in the record to support this questionable premise. The agency had cited to portions of a report by the Energy Information Agency, but other portions of the report made it clear that coal demand is sensitive to price, and it is basic economics that reducing supply increases price. And in other parts of its decision, the agency "repeatedly noted that PRB [Powder River Basin] coal enjoys several cost advantages over coal from other regions."

Significantly, the court also rejected any special deference to the agency based on the nature of the issues in the case:

"We do not owe the BLM any greater deference on the question at issue here

because it does not involve “the frontiers of science.” The BLM acknowledged that climate change is a scientifically verified reality. Climate science may be better in 2017 than in 2010 when the FEIS became available, but it is not a scientific frontier as defined by the Supreme Court in *Baltimore Gas*, i.e., as barely emergent knowledge and technology.”

Given that a concurring judge had questioned the court’s choice to describe climate science as settled, this language about the frontiers of science clearly was considered.

Given Trump’s desire to eliminate climate change as a factor in energy policy, this decision is clearly bad news for the Administration. Correspondingly, it is good news for anyone who doesn’t share the President’s desire to pour as much carbon into the atmosphere as possible.