WILDEARTH GUARDIANS
A FORCE FOR NATURE

May 4, 2018

Protest submitted via overnight mail

U.S. Bureau of Land Management
Nevada State Office
Attn. John Ruhs, State Director
1340 Financial Blvd.
Reno, NV 89502
Fax: (775) 861-6711

RECEIVED
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BLM NVSO IAC

Re: Protest of DOI-BLM-NV-B020-2018-0017-EA for the June 12, 2018 Competitive Oil and Gas Lease Sale

Pursuant to 43 C.F.R. § 3120.1-3, WildEarth Guardians submits the following protest of the U.S. Bureau of Land Management's ("BLM's") decision to approve an Environmental Assessment ("EA") in support of its June 12, 2018 competitive oil and gas lease sale for the Battle Mountain District Office in central Nevada. The agency is proposing to lease 166 publicly-owned mineral parcels comprising 313,715.310 acres in Eureka, Lander, and Nye Counties.

This protest is filed on behalf of WildEarth Guardians and its members. The mailing address to which correspondence regarding this protest should be directed is as follows:

Rebecca Fischer, Climate Guardian
WildEarth Guardians
2590 Walnut Street
Denver, CO 80205

Guardians protests the following lease parcels:

Lease Serial #	Acres	County	District Office
NV-18-06-001	1902.450	Nye	Battle Mountain
NV-18-06-002	2480.000	Nye	Battle Mountain
NV-18-06-003	2080.000	Nye	Battle Mountain
NV-18-06-004	2360.000	Nye	Battle Mountain

NV-18-06-005	2480.000	Nye	Battle Mountain
NV-18-06-006	1600.000	Nye	Battle Mountain
NV-18-06-007	1920.980	Nye	Battle Mountain
NV-18-06-008	2200.000	Nye	Battle Mountain
NV-18-06-009	1280.000	Nye	Battle Mountain
NV-18-06-010	959.100	Nye	Battle Mountain
NV-18-06-011	1928.620	Nye	Battle Mountain
NV-18-06-012	2037.150	Nye	Battle Mountain
NV-18-06-013	2560.000	Nye	Battle Mountain
NV-18-06-014	2232.160	Nye	Battle Mountain
NV-18-06-015	1680.000	Nye	Battle Mountain
NV-18-06-016	1760.000	Nye	Battle Mountain
NV-18-06-017	613.840	Lander	Battle Mountain
NV-18-06-018	2406.220	Nye	Battle Mountain
NV-18-06-019	2360.000	Nye	Battle Mountain
NV-18-06-020	1923.680	Nye	Battle Mountain
NV-18-06-021	1920.000	Nye	Battle Mountain
NV-18-06-022	1920.000	Nye	Battle Mountain
NV-18-06-023	2560.000	Nye	Battle Mountain
NV-18-06-024	2560.000	Nye	Battle Mountain
NV-18-06-025	1939.620	Nye	Battle Mountain
NV-18-06-026	641.960	Nye	Battle Mountain
NV-18-06-027	1280.000	Nye	Battle Mountain
NV-18-06-028	1924.000	Nye	Battle Mountain
NV-18-06-029	1920.000	Nye	Battle Mountain
NV-18-06-030	1251.000	Nye	Battle Mountain
NV-18-06-031	954.790	Nye	Battle Mountain
NV-18-06-032	2080.000	Nye	Battle Mountain
NV-18-06-033	1920.000	Nye	Battle Mountain
NV-18-06-034	2440.000	Nye	Battle Mountain
NV-18-06-035	2560.000	Nye	Battle Mountain
NV-18-06-036	2560.000	Nye	Battle Mountain
NV-18-06-037	1247.970	Nye	Battle Mountain
NV-18-06-038	1760.000	Nye	Battle Mountain
NV-18-06-039	1360.000	Nye	Battle Mountain
NV-18-06-040	1440.000	Nye	Battle Mountain
NV-18-06-041	1560.000	Nye	Battle Mountain
NV-18-06-042	960.000	Nye	Battle Mountain
NV-18-06-043	2400.000	Nye	Battle Mountain

NV-18-06-044	1400.000	Nye	Battle Mountain
NV-18-06-045	1923.080	Nye	Battle Mountain
NV-18-06-046	1920.000	Nye	Battle Mountain
NV-18-06-047	1280.000	Nye	Battle Mountain
NV-18-06-048	1389.370	Nye	Battle Mountain
NV-18-06-049	2000.000	Nye	Battle Mountain
NV-18-06-050	1035.080	Nye	Battle Mountain
NV-18-06-051	2312.000	Nye	Battle Mountain
NV-18-06-052	1280.000	Nye	Battle Mountain
NV-18-06-053	1278.000	Nye	Battle Mountain
NV-18-06-054	1280.000	Nye	Battle Mountain
NV-18-06-055	2545.000	Nye	Battle Mountain
NV-18-06-056	1200.000	Nye	Battle Mountain
NV-18-06-057	1200.000	Nye	Battle Mountain
NV-18-06-058	2549.000	Nye	Battle Mountain
NV-18-06-059	2560.000	Nye	Battle Mountain
NV-18-06-060	624.000	Nye	Battle Mountain
NV-18-06-061	2545.000	Nye	Battle Mountain
NV-18-06-062	2546.000	Nye	Battle Mountain
NV-18-06-063	1245.000	Nye	Battle Mountain
NV-18-06-064	2293.920	Nye	Battle Mountain
NV-18-06-065	622.980	Nye	Battle Mountain
NV-18-06-066	2542.140	Nye	Battle Mountain
NV-18-06-067	2544.500	Nye	Battle Mountain
NV-18-06-068	2559.780	Nye	Battle Mountain
NV-18-06-069	2559.180	Nye	Battle Mountain
NV-18-06-070	1266.540	Nye	Battle Mountain
NV-18-06-071	1294.000	Nye	Battle Mountain
NV-18-06-072	1285.760	Nye	Battle Mountain
NV-18-06-073	1923.380	Nye	Battle Mountain
NV-18-06-074	1603.380	Nye	Battle Mountain
NV-18-06-075	1200.000	Nye	Battle Mountain
NV-18-06-076	2560.000	Nye	Battle Mountain
NV-18-06-077	2447.970	Nye	Battle Mountain
NV-18-06-078	1280.000	Nye	Battle Mountain
NV-18-06-079	2560.000	Nye	Battle Mountain
NV-18-06-080	2521.200	Nye	Battle Mountain
NV-18-06-081	1917.880	Nye	Battle Mountain
NV-18-06-082	1880.000	Nye	Battle Mountain

NV-18-06-083	1480.000	Nye	Battle Mountain
NV-18-06-084	2043.280	Nye	Battle Mountain
NV-18-06-085	1440.000	Nye	Battle Mountain
NV-18-06-086	960.000	Nye	Battle Mountain
NV-18-06-087	1160.000	Nye	Battle Mountain
NV-18-06-088	1560.000	Nye	Battle Mountain
NV-18-06-089	1914.000	Nye	Battle Mountain
NV-18-06-090	2539.590	Nye	Battle Mountain
NV-18-06-091	2560.000	Nye	Battle Mountain
NV-18-06-092	2560.000	Nye	Battle Mountain
NV-18-06-093	517.920	Nye	Battle Mountain
NV-18-06-094	2560.000	Nye	Battle Mountain
NV-18-06-095	1920.000	Nye	Battle Mountain
NV-18-06-096	1920.000	Nye	Battle Mountain
NV-18-06-097	1436.530	Nye	Battle Mountain
NV-18-06-098	2346.500	Nye	Battle Mountain
NV-18-06-099	2560.000	Nye	Battle Mountain
NV-18-06-100	1955.050	Nye	Battle Mountain
NV-18-06-101	2560.000	Nye	Battle Mountain
NV-18-06-102	2560.000	Nye	Battle Mountain
NV-18-06-103	2542.600	Nye	Battle Mountain
NV-18-06-104	1280.000	Nye	Battle Mountain
NV-18-06-105	2560.000	Nye	Battle Mountain
NV-18-06-106	1344.000	Nye	Battle Mountain
NV-18-06-107	1339.000	Nye	Battle Mountain
NV-18-06-108	1932.000	Nye	Battle Mountain
NV-18-06-109	1920.000	Nye	Battle Mountain
NV-18-06-110	2560.000	Nye	Battle Mountain
NV-18-06-111	2522.000	Nye	Battle Mountain
NV-18-06-112	2555.000	Eureka	Battle Mountain
NV-18-06-113	1911.000	Eureka	Battle Mountain
NV-18-06-114	1920.000	Eureka	Battle Mountain
NV-18-06-115	1917.000	Eureka	Battle Mountain
NV-18-06-116	1918.000	Eureka	Battle Mountain
NV-18-06-117	2560.000	Eureka	Battle Mountain
NV-18-06-118	1919.000	Eureka	Battle Mountain
NV-18-06-119	1920.000	Eureka	Battle Mountain
NV-18-06-120	2559.000	Eureka	Battle Mountain
NV-18-06-121	2513.000	Eureka	Battle Mountain

NV-18-06-122	1913.000	Eureka	Battle Mountain
NV-18-06-123	1920.000	Eureka	Battle Mountain
NV-18-06-124	1920.000	Eureka	Battle Mountain
NV-18-06-125	2554.000	Eureka	Battle Mountain
NV-18-06-126	1954.000	Eureka	Battle Mountain
NV-18-06-127	1920.000	Eureka	Battle Mountain
NV-18-06-128	1280.000	Nye	Battle Mountain
NV-18-06-129	1415.000	Nye	Battle Mountain
NV-18-06-130	1985.000	Nye	Battle Mountain
NV-18-06-131	1280.000	Nye	Battle Mountain
NV-18-06-132	2200.000	Nye	Battle Mountain
NV-18-06-133	1920.000	Nye	Battle Mountain
NV-18-06-134	2240.000	Nye	Battle Mountain
NV-18-06-135	2080.000	Nye	Battle Mountain
NV-18-06-136	2557.000	Nye	Battle Mountain
NV-18-06-137	2520.000	Nye	Battle Mountain
NV-18-06-138	2248.000	Nye	Battle Mountain
NV-18-06-139	2560.000	Nye	Battle Mountain
NV-18-06-140	2560.000	Nye	Battle Mountain
NV-18-06-141	1280.000	Nye	Battle Mountain
NV-18-06-142	1920.000	Nye	Battle Mountain
NV-18-06-143	1153.240	Nye	Battle Mountain
NV-18-06-144	811.080	Nye	Battle Mountain
NV-18-06-145	1280.000	Eureka	Battle Mountain
NV-18-06-146	1280.000	Eureka	Battle Mountain
NV-18-06-147	1904.000	Eureka	Battle Mountain
NV-18-06-148	2390.650	Eureka	Battle Mountain
NV-18-06-149	2497.620	Eureka	Battle Mountain
NV-18-06-150	2560.000	Eureka	Battle Mountain
NV-18-06-151	923.290	Eureka	Battle Mountain
NV-18-06-152	2560.000	Eureka	Battle Mountain
NV-18-06-153	1920.000	Eureka	Battle Mountain
NV-18-06-154	1914.890	Eureka	Battle Mountain
NV-18-06-155	1897.600	Eureka	Battle Mountain
NV-18-06-156	2516.960	Eureka	Battle Mountain
NV-18-06-157	2406.880	Eureka	Battle Mountain
NV-18-06-158	950.880	Eureka	Battle Mountain
NV-18-06-159	2440.000	Eureka	Battle Mountain
NV-18-06-160	2480.000	Eureka	Battle Mountain

NV-18-06-161	1905.570	Eureka	Battle Mountain
NV-18-06-162	2240.000	Eureka	Battle Mountain
NV-18-06-163	320.000	Nye	Battle Mountain
NV-18-06-164	320.000	Nye	Battle Mountain
NV-18-06-165	1228.000	Nye	Battle Mountain
NV-18-06-166	2456.500	Nye	Battle Mountain

INTEREST OF THE PROTESTING PARTY

WildEarth Guardians is a nonprofit environmental advocacy organization dedicated to protecting the wildlife, wild places, wild rivers, and health of the American West. On behalf of our members, Guardians has an interest in ensuring the BLM fully protects public lands and resources as it conveys the right for the oil and gas industry to develop publicly-owned minerals. More specifically, Guardians has an interest in ensuring the BLM meaningfully and genuinely takes into account the air, water, and climate implications of its oil and gas leasing decisions and objectively and robustly weighs the costs and benefits of authorizing the release of more pollutants known to cause health impacts and greenhouse gas emissions known to contribute to climate change.

WildEarth Guardians has extensively commented on and protested proposed oil and gas leasing in Nevada, including the BLM's December 2017[1] and March 2018[2] lease sales. Guardians also submitted comments on the Forest Service's proposal to lease oil and gas in the Ruby Mountains with the Humboldt-Toiyabe National Forest.[3] In all of these documents, Guardians' has raised similar concerns over the agency's failure to adequately address climate impacts and impacts from fracking. Thus, the BLM is well aware of our concerns.

Furthermore, neither the BLM's regulations at 43 C.F.R. § 3120.1-3 nor the April 27, 2018 Notice of Competitive Lease Sale set forth criteria requiring a protesting party to have commented on the sale notice before filing a protest. Rather, the BLM's Notice imposes only limited requirements on the content of protests and the deadline for filing.[4] It provides that a protest must be timely filed, include a statement of reasons, be filed in hardcopy form or by fax, must be signed, must "state the interest of the protesting party," must include the name and the address of the protesting party, and must reference the lease parcel number identified in the sale

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[1] The December 2017 protest is available at: https://climatewest.files.wordpress.com/2017/11/2017-11-13-nevada-oil-and-gas-lease-protest.pdf.

[2] Guardians' comments on the March 2018 EA are available at: https://climatewest.files.wordpress.com/2017/11/2017-11-19-wg-nevada-march-2018-oil-and-gas-leasing-comments.pdf. Guardians' protest of the March 2018 lease sale is available at: https://www.blm.gov/sites/blm.gov/files/NV_OG_20180313_ELDO_Protest_WEG.pdf.

[3] Guardians' scoping comments on oil and gas leasing within the Ruby Mountains are available at: https://climatewest.files.wordpress.com/2017/11/fnl-scoping-comments-h-t-nf-no-attachments.pdf.

[4] Notice at 9.

notice. More importantly, the BLM consistently and routinely reviews protests filed by interested parties."

As discussed below, WildEarth Guardians requests that the BLM refrain from offering any of the parcels up for lease unless and until it completes its requirements under the National Environmental Policy Act of 1976 ("NEPA"), 42 U.S.C. §§ 4321–4370h; NEPA regulations promulgated thereunder by the White House Council on Environmental Quality ("CEQ"), 40 C.F.R. §§ 1500–1508.28; the Federal Land Policy and Management Act of 1976, ("FLPMA"), 43 U.S.C. §§ 1701–1787; and the Mineral Leasing Act, 30 U.S.C. §§ 181–287.

STATEMENT OF REASONS

I. Legal Background

A. Requirements of the National Environmental Policy Act

NEPA is our "basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). The law requires federal agencies to fully consider the environmental implications of their actions, taking into account "high quality" information, "accurate scientific analysis," "expert agency comments," and "public scrutiny," prior to making decisions. *Id.* § 1500.1(b). This consideration is meant to "foster excellent action," resulting in decisions that are well informed and that "protect, restore, and enhance the environment." *Id.* § 1500.1(c).

To fulfill the goals of NEPA, federal agencies are required to analyze the "effects," or impacts, of their actions to the human environment prior to undertaking their actions. *Id.* § 1502.16(d). To this end, the agency must analyze the "direct," "indirect," and "cumulative" effects of its actions, and assess their significance. *Id.* §§ 1502.16(a), (b), and (d). Direct effects include all impacts that are "caused by the action and occur at the same time and place." *Id.* § 1508.8(a). Indirect effects are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8(b). Cumulative effects include the impacts of all past, present, and reasonably foreseeable actions, regardless of what entity or entities undertake the actions. *Id.* § 1508.7.

An agency may prepare an environmental assessment ("EA") to analyze the effects of its actions and assess the significance of impacts. *See id.* § 1508.9; *see also* 43 C.F.R. § 46.300. Where effects are significant, an agency must prepare an Environmental Impact Statement. *See* 40 C.F.R. § 1502.3. Where impacts are not significant, an agency may issue a Finding of No

[7] For example, the Wyoming State Office of the BLM reviewed protests filed by the City of Casper and Wyoming Land Acquisition Partners over the inclusion of parcels in the agency's February 2016 Notice of Competitive Lease Sale, even though the BLM acknowledged, "the City of Casper and the WLAP did not submit written comments to the BLM on the EA." *See* BLM, Response to Protests of February 7, 2017 Competitive Oil and Gas Lease Sale (Feb. 6, 2017) at 3, available online at https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/96629/116695/0217ProtestDecision.pdf. Although the BLM ultimately dismissed these protests as moot, the agency did not dismiss the protests for a failure to provide written comments or to meet criteria not explicitly set forth at 43 C.F.R. § 3120.3-1 or the Notice of Competitive Lease Sale.

Significant Impact ("FONSI") and implement its action. *See id.* § 1508.13; *see also* 43 C.F.R. § 46.325(2).

Within an EA or EIS, the scope of the analysis must include "[c]umulative actions" and "[s]imilar actions." 40 C.F.R. §§ 1508.25(a)(2) and (3). Cumulative actions include action that, "when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement." *Id.* § 1508.25(a)(2). Similar actions include actions that, "when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together." *Id.* § 1508.25(a)(3). Key indicators of similarities between actions include "common timing or geography." *Id.*

B. Requirements of the Federal Land Policy and Management Act

In addition to NEPA, the BLM must comply with FLPMA. FLPMA requires that "[t]he Secretary [of the Interior] shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands." 43 U.S.C. § 1712(a).

The BLM fulfills this mandate by developing Resource Management Plans ("RMPs") for each BLM field office. In general, RMPs must be up-to-date. The BLM's Land Use Planning Handbook states that, "[RMP] revisions are necessary if monitoring and evaluation findings, new data, new or revised policy, or changes in circumstances indicate that decisions for an entire plan or a major portion of the plan no longer serve as a useful guide for resource management." BLM Land Use Planning Handbook, H-1610-1, Section VII.C at 46. Furthermore, the Handbook provides that amendments are needed whenever there is a need to "[c]onsider a proposal or action that does not conform to the plan," "implement new or revised policy that changes land use plan decisions," "respond to new, intensified, or changed uses on public land," or "consider significant new information from resource assessments, monitoring, or scientific studies that change land use plan decisions." *Id.* Section VII.B at 45.

When the BLM issues a new RMP or amends a RMP, the agency must also comply with the requirements of NEPA. *See* 43 C.F.R. §§ 1601.0-6. Thus, the BLM is required to issue an EIS with each RMP. *Id.* Although the BLM may tier its project-level analyses to a broader NEPA document, such as the EIS accompanying the RMP, 43 C.F.R. § 46.140, "[n]othing in the tiering regulations suggests that the existence of a programmatic EIS for a forest plan obviates the need for any future project-specific EIS, without regard to the nature of magnitude of a project." *Blue Mountains Biodiversity Proj. v. Blackwood*, 161 F.3d 1208, 1215 (9th Cir. 1998). Furthermore, "[a] NEPA document that tiers to another broader NEPA document . . . must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid or address any exceptions." *Id.* Put another way, "[t]o the extent that any relevant analysis in the broader NEPA document is not sufficiently comprehensive or adequate to support further decisions, the tiered NEPA document must explain this and provide any necessary analysis." *Id.* § 46.140(b).

II. The BLM's Environmental Assessment Violates NEPA and FLPMA.

A. The BLM Cannot Lease the Proposed Parcels Until the Battle Mountain RMP is Complete.

The applicable land use plans for the June 2018 EA are the Tonopah RMP EIS, approved in 1997, and the Shoshone Eureka RMP EIS, approved in 1986, amended in 1987, 1998, and 2002.[6] EA at 6. The BLM is currently in the process of updating both of these plans and developing the combined Battle Mountain RMP in conjunction with a draft EIS.[7]

According to the CEQ's NEPA regulations,

> [w]hile work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies *shall not* undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:
>
> (1) Is justified independently of the program;
> (2) Is itself accompanied by an adequate environmental impact statement; *and*
> (3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

40 C.F.R. § 1506.1(c) (emphases added).

BLM's recommended approval of the June 2018 lease sale directly violates this provision. As BLM is well aware, "NEPA requires federal agencies to pause *before* committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives." *See New Mexico ex rel. Richardson v. U.S. Bureau of Land Mgmt.*, 8565 F.3d 683, 703 (10th Cir. 2009) (emphasis added). Proceeding to lease 166[8] parcels will most definitely prejudice the possible alternatives for the proposed Battle Mountain RMP. For example, once the lease sale is held, BLM will no longer be able to consider an alternative that forbids oil and gas development on these parcels even if the agency determines that this is necessary. This is exactly the situation NEPA seeks to protect against – having an

[6] The Tonopah RMP/EIS is available online at: https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=116700. The Shoshone Eureka RMP/EIS and subsequent amendments are available online at: https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=116068.

[7] *See* BLM Notice of Intent to Prepare a Resource Management Plan for the Battle Mountain District and Associated Environmental Impact Statement, Nevada, 75 Fed. Reg. 77,652, 77,652 (Dec. 13, 2011), https://eplanning.blm.gov/epl-front-office/projects/lup/9552/17250/17450/RMP_NOIpublished.pdf.

[8] Arguably, the BLM's actions are even more prejudicial because the BLM has held numerous other lease sales since it announced its intent to revise the RMP.

agency commit to new activity that predetermines its analysis and limits its future alternatives. Unfortunately, BLM chose to ignore this provision.

Additionally, although there is a high bar to meet the standard of predetermination of outcomes under NEPA – "predetermination [is] present only when there [is] concrete evidence demonstrating that the agency had irreversibly and irretrievably bound itself to a certain outcome – for example, through a contractual obligation or other binding agreement." – this standard is met here. *Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, 1265 (10th Cir. 2011). Because the BLM has a contractual obligation to allow surface use of the leases once the agency issues them, 43 C.F.R. 3101.1-2, BLM cannot actually consider an alternative disallowing development on these areas of land. The language of the CEQ regulations directly supports this conclusion. "Interim action prejudices the ultimate decision on the program when it tends to determine *subsequent development*." 40 C.F.R. § 1506.1(c) (emphasis added). At a minimum, if these parcels are leased, the companies that buy the proposed leases will be able develop the land in order to conduct exploration activities, thereby precluding BLM from analyzing and preventing any unforeseen environmental harms. Thus, BLM must either postpone the lease sale until the Battle Mountain RMP is complete or complete a stand-alone EIS for the June lease sale.

In response to this the BLM points to BLM IM 2018-034 which states that "[i]t is BLM policy that existing land use plan decisions remain in effect until an amendment or revision is [completed and] approved. Therefore, the BLM will not routinely defer leasing when waiting for an RMP amendment or revision to be signed." EA, App'x K, at 176–77. But, the BLM IM cannot change the requirements of NEPA or abrogate existing case law. Therefore, if the BLM's actions result in a predetermination of a NEPA analysis or limit the proposed alternatives, a violation of NEPA has occurred.

B. The BLM Fails to Analyze a Range of Reasonable Alternatives.

To start, the BLM fails to analyze a range of reasonable alternatives for the sale, including an alternative that addresses the impacts from the release of more greenhouse gas emissions.

NEPA requires that federal agencies "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E). The alternatives section is the "heart" of an EIS and must "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." 40 C.F.R. § 1502.14. Furthermore, the agency must "rigorously explore and objectively evaluate all reasonable alternatives." *Id.* "The EA, while typically a more concise analysis than an EIS, must still evaluate the need for the proposal, alternatives as required by NEPA section 102(2)(E), and the environmental impacts of the proposed action and alternatives." *See High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F.Supp. 3d 1174 (D. Colo. 2014).

The BLM's alternatives analysis is flawed because the agency analyzes only two alternatives: leasing all 166 parcels or leasing none. This all-or-nothing approach does not

present the agency with "a reasoned choice" or otherwise address public concerns about climate change as reaffirmed by the recent court decision in *Western Organization of Resource Councils v. U.S. Bureau of Land Management*, CV 16-21-GF-BMM, 2018 WL 1475470, at *8–9 (D. Mont. March 23, 2018) (quoting *State of California v. Block*, 690 F.2d 753, 767–68 (9th Cir. 1982). There the court held that "[c]limate change concerns presented a reasonable basis for BLM to conduct a new coal-screening and to consider adopting an RMP that foreclosed coal extraction in additional areas. . . . [and that] BLM's failure to consider any alternative that would decrease the amount of extractable coal available for leasing rendered inadequate the Buffalo EIS and Miles City EIS in violation of NEPA." *Id.* at *9.

Here, public citizens raised climate change as a concern. *See* EA, App'x K, at 164. Indeed, the BLM includes a section analyzing potential greenhouse gas emissions in its EA. *Id.* at 16–19. But, BLM fails to consider an alternative that would address these concerns or otherwise present the agency with a "reasoned choice" between leasing all 166 parcels or none of the parcels. *See Western Org. of Resource Councils*, 2018 WL 1475470, at *9. The BLM also completely fails to explain why it chooses not to include this alternative or any other reasonable alternatives beyond the two extremes presented. This approach is in clear violation of NEPA.

In addition, because BLM admits through its Reasonably Foreseeable Development scenario for the lease parcels that many of the proposed lease parcels may never see development, EA at 4 (predicting 25 wells from 166 lease parcels), it appears the proposed leasing would simply be a major giveaway to the oil and gas industry. As it stands, of the 1,124,320 million acres of federal oil and gas under lease in Nevada, only 27,001 acres are in production.[9] Put another way, **only 2.4% of all leased federal oil and gas acres in Nevada are actually producing oil and gas**. This raises serious questions over whether the proposed oil and gas leasing would simply allow industry to hoard more leases to strengthen their balance sheet while generating minimal, if not negative, revenue to the American public. With companies allowed to bid as low $2.00 per acre for oil and gas leases and to pay only a nominal rental of $1.50 per acre per year, it would seem that industry is poised to secure leases for rock bottom prices and use these leases to inflate their assets. All the while, taxpayers will have to pay the cost of BLM administration of the leases, any inspections and enforcement, and lose the opportunity for these public lands to be dedicated to higher and better uses.

While we object to the BLM's proposal to lease, given the situation, we at least request the agency give detailed consideration to alternatives that address the likelihood that industry is only seeking the proposed leases in order to stockpile reserves and not actually produce oil and gas. We request the BLM give detailed consideration to the following alternative actions:

We request the BLM give detailed consideration to the following alternative actions:

- An alternative that imposes a minimum bonus bid higher than $2.00 per acre. Under 43 C.F.R. § 3120.1-2(c), BLM is prohibited from accepting a competitive oil and gas

[9] This is according to BLM oil and gas leasing statistics as of the end of FY 2016, available at https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics.

leasing bid that is less than $2.00 per acre. However, there is nothing that prohibits the BLM from establishing a minimum bid that is higher than $2.00 per acre. Here, we request the agency give detailed consideration to an alternative that requires a minimum bonus bid higher than $2.00 per acre as a condition of selling the lease parcels. This will ensure that only serious industry interest in the proposed oil and gas leasing parcels and help to prevent companies from stockpiling federal oil and gas leases as a means to increase their assets and enhance their own financial bottomline.

- An alternative that defers offering the proposed lease parcels for sale until at least 50% of all leased federal oil and gas acres in Nevada are put into production. This could happen as a result of leases expiring before being put into production, by industry relinquishing leases that have not produced for many years, or by leases being put into production by companies. This alternative would help to incentivize industry to start producing and generating revenue or to give up their ownership of federal oil and gas leases. This alternative would be a reasonable measure for the BLM to impose as a means for protecting the public interest and maximizing revenue for the American public where leases have already been issued.

In response to the call for additional alternatives, BLM provides a non-answer. The agency states the it is required by the Mineral Leasing Act to consider leasing and that the proposes leases are in conformance with the underlying RMPs. EA, App'x K, at 178. But, nothing in the Mineral Leasing abrogates the requirements of NEPA. BLM is still required to analyze a range of reasonable alternatives which address the resource concerns presented by the proposed action. Furthermore, there is no doubt that BLM has the discretion to decide not to lease all or some of the parcels. *See Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988) ("[R]efusing to issue [certain petroleum] leases ... would constitute a legitimate exercise of the discretion granted to the Secretary of the Interior"). BLM also argues that the RMP stage is the appropriate place to designate lands as closed to leasing. This answer ignores the broad discretion that BLM has at the lease sale stage as outlined above. And, an RMP designation is just that, a designation, and not a mandate for future leasing. Thus, BLM's arguments cannot stand.

C. The BLM Improperly Defers Its Site-Specific NEPA Analyses to the Application Permit to Drill Stage.

On a similar note, throughout the various EAs for the lease sale, the BLM attempts to segment its NEPA analysis into insignificant pieces by arguing that it will conduct site-specific NEPA analyses at the Application Permit to Drill ("APD") stage. *See, e.g.*, EA at 142 ("The potential for induced seismicity cannot be made at the leasing stage; as such, it will be evaluated at the APD stage should the parcel be sold issued, and a development proposal submitted."); 165 ("The quantity of water for drilling varies and the impact to local water sources is analyzed at the APD stage."); FONSI at 1 ("If leases are issued and lease operations are proposed in the future, BLM would conduct additional site- specific, project-specific NEPA analysis when an Application for Permit to Drill (APD) or other exploration, development or production project application is submitted.").

"NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment." *U.S. Bureau of Land Mgmt. v. Kern*, 284 F.3d 1062, 1072 (9th Cir. 2002); *see also* 40 C.F.R. § 1500.1(b) ("NEPA procedures must insure that environmental information is available to public officials and citizens *before decisions are made* and before actions are taken.") (emphasis added). This is especially the case if postponing analysis results in a piecemeal look at the impacts. *See* 40 C.F.R. § 1508.27 ("Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts."). Finally, as noted above, NEPA provides that the BLM must assess three types of actions: (1) connected actions, (2) cumulative actions, and (3) similar actions. 40 C.F.R. § 1508.25. Connected actions "are closely related and therefore should be discussed in the same impact statement." Actions are connected if they, among other things: [a]re interdependent parts of a larger action and depend on the larger action for their justification." *Id.*

Because drilling cannot occur without the BLM first leasing the minerals, leasing and drilling are interdependent, connected actions. Thus, the BLM must estimate the impacts of drilling these wells at the lease sale stage. Furthermore, NEPA requires that agencies prepare an EIS before there is "any irreversible and irretrievable commitment of resources." *Conner v. Burford*, 848 F.2d 1441, 1452 (9th Cir. 1988). The Ninth Circuit has held that issuing leases without a no surface occupancy ("NSO") stipulation conveys a right to develop and is thus considered an irretrievable commitment of resources. *Id.* ("[U]nless surface-disturbing activities may be absolutely precluded, the government must complete an EIS before it makes an irretrievable commitment of resources by selling non-NSO leases."). None of the parcels at issue have a NSO stipulation for the entire parcel. *See generally* EA, App'x B. This means that the leases are irretrievable commitments of resources, and once BLM reaches the APD stage, the agency cannot include additional lease stipulations to stop drilling and other cumulative impacts. Indeed, BLM admits this. *See* EA at 13–14 ("[I]f a lease is sold, the lessee retains certain irrevocable rights. . . . [including] 'the right to use as much of the lease lands as is necessary to explore for, drill for, mine, extract, remove and dispose of the leased resources in the 'leasehold'[.]"). Thus, further analysis at the APD stage would be in many cases, too little, too late, and the agency must complete a full NEPA analysis at the lease sale stage.

D. The BLM Fails to Take a "Hard Look" at the Impacts of Hydraulic Fracturing.

On top of this, the BLM has yet to take a "hard look" at the impacts of hydraulic fracturing[10] in any of its existing NEPA documents. Instead, the agency relies on two severely outdated RMPs EISs and an incomplete EA in violation of NEPA.

Multiple courts have held that if the BLM plans to allow a new oil and gas extraction technique, the agency must analyze the impacts of this technique in either a programmatic or project-specific NEPA document. *See Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1151, 1153 (10th Cir. 2004) (holding that when a new fossil fuel extraction technology becomes commercially viable, and creates "changed circumstances" such that production of energy with the new technology is "significantly different" than production using

[10] Hydraulic fracturing, or fracking, as used here, refers to a combination of horizontal drilling and multi-stage hydraulic fracturing.

previously considered technology, an agency permitting activities utilizing the new technology must take new environmental impacts into account as part of the NEPA process); *see also Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 937 F. Supp. 2d 1140, 1157 (N.D. Cal. 2013) (invalidating a BLM lease sale because "the scale of fracking in shale-area drilling today involves risks and concerns that were not addressed by the PRMP FEIS' general analysis of oil and drilling development in the area"); *see also ForestWatch v. U.S. Bureau of Land Mgmt.*, 2016 WL 5172009, Case No. CV-15-4378-MWF (JEMx) (C.D. Cal. Sept. 6, 2016) (holding that the BLM "acted unreasonably in failing to discuss, let alone take a 'hard look' at, the environmental impact of fracking in the FEIS").

As the BLM is well aware, with the use of fracking comes a myriad of potentially significant environmental impacts. Fracking has not only opened up vast areas of minerals that were previously uneconomical to extract – thereby expanding the total land area impacted by development – the process of fracking also causes more intense impacts to our public health, air, water, land, and wildlife. *See* Exhibit 1, Concerned Health Prof'ls of NY & Physicians for Soc. Responsibility, *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking (Unconventional Gas and Oil Extraction)* (5th ed. 2018), http://concernedhealthny.org/compendium/ ("As fracking operations in the United States have increased in frequency, size, and intensity, and as the transport of extracted materials has expanded, a significant body of evidence has emerged to demonstrate that these activities are dangerous to people and their communities in ways that are difficult – and may prove impossible – to mitigate. Risks include adverse impacts on water, air, agriculture, public health and safety, property values, climate stability, and economic vitality, as well as earthquakes."); *see also*, Exhibit 2, Gov't Accountability Office, *Oil and Gas: Information on Shale Resources, Development, and Environmental and Public Health Risks* (2012), available at https://www.gao.gov/products/GAO-12-732.

Despite this, BLM's existing NEPA analyses for underlying RMPs EIS completely omit any analysis of the impacts of fracking. *See generally* Tonopah RMP EIS and Shoshone Eureka RMP EIS. This is not surprising considering that widespread use of fracking as an extraction technique did not occur until the early 2000s, and the BLM approved the respective RMPs in 1997 and 1983. *Id.*; U.S. Energy Info. Admin., *Hydraulically Fractured Wells Provide Two-Thirds of U.S. Natural Gas Production* (2015), https://www.eia.gov/todayinenergy/detail.php?id=26112; EIA, *Hydraulic Fracturing Accounts for About Half of Current U.S. Crude Oil Production* (2015), https://www.eia.gov/todayinenergy/detail.php?id=25372. But, today, 67% of the U.S.'s natural gas comes from wells that use fracking, and 50% of the U.S.'s oil comes from wells that use fracking. *Id.* And, industry estimates that more than 90% of the new wells drilled today use fracking. Western Energy All., *What is Fracking?*, https://www.westernenergyalliance.org/why-western-oil-natural-gas/what-fracking. Thus, while the BLM's omission of a discussion of the impacts from fracking in the RMPs EISs is not surprising, it is certainly an omission that the BLM must address before the leases move forward. *See Pennaco Energy, Inc.*, 377 F.3d at 1151, 1153; *Ctr. for Biological Diversity*, 937 F. Supp. 2d at 1157.

Although Guardians appreciates that the BLM's EA for the June 2018 lease sale includes some information about the process of fracking and quantification of the impacts to water

quantity, *see* EA at 12–13 & App'x E, this analysis is incomplete. The BLM does not include any information about the increase in truck traffic associated with fracking, the impacts on roads, the socioeconomic impacts on small towns from the influx of oil and gas workers, the increase in air pollutants released from deeper wells, the increase in greenhouse gas emissions such as methane, the impacts to human health, and the impacts to wildlife to name a few. As a result, the BLM cannot rely on these incomplete analyses to meet its obligations under NEPA to take a "hard look" at the impacts of fracking. *See Pennaco Energy, Inc.*, 377 F.3d at 1151, 1153; *Ctr for Biological Diversity*, 937 F. Supp. 2d at 1157.

In its response to comments, the BLM claims that the Hydraulic Fracturing White Paper in Appendix E is sufficient and that any additional impacts would be analyzed at the APD stage. EA, App'x K, at 176. But, as noted above, the white paper only discusses impacts to water quantity and fails to address the other impacts associated with fracking. Thus, this analysis cannot meet NEPA's required "hard look." Furthermore, any analysis of the impacts at the APD stage would be too little, too late. As BLM admits, "if a lease is sold, the lessee retains certain irrevocable rights." EA at 13. Thus, any additional analysis at the APD stage may be too little too late to address potentially significant impacts.

Finally, the BLM's failure to analyze the impacts from fracking in its RMP and EIS not only violates NEPA but also violates FLPMA. As noted above, FLPMA requires that the BLM amend an RMP whenever there is a need to "[c]onsider a proposal or action that does not conform to the plan," "respond to new, intensified, or changed uses on public land," or "consider significant new information from resource assessments, monitoring, or scientific studies that change land use plan decisions." BLM Land Use Planning Handbook, H-1610-1, Section VII.B at 45. At a minimum, the use of multi-stage fracking coupled with horizontal drilling constitutes a "new, intensified, or changed use[] on public land." Thus, BLM cannot move forward with leasing the parcels in this area until it completes an amendment to the underlying RMPs.

E. The BLM Must Prepare an EIS.

The BLM also cannot rely on the EA and FONSI for the June 2018 lease sale to conclude that no significant environmental impacts will occur. Not only does the BLM fail to discuss the highly controversial, uncertain impacts associated with fracking, the BLM also fails to fully discuss the impacts of oil and gas development the Humboldt-Toiyabe National Forest, including the ecologically significant Ruby Mountains.

A federal agency must prepare an EIS when a major federal action "significantly affects the quality of the human environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.4. A federal action "affects" the environment when it "will or *may* have an effect" on the environment. 40 C.F.R. § 1508.3 (emphasis added); *see also Airport Neighbors Alliance v. U.S.*, 90 F.3d 426, 429 (10th Cir. 1996). The significance of a proposed action is gauged based on both context and intensity. 40 C.F.R. § 1508.27. Context "means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality." *Id.* § 1508.27(a). Intensity "refers to the severity of impact," and is determined by weighing ten factors, including "[1] [t]he degree to which the proposed action affects public health or safety," "[2] [u]nique characteristics of the geographic

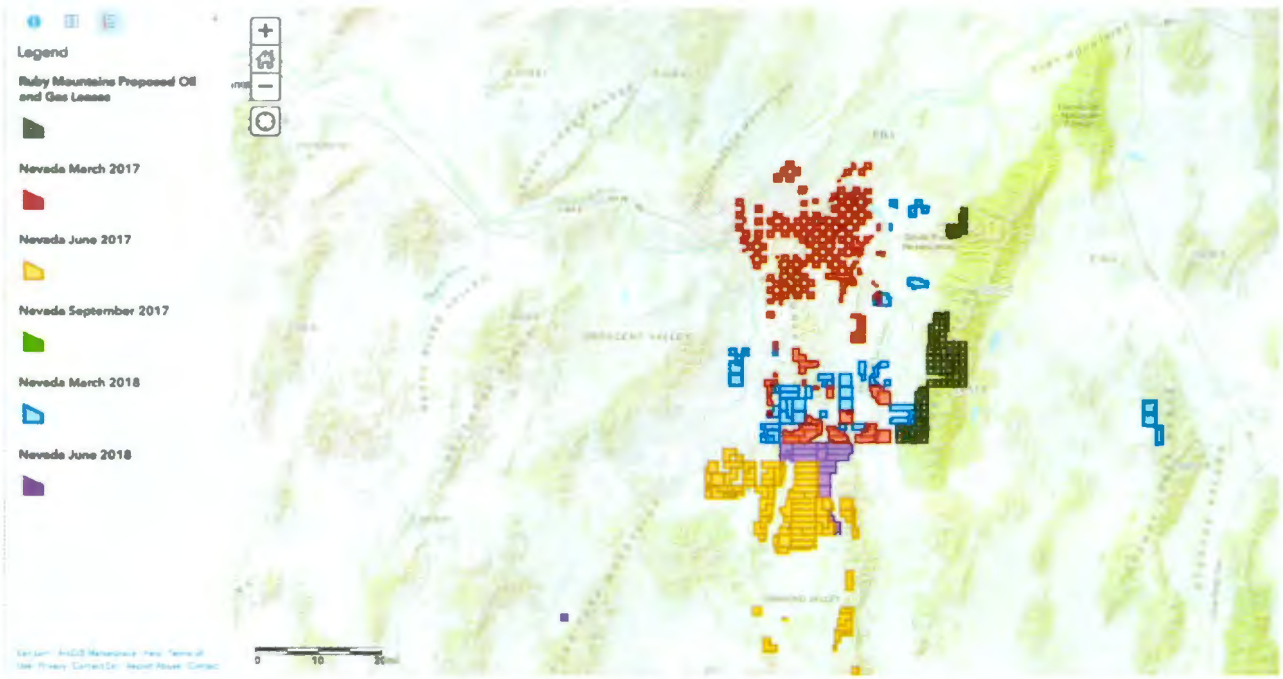
area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas." "[3] [t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." "[4] [t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks," and "[5] whether the action is related to other actions with individually insignificant but cumulative significant impacts." *Id.* § 1508.27(b)(2), (5), (7).

To start, the BLM's failure to fully analyze the impacts of fracking implicates the first, third, and fourth intensity factors listed above. Fracking poses public health and safety risks. *See* Exhibit 1. The BLM even acknowledges this, albeit briefly, in the EA. EA, App'x E, at 143 ("The intensity, and likelihood, of potential impacts to public health and safety, and to the quality of usable water aquifers is directly related to proximity of the proposed action to domestic and or community water supplies (wells, reservoirs, lakes, rivers, etc.) and or agricultural developments."). But, this statement fails to further elucidate whether the proposed leases are near community water supplies or will otherwise pose these risks and nothing in the Hydraulic Fracturing White Paper provides additional information. Furthermore, because the RMPs EIS are not up-to-date and the June 2018 EA is incomplete, the risks posed by leasing and fracking the parcels at issue are unknown. Indeed, the situation here is directly similar to the situation in *Center for Biological Diversity v. U.S. Bureau of Land Management*, where the court held that the BLM's "unreasonable lack of consideration of how fracking could impact development of the disputed parcels . . . unreasonably distort[ed] BLM's assessment of at least three of the 'intensity' factors in its FONSI." 937 F. Supp. 2d at 1157. Thus, the court reasoned that fracking was highly controversial based on the possibility of significant environmental degradation, public outcry, and potential threats to health and safety. *Id.* at 1157–58.

Turning to the second and fifth intensity factors, the June lease sale's proximity to other oil and gas lease sale parcels, including the parcels proposed for the Ruby Mountains in the Humboldt-Toiyabe National Forest, is also particularly concerning. The Ruby Mountains are a particularly important area for both recreational opportunities and wildlife habitat. According to the Forest Service, the area is designated as wilderness[11] and is "home to one of the largest herds of mule deer in Nevada, . . . supports populations of mountain goats, bighorn sheep, and Himalayan Snowcock, and . . . brook, rainbow, and threatened Lahontan Cutthroat Trout." U.S Forest Serv., *Ruby Mountains Wilderness*, https://www.fs.usda.gov/detail/htnf/home/?cid=stelprdb5239022 (last visited May 2, 2018). Approximately 300 miles of trails can be found within the area as well. *Id.* Yet, the BLM fails to mention the Ruby Mountains in its June 2018 EA at all.

The need to consider the cumulative impacts on the Ruby Mountains and the cumulative impacts in general is even more important when the entire scope of oil and gas leasing in the area is examined. As shown the map below, between March 2017 and June 2018, the BLM and Forest Service have leased and or proposed to lease a significant swath of Nevada.

[11] The BLM wrongly concludes in its FONSI that "[n]o park lands, prime farmlands, congressionally designated wilderness areas, or wild and scenic rivers are on or near the lease parcels." FONSI at 3. The Ruby Mountains are less than 10 miles away.



All data obtained from the BLM or U.S. Forest Service.

Unfortunately, no single NEPA document considers the entirety of the impacts that will result from these actions despite NEPA's requirement to consider "whether the action is related to other actions with individually insignificant but cumulatively significant impacts." 40 C.F.R. § 1508.27(b)(7). As noted above, the RMPs/EISs for the Battle Mountain District are decades old, and, the BLM's June 2018 EA fails to include a comprehensive discussion of cumulative impacts which accounts for surrounding oil and gas leasing. *See generally* EA at 47–52.

In response to this, the BLM argues that "[p]ast, present, and reasonably foreseeable future actions, with potential to have effects that would overlap in time or space with those of the analyzed alternatives, were considered in the cumulative impacts analysis as part of the EA." FONSI at 4. But, this is incorrect. Nothing in the EA mentions the leasing in the Ruby Mountains or the past, present, and future BLM lease sales occurring in the exact same area as shown by the map above.

F. The BLM Fails to Fully Analyze and Assess the Cumulative Impacts of Greenhouse Gas Emissions that Would Result from Issuing the Proposed Lease Parcels.

Relatedly, although Guardians appreciates the fact that the BLM calculates the cumulative greenhouse gas emissions for the proposed lease sale, the BLM completely ignores the very real cumulative impacts that will result from past, present, and future lease sales occurring in Nevada and surrounding states.

CEQ NEPA regulations 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.

This is exactly what the federal oil and gas leasing program presents—individual actions with collectively significant impacts. For example, the BLM has sold, is selling, and will be selling millions of acres of oil and gas leases in the West, including:

- Nevada: On March 14, 2017, the BLM sold 20 parcels comprising 35,502.86 acres in the Elko District Office. *See* https://www.blm.gov/sites/blm.gov/files/uploads/NV_OG_20170314_COMP_SALE_RESULTS.pdf. On June 14, 2017, the agency sold 7 parcels (5,760 acres) in the Battle Mountain District. *See* https://www.blm.gov/sites/blm.gov/files/uploads/NV_OG_20170614_BMDO_COMP_SALE_RESULTS.pdf. At the September 12, 2017 sale, the BLM sold 3 parcels totaling 3680 acres also in the Battle Mountain District. *See* https://www.blm.gov/sites/blm.gov/files/NV-OilGasLeaseSale-Sept2017-Results.pdf. The agency also sold 17 parcels (33,483.72 acres) for its December 12, 2017 lease sale in the Ely District. *See* https://www.blm.gov/sites/blm.gov/files/NV_OG_20171212_EYDO_COMP_SALE_RESULTS.pdf. In March 2018, the BLM sold 11 parcels comprising 19,432.94 acres in the Elko and Carson City Districts. *See* https://www.blm.gov/sites/blm.gov/files/NV_OG_20180313_ELDO_COMP_SALE_RESULTS.pdf.

- Utah: On June 13, 2017, the agency sold 8 parcels covering 7,478.990 acres in the Color Country District Office for sale. *See* https://www.blm.gov/sites/blm.gov/files/Programs_EnergyandMinerals_OilandGas_Leasing_RegionalLeaseSales_Utah_2017_SaleResults.pdf. In September 2017, the BLM sold three parcels containing 4,101.710 acres in the West Desert District. *See* https://www.blm.gov/sites/blm.gov/files/Programs_OilandGas_Leasing_RegionalLeaseSales_Utah_2017_SALERESULTS.pdf. The agency also sold 49 parcels (53,763.560 acres) at its December 2017 sale. *See* https://eplanning.blm.gov/epl-front-office/projects/nepa/80165/127348/154996/CompStats.pdf. In March 2018, the BLM sold 43 parcels comprising 51,482.94 acres in the Moab and Monticello Field Offices. https://eplanning.blm.gov/epl-front-office/projects/nepa/82261/138354/170209/COMPSTATSone.pdf. And, in June 2018, the BLM is proposing to lease 12 parcels totaling 16,545.28 acres. *See* https://eplanning.blm.gov/epl-front-office/projects/nepa/104741/142442/174904/1June2018_NCLS.pdf.

All told, the BLM has leased or is proposing to lease approximately 339 parcels or 584,947.31 acres of publicly-owned land in the states listed above in 2017 and 2018.[12] Unfortunately, nothing in BLM's EA discloses or discusses these surrounding lease sales.

The need to take into account "similar" and "cumulative" actions is underscored by the fact that the BLM generally acknowledges in the EA that the proper geographic area for analyzing and assessing the impacts of greenhouse gas emissions is on a worldwide scale. *See, e.g.*, EA at 48 ("Thus under the high production emission RFD scenario total annual GHG emissions of 293,900 tpy CO2e would constitute 0.0019 percent of total worldwide contribution of CH4 which is 730,832,399 tons per year (15,347,480,381 tpy CO2e)."). Although this assessment was apparently prepared to try to mislead the public into believing that emissions from the proposed leasing are not significant, it actually emphasizes the need for the BLM to not simply account for emissions from the proposed leasing, but likely for all greenhouse gas emissions associated with BLM-approved oil and gas leasing nationwide. Indeed, the BLM cannot claim that emissions are insignificant in the context of worldwide emissions, but then fail to disclose the cumulative greenhouse gases that would result from all other "similar" and "cumulative" actions within the region. Accordingly, the BLM's failure to discuss or acknowledge the lease sales occurring within Nevada and in neighboring states is a violation of NEPA which renders the EA for the June 2018 lease sale invalid.

G. The BLM Fails to Analyze the Costs of Reasonably Foreseeable Carbon Emissions Using Well-Accepted, Credible, GAO-Endorsed, Interagency Methods for Assessing Carbon Costs.

In addition to an incomplete cumulative impacts analysis, the agency omits a discussion on the social cost of carbon protocol, a valid, well accepted, credible, and interagency endorsed method of calculating the costs of greenhouse gas emissions and understanding the potential significance of such emissions while simultaneously touting the monetary benefits from the lease sale. *See* EA at 44-45 ("Revenues generated from both competitive and non competitive oil and gas lease sales in the state of Nevada for fiscal year 2016 totaled $2,915,471; statewide revenues from 2012 to 2016 totaled $45,879,707."); FONSI at 2 ("Beneficial socioeconomic impacts are predicted, in the form of increased jobs and increased spending in local communities, although these would be minimal due to the low level of predicted activity. (EA section 3.2.17, Socioeconomic Values). Beneficial effects would also include revenue from the lease sale, the ongoing annual rent on the leases and any royalties resulting from production, 49% of which is shared with the State of Nevada and the county government."). Failure to use this best available science in the EA violates NEPA's hard look mandate.

The social cost of carbon protocol for assessing climate impacts is a method for "estimat[ing] the economic damages associated with a small increase in carbon dioxide (CO2) emissions, conventionally one metric ton, in a given year [and] represents the value of damages avoided for a small emission reduction (i.e. the benefit of a CO2 reduction)." Exhibit 3, U.S. Environmental Protection Agency ("EPA"), "Fact Sheet: Social Cost of Carbon" (Nov. 2013) at

[12] This number includes the proposed leases for the Nevada BLM's June 2018 lease sale.

1, formerly available online at https://www.epa.gov/climatechange/social-cost-carbon. The protocol was developed by a working group consisting of several federal agencies.

In 2009, an Interagency Working Group was formed to develop the protocol and issued final estimates of carbon costs in 2010. *See* Exhibit 4, Interagency Working Group on Social Cost of Carbon, "Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866" (Feb. 2010), available online at https://www.epa.gov/sites/production/files/2016-12/documents/scc_tsd_2010.pdf. These estimates were then revised in 2013 by the Interagency Working Group, which at the time consisted of 13 agencies. *See* Exhibit 5, Interagency Working Group on Social Cost of Carbon, "Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866" (May 2013), available online at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf. This report and the social cost of carbon estimates were again revised in 2015. *See* Exhibit 6, Interagency Working Group on Social Cost of Carbon, "Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866" (July 2015). Again, this report and social cost of carbon estimates were revised in 2016. *See* Exhibit 7, Interagency Working Group on Social Cost of Greenhouse Gases, "Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis – Under Executive Order 12866" (Aug. 2016), available online at https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/scc_tsd_final_clean_8_26_16.pdf.

Most recently, as an addendum to previous Technical Support Documents regarding the social cost of carbon, the Department of the Interior joined numerous other agencies in preparing estimates of the social cost of methane and other greenhouse gases. *See* Exhibit 8, Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, "Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide" (Aug. 2016).

Depending on the discount rate and the year during which the carbon emissions are produced, the Interagency Working Group estimates the cost of carbon emissions, and therefore the benefits of reducing carbon emissions, to range from $10 to $212 per metric ton of carbon dioxide. *See* Chart Below. In one of its more recent update to the Social Cost of Carbon Technical Support Document, the White House's central estimate was reported to be $36 per metric ton. Exhibit 8 at 4.

In July 2014, the U.S. Government Accountability Office ("GAO") confirmed that the Interagency Working Group's estimates were based on sound procedures and methodology. *See* Exhibit 9, GAO, "Regulatory Impact Analysis, Development of Social Cost of Carbon Estimates," GAO-14-663 (July 2014), http://www.gao.gov/assets/670/665016.pdf.

Year	5% Average	**3% Average**	2.5% Average	High Impact (95th Pct at 3%)
2010	10	**31**	50	86
2015	11	**36**	56	105
2020	12	**42**	62	123
2025	14	**46**	68	138
2030	16	**50**	73	152
2035	18	**55**	78	168
2040	21	**60**	84	183
2045	23	**64**	89	197
2050	26	**69**	95	212

Most recent social cost of carbon estimates presented by Interagency Working Group on Social Cost of Carbon. The 95th percentile value is meant to represent "higher-than-expected" impacts from climate change. *See* Exhibit 8.

Although often utilized in the context of agency rulemakings, the protocol has been recommended for use and has been used in project-level decisions. For instance, the EPA recommended that an EIS prepared by the U.S. Department of State for the proposed Keystone XL oil pipeline include "an estimate of the 'social cost of carbon' associated with potential increases of GHG emissions." Exhibit 10, EPA, Comments on Supplemental Draft EIS for the Keystone XL Oil Pipeline (June 6, 2011).

More importantly, BLM's Billings Field Office, has also utilized the social cost of carbon protocol in the context of oil and gas approvals. For example, the Billings Field Office estimated "the annual SCC [social cost of carbon] associated with potential development on lease sale parcels." Exhibit 11, BLM, "Environmental Assessment for October 21, 2014 Oil and Gas Lease Sale," DOI-BLM-MT-0010-2014-0011-EA (May 19, 2014) at 76, https://blm_prod.opengov.ibmcloud.com/sites/blm.gov/files/MT-DAKS%20Billings%20Oct%202014%20EA%20Protest.pdf. In conducting its analysis, the BLM used a "3 percent average discount rate and year 2020 values," presuming social costs of carbon to be $46 per metric ton. *Id.* Based on its estimate of greenhouse gas emissions, the agency estimated total carbon costs to be "$38,499 (in 2011 dollars)." *Id.* In Idaho, the BLM also utilized the social cost of carbon protocol to analyze and assess the costs of oil and gas leasing. Using a 3% average discount rate and year 2020 values, the agency estimated the cost of carbon to be $51 per ton of annual CO_2e increase. *See* Exhibit 12, BLM, "Little Willow Creek Protective Oil and Gas Leasing," EA No. DOI-BLM-ID-B010-2014-0036-EA (February 10, 2015) at 81, https://eplanning.blm.gov/epl-front-office/projects/nepa/39064/55133/59825/DOI-BLM-ID-B010-2014-0036-EA_UPDATED_02272015.pdf. Based on this estimate, the agency estimated that the total carbon cost of developing 25 wells on five lease parcels to be $3,689,442 annually. *Id.* at 83.

To be certain, the social cost of carbon protocol presents a conservative estimate of economic damages associated with the environmental impacts climate change. As the EPA has noted, the protocol "does not currently include all important [climate change] damages." Exhibit 3 at 1. As explained:

> The models used to develop [social cost of carbon] estimates do not currently include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature because of a lack of precise information on the nature of damages and because the science incorporated into these models naturally lags behind the most recent research.

Id. In fact, more recent studies have reported significantly higher carbon costs. For instance, a report published in 2015 found that current estimates for the social cost of carbon should be increased six times for a mid range value of $220 per ton. *See* Exhibit 13, Moore, C.F. and B.D. Delvane, "Temperature impacts on economic growth warrant stringent mitigation policy," Nature Climate Change 2 (January 12, 2015). And a report from 2017, estimated carbon costs to be $50 per metric ton, a value that experts have found to be the "best estimate of the social cost of greenhouse gases." *See* Exhibit 14, Revesz, R. *et al.* "Best cost estimate of greenhouse gases," 357 *Science* 655, 655 (Aug. 18, 2017). In spite of uncertainty and likely underestimation of carbon costs, nevertheless, "the SCC is a useful measure to assess the benefits of CO2 reductions," and thus a useful measure to assess the costs of CO2 increases. Exhibit 5.

That the economic impacts of climate change, as reflected by an assessment of social cost of carbon, should be a significant consideration in agency decision making, is emphasized by a 2014 White House report, which warned that delaying carbon reductions would yield significant economic costs. *See* Exhibit 15, Executive Office of the President of the United States, "The Cost of Delaying Action to Stem Climate Change," (July 2014). As the report states:

> [D]elaying action to limit the effects of climate change is costly. Because CO accumulates in the atmosphere, delaying action increases CO concentrations. Thus, if a policy delay leads to higher ultimate CO concentrations, that delay produces persistent economic damages that arise from higher temperatures and higher CO concentrations. Alternatively, if a delayed policy still aims to hit a given climate target, such as limiting CO concentration to given level, then that delay means that the policy, when implemented, must be more stringent and thus more costly in subsequent years. In either case, delay is costly.

Id. at 1.

The requirement to analyze the social cost of carbon is supported by the general requirements of NEPA and is specifically supported in federal case law. Courts have ordered agencies to assess the social cost of carbon pollution, even before a federal protocol for such analysis was adopted. In 2008, the U.S. Court of Appeals for the Ninth Circuit ordered the National Highway Traffic Safety Administration to include a monetized benefit for carbon emissions reductions in an Environmental Assessment prepared under NEPA. *Center for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1203 (9th Cir. 2008). The Highway Traffic Safety Administration had proposed a rule setting corporate average fuel economy standards for light trucks. A number of states and public interest groups challenged the rule for, among other things, failing to monetize the benefits that would accrue from a decision that led to lower carbon dioxide emissions. The Administration had monetized

the employment and sales impacts of the proposed action. *Id.* at 1199. The agency argued, however, that valuing the costs of carbon emissions was too uncertain. *Id.* at 1200. The court found this argument to be arbitrary and capricious. *Id.* The court noted that while estimates of the value of carbon emissions reductions occupied a wide range of values, the correct value was certainly not zero. *Id.* It further noted that other benefits, while also uncertain, were monetized by the agency. *Id.* at 1202.

In 2014, a federal court did likewise for a federally approved coal lease. That court began its analysis by recognizing that a monetary cost benefit analysis is not universally required by NEPA. *See High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F.Supp. 3d 1174, 1193 (D. Colo. 2014) (citing 40 C.F.R. § 1502.23). However, when an agency prepares a cost benefit analysis, "it cannot be misleading." *Id.* at 1182 (citations omitted). In that case, the NEPA analysis included a quantification of benefits of the project, but, the quantification of the social cost of carbon, although included in earlier analyses, was omitted in the final NEPA analysis. *Id.* at 1196. The agencies then relied on the stated benefits of the project to justify project approval. This, the court explained, was arbitrary and capricious. *Id.* Such approval was based on a NEPA analysis with misleading economic assumptions, an approach long disallowed by courts throughout the country. *Id.* Furthermore, the court reasoned that even if the agency had decided that the social cost of carbon was irrelevant, the agency must still provide "*justifiable reasons* for not using (or assigning minimal weight to) the social cost of carbon protocol . . . ." *Id.* at 1193 (emphasis added). In August 2017, a federal district court in Montana cited to the *High Country* decision and reaffirmed its reasoning, rejecting a NEPA analysis for a coal mine expansion that touted the economic benefits of the expansion without assessing the carbon costs that would result from the development. *See Mont. Envtl. Info. Ctr. v. U.S. Office of Surface Mining*, No. CV 15-106-M-DWM (D. Mont. Aug. 14, 2017).

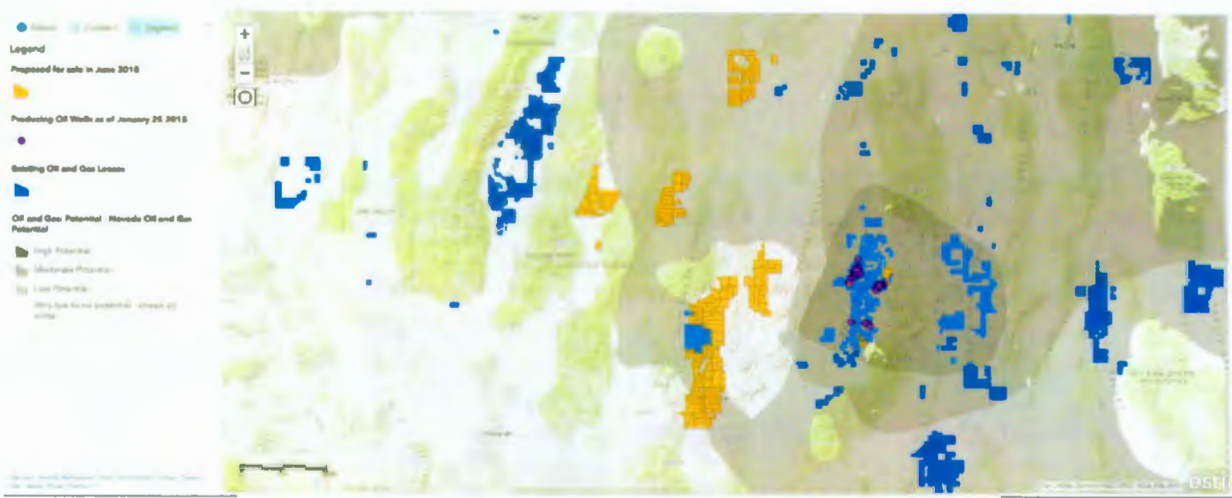
A 2015 op-ed in the New York Times from Michael Greenstone, the former chief economist for the President's Council of Economic Advisers, confirms that it is appropriate and acceptable to calculate the social cost of carbon when reviewing whether to approve fossil fuel extraction. *See* Exhibit 16, Greenstone, M., "There's a Formula for Deciding When to Extract Fossil Fuels," New York Times (Dec. 1, 2015), available at https://www.nytimes.com/2015/12/02/upshot/theres-a-formula-for-deciding-when-to-extract-fossil-fuels.html. In 2017, the Proceedings of the National Academy of Sciences of the United States of America ("PNAS"), acknowledged in a peer reviewed article from February of this year that the social cost of carbon analysis is "[t]he most important single economic concept in the economics of climate change," and that "federal regulations with estimated benefits of over $1 trillion have used the SCC." Exhibit 17, William D. Nordhaus, Revisiting the Social Cost of Carbon, PNAS, Feb. 14, 2017, http://www.pnas.org/content/114/7/1518.full.pdf.

In sum, the social cost of carbon provides a useful, valid, and meaningful tool for assessing the climate consequences of the proposed leasing, and the BLM's complete failure to discuss it or otherwise explain its omission while touting the economic benefits of the lease sale is arbitrary and capricious.

III. The Proposed Leasing Appears to Violate the Mineral Leasing Act.

Finally, the BLM's proposed leasing runs afoul of the MLA in two key regards. First, it appeals that most all of the lease parcels contain lands that are have very low to no development potential. *See* EA at 4 (estimating that 25 wells would be drilled from leasing 166 parcels) & map below. Second, it does not appear that BLM has examined whether any lessee has the intent to diligently develop many of the proposed parcels.

On the first matter, the Mineral Leasing Act allows leasing only where there are lands that are "known or believed to contain oil or gas deposits." 30 U.S.C. § 226(a). Here, a large part of the June 2018 parcels is proposed for lease in areas with very low to no development potential. At a minimum, the BLM has a duty to confirm where lands proposed for leasing are known or believed to contain oil and gas deposits.



The BLM has recently confirmed that leasing in areas with low development potential and little to no industry interest warrants removing parcels from proposed sales. For example, in Colorado, the agency recently removed 20 parcels totaling 27,529 acres in Grand County from a proposed lease sale, citing "low energy potential and reduced industry interest in the geographic area[.]" Exhibit 18, BLM, "BLM modifies parcel list for June 2017 oil and gas lease sale" (April 17, 2017). The BLM cannot blindly offer to lease public lands for oil and gas development without undertaking some steps to confirm that there exists reasonable development potential.

On the second matter, the BLM cannot lease lands for oil and gas development if there is no intent to diligently develop.[13] The agency confirmed this in a recent decision denying the issuance of an oil and gas lease to a lessee, explaining:

[13] Even representatives of the oil and gas industry have admitted that the current spate of expressions of interests in Nevada are speculative and being made by disreputable companies. *See* Jeremy Nichols, *Something Weird Is Going On in Nevada*, https://climatewest.org/2017/08/30/something-weird-is-going-on-in-nevada/ (last visited May 3, 2017); *see also* Letter from Guardians, *Interest in Oil and Gas in Nevada is a Sham, Pause on New Leasing Needed* (Aug. 24, 2017), https://climatewest.files.wordpress.com/2017/08/2017-8-24-nevada-oil-and-gas-leasing-pause-letter.pdf.

> A fundamental requirement of every oil and gas lease, as stated in Section 4 on page 3 of Form 3100-1, is the requirement that the "Lessee must exercise reasonable diligence in developing and producing, and must prevent unnecessary damage to, loss of, or waste of leased resources." This diligent development requirement has its basis in the Mineral Leasing Act of 1920, as amended. See 30 U.S.C. § 187. Thus, an expressed intent by a person offering to purchase a lease to not develop and produce the oil and gas resources on the leasehold would directly conflict with the diligent development requirement and require that the offer be rejected.

Exhibit 19, BLM, Oil and Gas Noncompetitive Lease Offers Rejected (Oct. 18, 2016). This decision makes clear that the BLM is obligated to ensure that interest in these parcels is legitimate as it did in the case of Ms. Tempest-Williams. *Id.* The BLM must also apply equal treatment to all potential lessees. The agency owes it to the American people to ensure a fair return on public minerals.

IV. Conclusion

In sum, the BLM's EA for the June 2018 competitive oil and gas lease in Nevada violates NEPA, FLPMA, and MLA in a variety of ways. Thus, Guardians requests that BLM defer all of the proposed parcels, and at a minimum the very low to no development potential parcels and the parcels near the Ruby Mountains, unless and until it corrects these deficiencies.

Sincerely,

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