

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 14 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CITY OF FERNLEY,

Plaintiff - Appellant,

and

DAVID F. STIX, Jr., DEENA E.
EDMONSTON,

Intervenor-Plaintiffs,

v.

ERNEST A. CONANT, Regional Director
of the U.S. Bureau of
Reclamation; UNITED STATES BUREAU
OF RECLAMATION,

Defendants - Appellees,

and

PYRAMID LAKE PAIUTE TRIBE,

Intervenor-Defendant -
Appellee.

No. 25-1776

D.C. No.

3:21-cv-00119-MMD-CLB

MEMORANDUM*

CITY OF FERNLEY,

No. 25-1782

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Plaintiff,

and

DAVID F. STIX, Jr.; DEENA E.
EDMONSTON,

Intervenor-Plaintiffs -
Appellants,

v.

ERNEST A. CONANT; UNITED STATES
BUREAU OF RECLAMATION,

Defendants - Appellees,

and

PYRAMID LAKE PAIUTE TRIBE,

Intervenor-Defendant -
Appellee.

D.C. No.
3:21-cv-00119-MMD-CLB

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding

Argued and Submitted August 12, 2026
Reno, Nevada

Before: OWENS, FORREST, and VANDYKE, Circuit Judges.

Plaintiff-Appellant City of Fernley and Intervenor-Appellants David Stix and Deena Edmonston (Plaintiffs) appeal the district court's grant of summary judgment for Defendant-Appellee Bureau of Reclamation (Reclamation) on their National Environmental Policy Act (NEPA) claims. We have jurisdiction under 28 U.S.C.

§ 1291 and affirm.

We review cross-motions for summary judgment de novo. *Moving Oxnard Forward, Inc. v. Lopez*, 173 F.4th 1070, 1076 (9th Cir. 2026) (en banc). Summary judgment is appropriate if, taking the evidence and all reasonable inferences in the light most favorable to the non-moving party, “there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *Cascadia Wildlands v. BLM*, 153 F.4th 869, 892 (9th Cir. 2025) (citation modified).

We review compliance with NEPA under the Administrative Procedure Act, and we “must set aside agency action if we find it to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Friends of the Inyo v. USFS*, 103 F.4th 543, 551 (9th Cir. 2024) (citation modified). The Supreme Court has recently reiterated that “NEPA is a *purely procedural statute*,” and, under the governing standard of review, the job of a reviewing court is not to address “whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained.” *Seven County Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 180 (2025). More specifically, the court is “to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project.” *Id.*

Plaintiffs press three NEPA deficiencies in Reclamation’s environmental impact statement (EIS): (1) it fails to consider a reasonable range of alternatives,

(2) it fails to properly address the potential impacts of a reduction in canal seepage for each alternative, and (3) it does not sufficiently discuss measures to mitigate the impact of the project. None give reason to reverse.

1. ***Range of Alternatives.*** An EIS must include a “detailed statement” on “a reasonable range of alternatives to the proposed agency action.” 42 U.S.C. § 4332(2)(C)(iii). But an agency is not required to “consider alternatives that are unlikely to be implemented or those inconsistent with its basic policy objectives.” *HonoluluTraffic.com v. Fed. Transit Admin.*, 742 F.3d 1222, 1231 (9th Cir. 2014) (citation modified). When an agency explains that a characteristic of a project is essential to that project, the agency does not violate NEPA by failing to seriously consider an alternative that does not possess that essential characteristic. *See Audubon Soc’y of Portland v. Haaland*, 40 F.4th 967, 991 (9th Cir. 2022); *see also Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 198 (D.C. Cir. 1991) (holding that agency did not violate NEPA when it eliminated all but one alternative for further discussion). And alternatives that merit no further analysis warrant only a brief discussion of the reasons for their elimination. *Ctr. for Biological Diversity v. BLM*, 141 F.4th 976, 993 (9th Cir. 2025) (citation modified).

Here, Reclamation sufficiently explained why it selected some alternatives for further study and rejected others. The rejected alternatives were not given further consideration because they did not meet the purpose of the project after Reclamation

conducted feasibility studies in 2017. We conclude that Reclamation sufficiently explained in the EIS that the alternatives it rejected did not meet the goals of the project.

2. *Potential Impacts of the Project.* NEPA requires an agency to “take a hard look at the environmental consequences” of a proposed action. *Ctr. for Biological Diversity*, 141 F.4th at 993 (citation modified); *see also Seven County*, 605 U.S. at 181 (“The EIS also must identify significant environmental impacts”); 42 U.S.C. § 4332(2)(C)(i) (requiring a “detailed statement” on “environmental effects”). That “hard look” requires providing sufficient detail about the environmental impacts of the proposed alternatives to permit informed agency decisionmaking and meaningful public participation. *Ctr. for Biological Diversity*, 141 F.4th at 993–94 (citation modified); *see also Audubon Soc’y of Portland*, 40 F.4th at 982.

Plaintiffs contend generally that the EIS did not sufficiently address the project’s impact on the aquifer, and they also raise several topic-specific objections.

As to Plaintiffs’ general challenge, an EIS need only generally discuss a project’s subsequent impact on groundwater. *See Ariz. Mining Reform Coal. v. USFS*, 172 F.4th 641, 659–60 (9th Cir. 2026) (concluding that agency’s “conceptual” and “qualitative” discussion of impacts on groundwater was entitled to deference under *Seven County*). The EIS here meets that standard by quantifying the

seepage that would be lost under each alternative and by describing some of the effects of that loss.

In its topic-specific challenges, Fernley first charges that the EIS should have used the Desert Research Institute model for further studies. Under NEPA, an EIS must “utilize a systematic, interdisciplinary approach” to “ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment.” 42 U.S.C. § 4332(2)(A).¹ Reclamation did rely on older data, but it is not required to do additional analysis if such analysis would not significantly improve the understanding of the environmental impacts of the project. *Cf. League of Wilderness Defs. Blue Mountains Biodiversity Project v. Allen*, 615 F.3d 1122, 1136 (9th Cir. 2010) (“[T]he inclusion of additional, unnecessary data in the EIS would run contrary to the purpose of NEPA.”); *Idaho Wool Growers Ass’n v. Vilsack*, 816 F.3d 1095, 1106 (9th Cir. 2016) (explaining that an agency need not supplement an EIS unless the new information is significant). As the Supreme Court recently repeated,

¹Fernley suggested, both in briefing and at oral argument, that a “best science available” standard applies. Oral Arg. at 29:39; Fernley Op. Br. at 22. Not so. The role of a court is not to “decide whether an EIS is based on the best scientific methodology available.” *Or. Nat. Res. Council Fund v. Goodman*, 505 F.3d 884, 897 (9th Cir. 2007) (citation modified). Indeed, the two sources it cites for such a proposition, Fernley Op. Br. at 22 n.80, suggest agencies should refer to “relevant science,” 40 C.F.R. § 1502.16(a)(9) (removed by 91 Fed. Reg. 618 (2026)), and “reliable data and resources,” 42 U.S.C. § 4332(2)(E).

“inherent in NEPA . . . is a rule of reason, which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.” *Seven County*, 605 U.S. at 183 (citation modified) (quoting *Dept. of Trans. v. Public Citizen*, 541 U.S. 752, 767 (2004)). Where even the most recent evidence presented by Fernley suggests an impact on the aquifer similar to the one described in the EIS, we conclude that it was reasonable for Reclamation to rest on the data it had.

Next, Plaintiffs assert that the EIS does not sufficiently discuss the impact of the project on local geology and land subsidence. Reclamation directly addressed Plaintiffs’ comments on this issue, explaining that the soils were already over-consolidated from the seepage. While Plaintiffs object to Reclamation’s scientific conclusion regarding the impact of the decrease in seepage, that conclusion is owed deference under “[b]lack-letter administrative law.” *Id.* at 182.

Plaintiffs also argue that the EIS fails to adequately analyze impacts to phreatophyte plains outside the project area. The EIS discusses impacts on potential general vegetation loss and explains that the amount of loss would be minor in proportion to the vegetation in the region. The failure to discuss phreatophytes specifically is not a NEPA violation. *Cf. Audubon Soc’y of Portland*, 40 F.4th at 984 (explaining that NEPA requires only a “reasonably thorough discussion” (citation modified)).

Finally, Plaintiffs contend that the EIS does not sufficiently discuss the impact of the project on water quality in Fernley. The EIS did recognize that Fernley’s wells draw from the part of the aquifer that tested high for arsenic. But the EIS also noted that the water-treatment plant effectively treats the water for safe human consumption in both the discussion of the environmental consequences and in response to comments. And the EIS also explains that the domestic (non-municipal) wells draw from the shallow aquifer and are unlikely to be affected by a concentration of arsenic, which is found deeper in the aquifer. That discussion falls within the “broad zone of reasonableness” afforded to agencies in preparing an EIS. *Seven County*, 605 U.S. at 183.

3. Mitigation Measures. The requirement that an EIS include a detailed discussion of possible mitigation measures “flows” from the language of NEPA. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351–52 (1989). Mitigation must be discussed in sufficient detail—“[p]erfunctory descriptions or mere lists of mitigation measures are insufficient.” *Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1088 (9th Cir. 2013). Yet “NEPA imposes no substantive requirement” that the discussed “mitigation measures actually be taken.” *Japanese Vill., LLC v. Fed. Transit Admin.*, 843 F.3d 445, 463 (9th Cir. 2016) (quoting *Robertson*, 490 U.S. at 353 n.16).

The EIS discusses a wide range of mitigation measures that will prevent

potential environmental effects from the project itself that were not included in the discussion of the alternatives, such as controlling runoff and storing equipment away from aquatic habitat. But Plaintiffs’ argument is better taken as a challenge to the discussion of mitigation of the seepage decline that will result from the project. In that respect, Reclamation discusses that the chosen alternative limits the unavoidable seepage decline and its consequences by leaving lower-risk segments of the canal unlined. That qualifies as a discussion of mitigation—especially when the agency is afforded deference—because it “[m]inimiz[es] impacts by limiting the degree or magnitude of the action and its implementation.” *Id.* at 457 (citation modified).²

AFFIRMED.

² Plaintiffs insinuate in their briefs that agency staff conspired to steer Reclamation towards the preferred alternative and that Reclamation “fabricated an excuse” to omit certain alternatives. These allegations of misconduct are not well taken where they are unsupported by any citation to the record.