THE WILDERNESS SOCIETY
ROCKY MOUNTAIN WILD * WILD MONTANA * COALITION TO PROTECT AMERICA'S NATIONAL PARKS * FRIENDS OF THE EARTH

May 17, 2022

Submitted via ePlanning and mail

U.S. Bureau of Land Management
Nevada State Office
Attn: Jon Raby, State Director
1340 Financial Blvd.
Reno, NV 89502

Re: Protest of June 2022 Competitive Oil and Gas Lease Sale Parcels

Dear State Director Raby:

The Wilderness Society, Rocky Mountain Wild, Wild Montana, Coalition to Protect America's National Parks, and Friends of the Earth respectfully protest all parcels in the June 2022 Competitive Oil and Gas Lease Sale. The reference identification for the Environmental Assessment[1] and Finding of No Significant Impact[2] for this lease sale is DOI-BLM-NV-B000-2021-0007-OTHER. On April 18, 2022, The Bureau of Land Management (BLM) Nevada State Office announced the proposed sale of 5 parcels containing 2560.00 acres. For the reasons stated herein, our groups protest all parcels:

NV-2022-06-1508
NVNV105294467
NV, Battle Mountain District Office

NV-2022-06-6910
NVNV105294469
NV, Battle Mountain District Office

NV-2022-06-6912
NVNV105294471
NV, Battle Mountain District Office

NV-2022-06-1513
NVNV105294472
NV, Battle Mountain District Office,

NV-2022-06-1510
NVNV105294474
NV, Battle Mountain District Office

This protest is filed on behalf of The Wilderness Society, Rocky Mountain Wild, Wild Montana, Coalition to Protect America's National Parks, Friends of the Earth, and our members. The names, mailing addresses, and telephone numbers for each organization filing this protest are as follows:

[1] BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-NV-B000-2021-0007-EA (Apr. 18, 2022) [hereinafter EA].

[2] BUREAU OF LAND MGMT., DRAFT FINDING OF NO SIGNIFICANT IMPACT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-NV-B000-2021-0007-EA (Apr. 18, 2022) [hereinafter FONSI].

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I, Ben Tettlebaum, have been authorized to file this protest on behalf of the above groups.

I. INTERESTS OF THE PROTESTING PARTIES

The Wilderness Society (TWS) is a national non-profit membership organization that works to unite people to protect America's wild places. Founded in 1935, TWS is headquartered in Washington, D.C., with offices throughout the country and over 130,000 total members nationwide. TWS aims to transform federal land management to prioritize climate resilience and biodiversity protection and help develop and advance policies for just and equitable public land conservation on behalf of all people. In working toward its mission, TWS elevates the voices of communities that might otherwise be unable to engage in federal processes affecting public lands and waters. For years, TWS has advocated for reform of BLM's oil and gas leasing program. TWS has used in-house science, policy, and legal expertise to comment on and engage in the oil and gas leasing process.

Rocky Mountain Wild (RMW) is a non-profit conservation non-profit works to protect, connect, and restore wildlife and wild lands in the Southern Rocky Mountain region. RMW envisions a biologically healthy future for our region – one that includes a diversity of species and ecosystems, thriving populations of wildlife, and a sustainable coexistence between people and nature. Using research, community science, legal action, and advanced geospatial analysis, we offer solutions for conserving our most at-risk animal and plant species and landscapes. RMW is actively building a diverse community of educators, students, activists, philanthropists, and community scientists to help us make our vision a reality. Because we are all in this together.

Wild Montana: Since 1958, Wild Montana has been uniting and mobilizing people across Montana, creating and growing a conservation movement around a shared love of wild public lands and waters. We work at the local level, building trust, fostering collaboration, and forging agreements for protecting the wild, enhancing public land access, and helping communities thrive. Wild Montana routinely engages in public land-use planning processes, as well as local projects such as timber sales, recreational infrastructure planning, oil and gas lease sales, and land acquisitions. Wild Montana actively advocates for federal oil and gas leasing reform. Our members are invested in the ecological integrity of the selected parcels in this sale and surrounding landscapes in eastern Montana, as well as the impact of climate change on Montana's wild places.

The Coalition to Protect America's National Parks represents over 2,200 current, former, and retired employees and volunteers of the National Park Service, with over 40,000 collective years of stewardship of America's most precious natural and cultural resources. We are protection rangers and interpreters, scientists and maintenance workers, managers and administrators, and specialists in the full spectrum of the parks' resources. Our membership also includes former National Park Service directors, deputy directors, regional directors, and park superintendents. Recognized as the Voices of Experience, the Coalition educates, speaks, and acts for the preservation and protection of the National Park System, and mission-related programs of the National Park Service. More information can be found at https://protectnps.org.

Friends of the Earth (FoE) is a 501(c)(3) non-profit, membership-based organization with offices located in Berkeley, California and Washington, DC. FoE currently has over 4.7 million activists and over 290,000 members, located across all 50 states and the District of Columbia. FoE is also a

member of Friends of the Earth-International, which is a network of grassroots groups in 74 countries worldwide. FoE's primary mission is to defend the environment and champion a more healthy and just world by collectively ensuring environmental and social justice, human dignity, and respect for human rights and peoples' rights. FoE is dedicated to fighting climate change and advocating for clean energy alternatives. FoE's Climate & Energy program directly engages in administrative and legal advocacy to protect the environment and society from climate change, pollution, and industrialization associated with fossil fuel development on public lands and associated greenhouse gas emissions. Key to this work is fighting to reduce greenhouse gas emissions and domestic reliance on fossil fuels, and advance justly-sourced, renewable energy.

II. STATEMENT OF REASONS IN SUPPORT OF THE PROTEST OF THE NEVADA JUNE 2022 LEASE SALE PARCELS

The Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and accompanying documents contain several major flaws that undergird this protest and counsel withdrawal of parcels from this lease sale:

- *Louisiana v. Biden* does not require holding a lease sale or issuing any lease.
- BLM failed to analyze the cumulative or reasonably foreseeable impacts of all the lease sales it announced concurrently in this national action, which requires preparing an EIS.
- Resources Management Plans (RMPs) must be amended to account for and address climate change before any leasing could occur.
- BLM failed to determine whether greenhouse gas (GHG) emissions and climate impacts are significant, in violation of the National Environmental Policy Act (NEPA).
- BLM failed to determine whether leasing is necessary and will comply with the Federal Land Policy and Management Act (FLPMA) anti-degradation mandate.
- The EA arbitrarily ignored whether there are any benefits from the lease sale that warrant incurring the enormous social and environmental costs of the sale.
- The EA failed to adequately analyze mitigation to address the impacts of GHG emissions.
- BLM's argument that not issuing new federal onshore leases may lead to an even greater rise in oil and gas consumption is arbitrary and capricious.
- The environmental justice analysis in the EA is inadequate.
- BLM failed to take a hard look at impacts to resources, other than climate, from reasonably foreseeable development of the proposed leases.
- BLM failed to analyze and evaluate mitigation for the impact of methane emissions.

a. *Louisiana v. Biden* Does Not Require Holding a Lease Sale or Issuing Any Leases.

As an initial matter, the Department of the Interior's reasoning that it must proceed with lease sales to remain "[i]n compliance with an injunction from the Western District of Louisiana,"[3] is incorrect. The preliminary injunction order issued by the U.S. District Court for

[3] *See, e.g.*, U.S. DEP'T OF THE INTERIOR, INTERIOR DEPARTMENT ANNOUNCES SIGNIFICANTLY REFORMED ONSHORE OIL AND GAS LEASE SALES (Apr. 15, 2022), https://www.doi.gov/pressreleases/interior-department-announces-significantly-reformed-onshore-oil-and-gas-lease-sales.

the Western District of Louisiana does not require holding any lease sales. *See Louisiana v. Biden*, No. 2:21-cv-778-TAD-KK, 2021 WL 2446010 (W.D. La. June 15, 2021).

The *Louisiana* order enjoined implementation of a nationwide "Pause" on offshore and onshore oil and gas leasing contemplated by President Biden's Executive Order 14008. *Id.* The court, however, did not rule that BLM must hold lease sales every three months in every state office. Instead, while enjoining a nationwide "Pause" directed by the President, the court distinguished lease sale postponements for NEPA or other environmental concerns.

The court stated that "[t]he agencies could cancel or suspend a lease sale due to problems with that specific lease [sale], but not as to eligible lands for no reason other than to do a comprehensive review pursuant to Executive Order 14008." *Id.* at *14. The court added: "there is a huge difference between the discretion to stop or pause a lease sale because the land has become ineligible for a reason such as an environmental issue," and halting lease sales "with no such issues and only as a result of Executive Order 14008." *Id.* at *13. The *Louisiana* ruling held that the plaintiffs had shown a likelihood of success on the merits of the case because BLM's postponement of some sales expressly relied on Executive Order 14008 or did not identify any NEPA concerns. *Id.* at *16; *see also id.* at *21 ("at least some of the onshore lease [sale]s were cancelled due to the Pause, without any other valid reason. Some were cancelled to do additional environmental analysis . . . but the Pause has obviously been implemented by Agency Defendants for some of the lease sales").

The court's reasoning thus supports BLM's continued authority to postpone lease sales to address NEPA and similar concerns tied to a given sale. The Interior Department itself has recognized this point. In its appeal of the *Louisiana* ruling, the Department noted: "the district court did not dispute that Interior retains discretion to insist on compliance with NEPA and other statutory prerequisites before finding that 'eligible lands are available' under the [Mineral Leasing Act] (and its injunction does not prevent Interior from doing so)." Appellants' Open. Br. at 32-33, *State of Louisiana v. Biden*, Fifth Cir. No. 21-30505 (Nov. 16, 2021); *see also id.* at 14 n.1 (similar).[4]

As discussed elsewhere in this protest, there are numerous NEPA, FLPMA, and other issues that require postponing leasing, and the *Louisiana* order presents no obstacle to doing so. BLM's continued reliance on the *Louisiana* order as a justification for the proposed lease sales is arbitrary and capricious.

b. BLM Failed to Analyze the Cumulative or Reasonably Foreseeable Impacts of All the Lease Sales It Announced Concurrently in this National Action, which Requires Preparing an EIS.

The proposed lease sales in each state are driven by a national Interior Department decision to proceed with oil and gas leasing in direct response to the *Louisiana* litigation. By failing to analyze the cumulative or reasonably foreseeable impacts of all the June 2022 lease

[4] BLM also has tacitly acknowledged the same point by deciding not to hold any lease sale this quarter for the Eastern States. *See* https://eplanning.blm.gov/eplanning-ui/project/2015577/510 (BLM Eastern States office selecting no action alternative for proposed lease sale).

sales, BLM improperly and arbitrarily has minimized the overall environmental effects – particularly the aggregated GHG emissions and climate impacts.

On August 24, 2021, the Interior Department reported to the court that BLM offices across the country had been directed "to finalize parcel lists for upcoming sales, in order to publicly post those parcel lists for NEPA scoping by August 31, 2021." ECF No. 155 at 5, *Louisiana v. Biden*. As directed by the Department, notices of scoping in each state were posted on August 31. Also on August 31, the Interior Department announced that it would proceed with offshore lease sale 257, which covers over 80 million acres in the Gulf of Mexico. That sale took place on November 17. And the Interior Department announced on April 15 that it would be holding all the proposed lease sales with an increased 18.75% royalty rate.[5] Each of the proposed lease sales here are plainly part of a national initiative and must be analyzed as such under NEPA.

That means preparing an Environmental Impact Statement (EIS) to address the cumulative or reasonably foreseeable impacts[6] of the tens of millions of acres that might be leased both onshore and offshore.[7] Cumulative or reasonably foreseeable impacts include those related not only to climate and GHG emissions, but also to wildlife habitat, water pollution, impacts to wildlife and recreation and other uses of these lands and waters, and other relevant issues. The current NEPA regulations require BLM to evaluate cumulative impacts "result[ing] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.1(g)(3) (2022).[8] The 2020 NEPA regulations, under which BLM prepared the EA, require BLM to evaluate impacts that are "reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives." 40 C.F.R. § 1508.1(g) (2020). Under either regulatory effects definition, BLM must analyze the impacts of all June 2022 lease sales together. BLM's effects analysis "must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339,

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[5] U.S. DEP'T OF THE INTERIOR, INTERIOR DEPARTMENT ANNOUNCES SIGNIFICANTLY REFORMED ONSHORE OIL AND GAS LEASE SALES (Apr. 15, 2022), https://www.doi.gov/pressreleases/interior-department-announces-significantly-reformed-onshore-oil-and-gas-lease-sales.

[6] On April 20, 2022, the Council on Environmental Quality (CEQ) published final NEPA regulations, which reinstate the requirement to analyze "cumulative effects" in NEPA analyses. *See* 87 Fed. Reg. 23,453, 23,469–70 (Apr. 20, 2022). For the June 2022 least sale EAs, BLM analyzed effects based on the 2020 NEPA regulations, which call for analysis of "reasonably foreseeable" effects or impacts. *See* 40 C.F.R. § 1508.1(g) (2020).

[7] Even if the Interior Department fails to produce an EIS analyzing the collective impacts of all concurrently announced onshore and offshore lease sales, BLM must nonetheless analyze the cumulative or reasonably foreseeable impacts from all June 2022 onshore lease sales.

[8] On April 16, 2021, the Department of the Interior Secretary Deb Haaland issued Secretarial Order 3399, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process*, directing all Interior bureaus and offices "not [to] apply the 2020 [NEPA] Rule in a manner that would change the application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect . . . . Bureaus/Offices will continue to follow the Department's NEPA regulations at 43 C.F.R. Part 46, Department Manual procedures (516 DM Ch. 1-15), and guidance and instruction from the Office of Environmental Policy and Compliance." SO 3399 at *3–4. As such, this section references the 2022 regulations, which relevant parts here are synonymous with the 1978 regulations.

342 (D.C. Cir. 2002); *see Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 973–74 (9th Cir. 2006) (holding agency's cumulative impacts analysis insufficient based on failure to discuss other mining projects in the region); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214–16 (9th Cir. 1998) (overturning Forest Service EA that analyzed impacts of only one of five concurrent logging projects in the same region); *see also Kern v. BLM*, 284 F.3d 1062, 1078 (9th Cir. 2002) (holding that BLM arbitrarily failed to include cumulative impacts analysis of reasonably foreseeable future timber sales in the same district as the current sale).

Analyzing those impacts will require an EIS. NEPA mandates that an agency prepare an EIS for any major federal action that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). An agency can rely on an EA only if it makes an affirmative finding that environmental impacts will not be significant in a FONSI. If there are "substantial questions" whether leasing may have a significant effect on the environment, an EIS is required. *Anderson v. Evans*, 371 F.3d 475, 488 (9th Cir. 2004); *Ctr. for Biological Diversity v. BLM*, 937 F. Supp. 2d 1140, 1154 (N.D. Cal. 2013). Interior's own NEPA manual directs preparation of an EIS, in instances such as this, "where a proposed action is directly related to another action(s), and cumulatively the effects of the actions taken together would be significant, even if the effects of the actions taken separately would not be significant." DEP'T OF THE INTERIOR, DEPARTMENTAL MANUAL, 516 DM 11 at 6 (Dec. 10, 2020).

As discussed in more detail below, here, the Interior Department announced potential leasing that it predicts will cause billions of dollars in social and environmental costs from greenhouse gas emissions alone. Collectively, these actions impose significant impacts. It would be arbitrary and capricious to conclude that leasing on this scale will not be significant.

BLM's claim that analyzing the cumulative GHG emissions from all these lease sales "would result in an inflated, unrealistic, quantity of estimated emissions that would not be useful to the decision maker and would not accurately inform the public of the magnitude of probable cumulative emissions and impacts," *see, e.g.*, EA at 32, is arbitrary and capricious. The EA for each proposed lease sale provides a similar analysis of the reasonably foreseeable GHG emissions from that sale, making it entirely feasible to aggregate and assess their cumulative impacts. *See, e.g.*, EA at 23–34; BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-WY-0000-2021-0003-EA 29–40 (Apr. 18, 2022); BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-MT-0000-2021-0006-EA 34–47 (Apr. 18, 2022); *see also* Bureau of Land Mgmt., 2020 Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends 50, table 5-13, 51, table 5-14, 52, table 5-15, 53, table 5-16 (Oct. 29, 2021) [hereinafter Annual Report], https://www.blm.gov/content/ghg/ (demonstrating that, despite BLM's contention in this EA, it can estimate aggregated emissions from oil and gas leasing across the states and this does better inform the public of the magnitude of probable cumulative emissions and impacts). Not doing so results in a *deflated* and unrealistic quantity of estimated GHG emissions that fails to inform the public of the magnitude of GHG emissions and the resulting climate impacts.

Accordingly, we request that BLM withdraw all parcels because it has not prepared an adequate impacts analysis under NEPA.

c. Resources Management Plans (RMPs) Must Be Revised or Amended to Account for and Address Climate Change before Any Leasing Could Occur.

BLM must withdraw all parcels from this sale because it has not revised or amended the underlying land use plans to properly account for climate change impacts resulting from GHG emissions. The EA incorrectly asserts that the sale and prospective lease issuance conform to the respective RMPs. EA at 5. True, oil and gas leasing is allowed under the relevant RMPs. But because none of the operable land use plans adequately accounts for GHG emissions and climate change impacts, revision, or amendment of the RMPs is needed before BLM could consider offering parcels for lease.

BLM must manage public lands according to "multiple use" and "sustained yield" and "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archeological values." 43 U.S.C. §§ 1701(a)(7) & (8), 1712(c)(1), 1732(a). Multiple use obligates the agency to make the "most judicious use" of public lands and their resources to "best meet the present and future needs of the American people." *Id.* § 1702(c). This requires taking "into account the long-term needs of future generations," ensuring "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment." *Id.* Sustained yield mandates "achiev[ing] and maint[aining] in perpetuity [] a high-level annual or regular periodic output of the various *renewable* resources of the public lands consistent with multiple use." *Id.* § 1702(h) (emphasis added). Importantly, BLM must also "take any action necessary to prevent unnecessary or undue degradation of the lands." *Id.* § 1732(b).

These principles undergird the land use planning process. BLM "shall . . . when appropriate, revise land use plans," adhering to multiple use and sustained yield. *Id.* § 1712(a); *see id.* §§ 1711(a), 1712(c)(4). BLM *must* revise an RMP based on "new data, new or revised policy[,] and changes in circumstances affecting the entire plan or major portions of the plan." 43 C.F.R. § 1610.5-6. Revisions shall "consider the relative scarcity of the values involved," "weigh long-term benefits to the public against short-term benefits," and comply with state and federal pollution control laws and "other pollution standards or implantation plans." 43 U.S.C. § 1712(c)(1), (6), (7) & (8).

The Mineral Leasing Act (MLA) does not contravene FLPMA's resource conservation requirements, leaving BLM considerable discretion over the onshore leasing program. *See* 30 U.S.C. § 226(a). Courts have repeatedly upheld DOI's and BLM's authority over public lands management and, specifically, the onshore leasing program, including whether to issue any oil and gas leases at all. *See, e.g., W. Energy Alliance v. Salazar*, 709 F.3d. 1040, 1044 (10th Cir. 2013) ("The MLA, as amended by the Reform Act of 1987, continues to vest the Secretary with considerable discretion to determine which lands will be leased."); *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009) ("It is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses. . . . Development is a *possible* use, which BLM must weigh against other possible uses including conservation to protect environmental values. . . ."). The MLA poses no impediment to BLM fulfilling its obligations under FLPMA.

Several courts have recently found RMPs inadequate for failure to analyze climate impacts. In *Wilderness Workshop v. Bureau of Land Management*, the court determined that BLM failed to take a hard look at the reasonably foreseeable indirect impacts of oil and gas leasing and development authorized through the Colorado River Valley RMP. 342 F. Supp. 3d 1145, 1156 (D. Colo. 20 18). The court held that "BLM acted in an arbitrary and capricious manner and violated NEPA by not taking a hard look at the indirect effects resulting from the combustion of oil and gas in the planning area under the RMP" and directed BLM to "quantify and reanalyze the indirect effects that emissions resulting from combustion of oil and gas in the planning area may have on [greenhouse gas] emissions." *Id.*

Similarly, in *Western Organization of Resource Councils v. BLM*, the court directed BLM to prepare supplemental EISs to address deficiencies in the environmental analyses for the 2015 Miles City and Buffalo RMPs. No. CV 16-21-GF-BMM, 2018 U.S. Dist. LEXIS 49635, at *55–56 (D. Mont. Mar. 26, 2018). Among other things, the court held that the RMPs failed to consider alternatives that would decrease the amount of coal available for leasing, evaluate the consequences of downstream fossil fuel combustion, or justify the exclusive use of 100-year global warming potential (GWP). *Id.* at 20–48. The court explained, "Deferral of such analysis 'based on a promise to perform a comparable analysis in connection with later site-specific projects' risks defeating entirely the purpose of completing an EIS at the RMP stage." *Id.* at *33; *see also id.* at *40 ("In light of the degree of foreseeability and specificity of information available to the agency while completing the EIS, NEPA requires BLM to consider in the EIS the environmental consequences of the downstream combustion of the coal, oil and gas resources potentially open to development under these RMPs. . . . BLM may not defer wholesale such analysis to the leasing stage.").

After a court held that BLM did not sufficiently analyze impacts from the combustion of oil and gas as part of preparing the Colorado River Valley RMP, the agency has now committed to amending the RMP. A recent lawsuit making similar claims with respect to the Grand Junction RMP has led to a pause on leasing in the Grand Junction Field Office. And a recent settlement has put 53 leases on hold until the applicable land use plans can be updated to address climate impacts in the Grand Junction and Colorado River Valley RMPs.[9]

Recently issued Instruction Memorandum 2021-027 also contemplates not issuing oil and gas leases when an RMP must be revised or amended. It recognizes that where "necessary terms and conditions under which leasing would be appropriate are not in conformance with the RMP, it will be necessary to amend the RMP before leasing is appropriate." Instruction Memorandum No. 2021-027 (Apr. 30, 2021). In such cases, "the affected lease parcels must be withdrawn or deferred from leasing until a plan amendment or revision can be completed at a later date."[10] *Id.* Such is the case here.

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[9] *See* Sierra Club, *Legal Agreement Blocks Fracking on 53 Oil Leases, Requires Climate Review for Management of 2 Million Acres in Colorado* (Jan. 6, 2021), https://www.sierraclub.org/press-releases/2021/01/legal-agreement-blocks-fracking-53-oil-leases-requires-climate-review-for.

[10] The provision in IM 2021-027 stating that "BLM will not routinely defer leasing when waiting for an RMP amendment or revision *to be signed*" (emphasis added) is not applicable because there is no RMP revision here merely waiting "to be signed."

The Biden Administration has painstakingly set forth new policy, standards, and plans regarding climate change.[11] The RMP covering the parcels under consideration for this lease sale does not come close to accounting for or adequately addressing climate change, its adverse environmental impacts on resources and land uses, or GHG emissions in relation to oil and gas leasing and development:

- BLM Tonopah Field Office, Approved RMP (Sept. 2015): never discusses climate change.[12]

Because BLM has not adequately analyzed GHG emissions and climate change impacts from oil and gas leasing in the governing land use plans for these regions, those plans must be revised or amended before offering any parcel for lease.

Underscoring the inadequacy of existing RMPs' consideration of climate change and the need for land use plans to do so, a recent Utah State University study that reviewed 225 papers published between 2009 and 2018 found that active uses on BLM lands, such as energy development, threaten passive uses such as conservation and ecosystem services.[13] Climate change is seriously exacerbating these impacts. Yet, in reviewing 44 RMPs the study found that there was little, if any, consideration of climate change or its impacts to ecosystems and land uses, and adaptive responses to climate change were not considered.[14]

The significant adverse impacts caused by burning fossil fuels from oil and gas development on these public lands directly and urgently threaten BLM's ability to uphold its statutory mandates under FLPMA. The Annual Report's discussion of climate impacts for Colorado highlights the need for RMP revisions or amendments before new leasing:

> Statewide average annual temperatures are projected to warm by 2.5°F to 5°F by 2050. . . . Projected hotter temperatures increase probabilities of decadal to multidecadal megadroughts, which are persistent droughts lasting longer than a decade, even when precipitation increases. Increased warming, drought, and insect outbreaks, all caused by or linked to climate change, will continue to increase wildfire risks and impacts to people and ecosystems.[15]

The serious ecological and environmental degradation of the climate crisis constitutes new data and a change in circumstances affecting the entirety of the RMPs or, at the least, major portions of them. NEPA requires full and proper analysis of GHG emissions and the resulting climate

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[11] *See, e.g.*, Presidential Executive Order 14008, 86 Fed. Reg. 7,619 (Feb. 1, 2021); United Nations Framework Convention on Climate Change, Conference of the Parties, Nov. 30–Dec. 11, 2015, Adoption of the Paris Agreement Art. 2, U.N. Doc. FCCC/CP/2015/L.9 (December 12, 2015), http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf.

[12] BLM TONOPAH FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN 83 table 3.1, 548 (Oct. 1997).

[13] *See* ELAINE M. BRICE ET AL., IMPACTS OF CLIMATE CHANGE ON MULTIPLE USE MANAGEMENT OF BUREAU OF LAND MANAGEMENT LAND IN THE INTERMOUNTAIN WEST, USA 10–20 (Michael C. Duniway ed., Sept. 16, 2020), https://esajournals.onlinelibrary.wiley.com/doi/epdf/10.1002/ecs2.3286.

[14] *Id.*

[15] Annual Report at 93–94.

change impacts. *See, e.g.*, *Sierra Club v. Fed. Energy Regulatory Comm'n*, 867 F.3d 1357, 1374 (D.C. Cir. 2017); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 67–77 (D.D.C. Mar. 19, 2019).

For these reasons, the RMP is legally flawed, failing to manage the public lands on the basis of multiple use and sustained yield. BLM should therefore withdraw all lease parcels because the underlying RMP and accompanying EIS fails to adequately account for GHG emissions and address climate change.

d. BLM Failed to Determine Whether GHG Emissions and Climate Impacts Are Significant, in Violation of NEPA.

The assertion in the FONSI that BLM cannot evaluate the significance of GHG emissions, FONSI at 3, is arbitrary and capricious. The Annual Report and the tremendous wealth of high-quality information on climate change combined with BLM's long history of environmental analyses under NEPA provide the agency with ample resources to ascertain whether this action presents significant environmental effects.

NEPA requires an agency to prepare an EIS for any major federal action that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). An agency can rely on an EA only if it makes an affirmative finding that environmental impacts will not be significant. If there are "substantial questions" whether leasing may have a significant effect on the environment, an EIS is required. *Anderson v. Evans*, 371 F.3d 475, 488 (9th Cir. 2004); *WildEarth Guardians v. Zinke*, No. CV 17-80-BLG-SPW-TJC, 2019 U.S. Dist. LEXIS 30357, at *38 (D. Mont. Feb. 11, 2019) ("[A] plaintiff need not show that significant effects will in fact occur, but raising substantial questions whether a project may have a significant effect is sufficient." (citing *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 864–65 (9th Cir. 2005))); *Ctr. for Biological Diversity v. BLM*, 937 F. Supp. 2d 1140, 1154 (N.D. Cal. 2013).

The recent case, *350 Montana v. Haaland*, is instructive. No. 20-35411, 2022 U.S. App. LEXIS 8918 (9th Cir. Apr. 4, 2022). There, BLM similarly found that a project's GHG emissions would have no significant impact. *Id.* at *7. The agency failed "to articulate any science-based criteria for significance." *Id.* But the "lack of a science-based standard for significance," *Id.* at 23, did not excuse the agency from providing a "convincing statement of reasons to explain why [the] project's impacts [we]re insignificant." *Id.* at 7 (first alteration in original) (internal citation and quotation marks omitted).

Here, while the EA and FONSI provide some comparisons of the lease sale's estimated GHG emissions to broader GHG emissions, *e.g.*, EA at 23–34, as noted above, BLM fails to contextualize emissions from all June 2022 lease sales and, moreover, claims that because there are no established thresholds to determine the significance of GHG emissions' climate impacts, it simply finds that leasing will have no significant impacts. *See* EA at 3. In fact, contrary to its express finding of no significant impact, BLM states that it "cannot render a determination of significance for a proposed action based on GHG emissions or climate impacts alone."[16]

[16] *See* Supplemental Information at 72.

Although it may be challenging to determine significance, that does not relieve BLM of this burden. BLM's conclusion that it cannot do so is confounding given that the Annual Report itself appears to envision enabling the agency to make the type of significance determination that the FONSI claims is infeasible:

> Comparing emissions levels between proposed actions, current emissions and conditions, and published predictions based on forecasted emission scenarios allows decisionmakers to form a qualitative judgment about the potential for climate impacts from a proposed action. . . . The annual global and U.S. emissions data presented in chapter 6 can be compared with the estimated annual GHG emissions from BLM fossil fuel authorizations in chapter 5 to provide context around the scale and potential impact of estimated emissions from BLM's fossil fuel authorizations. Evaluating the magnitude of estimated emissions from a particular category in the context of other categories or total geographic emissions is one way to evaluate their relative potential impact on climate change.[17]

The Annual Report thus acknowledges the difficulty in downscaling impacts to a particular action but then explains how BLM can use existing information and analysis, such as the social cost of greenhouse gases, to judge the potential for climate impacts from a proposed action.

BLM's finding is all the more concerning given the Annual Report's own conclusion that "[s]taying within the 1.5°C carbon budget implies that CO_2 emissions need to start declining this decade to maintain reasonable progress to reach net zero by about 2050."[18] Rather than fulfill its legal obligations under NEPA and grapple with the imminent threat posed by locking in future GHG emissions through leasing, BLM avers that it has not developed a standard or carbon budget.[19] But BLM does have the responsibility to make a non-arbitrary significance determination and has the tools to do so. Otherwise, no matter the size of the project or the amount of GHG emissions, BLM would *always* find climate impacts to be insignificant. Such reasoning is capricious, ignoring the pressing reality of the climate crisis, the clearly adverse impacts it is causing both globally and locally to resources that BLM manages, and the mandate "to prevent unnecessary or undue degradation of the lands" under FLPMA. *See* 43 U.S.C. § 1732(b).

Rather than blatantly locking in more emissions over the coming years through leasing, BLM must withdraw all parcels from this lease sale because it failed to determine a threshold of significance for GHG emissions and the resulting climate impacts.

e. BLM Failed to Determine Whether Leasing Is Necessary and Will Comply with the Federal Land Policy and Management Act (FLPMA) Anti-Degradation Mandate.

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[17] *See* Annual Report at 64.
[18] *Id.* at 67.
[19] *See* Supplemental Information at 72.

The EA failed to determine whether the adverse impacts of leasing would result in unnecessary or undue degradation of the lands, as FLPMA requires. BLM must manage public lands according to "multiple use" and "sustained yield" and "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archeological values." 43 U.S.C. §§ 1701(a)(7) & (8), 1712(c)(1), 1732(a). Multiple requires BLM to make the "most judicious use" of public lands and their resources to "best meet the present and future needs of the American people." *Id.* § 1702(c). This means taking "into account the long-term needs of future generations," ensuring "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment." *Id.* Sustained yield mandates "achiev[ing] and maint[aining] in perpetuity [] a high-level annual or regular periodic output of the various *renewable* resources of the public lands consistent with multiple use." *Id.* § 1702(h) (emphasis added). The agency must "take any action necessary to prevent unnecessary or undue degradation of the lands." *Id.* § 1732(b).

Under FLPMA, BLM may not prioritize and elevate oil and gas development over other uses, particularly if it would result in unnecessary or undue degradation. *See, e.g., N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009). BLM does not determine whether it is *necessary* or *appropriate* (due) to lease this land to mineral development at the cost of vegetative health, loss of ecosystem services, and GHG emissions and climate change, among other impacts. By failing to make an affirmative determination as to whether leasing will cause unnecessary or undue degradation, BLM has violated FLPMA and must withdraw the parcels from this lease sale.

f. The EA Arbitrarily Ignored Whether There Are Any Benefits from the Lease Sale that Warrant Incurring the Enormous Social and Environmental Costs of the Sale.

We appreciate BLM's analysis of the potential GHG emissions associated with these lease sales. Such analysis includes putting those emissions into context by calculating that the social cost of greenhouse gases (SC-GHG) resulting from the lease sales runs into the billions of dollars, *e.g.*, Wyoming draft EA at 39, and that for certain sales "the projected average annual GHG emissions from expected development following the proposed lease sale are equivalent to 400,926 gasoline-fueled passenger vehicles driven for one year." *Id.* at 35.

However, the EAs arbitrarily ignores an important aspect of the problem: what economic benefits and revenues would result from the lease sale, and how do they compare to the enormous social and environmental costs of the sale? The EA asserts that "SC-GHG is provided only as a useful measure of the benefits of GHG emissions reductions *to inform agency decision-making*." EA at 30 (emphasis added). But it is unclear how it has so informed decision-making, given the sales are projected to impose billions of dollars in harm, yet the agency is moving forward with leasing nonetheless. Moreover, as noted above, BLM has failed to analyze benefits and costs of all the lease sales collectively – important for understanding the true impact of this national decision. None of the draft EAs offer any estimate of this at all. The EA provides only boilerplate text describing how lease revenues are distributed and generic descriptions of economic and social issues related to oil and gas development. *See, e.g.*, EA at 23–34; BUREAU

OF LAND MGMT., ENVIRONMENTAL ASSESSMENT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-WY-0000-2021-0003-EA, at 100–01 (Apr. 18, 2022).[20]

Offering leases that will impose billions of dollars in social and environmental harms without addressing what (if any) countervailing benefits might warrant such a decision is arbitrary and capricious and inconsistent with FLPMA. An action is arbitrary and capricious, *inter alia*, "if the agency has . . . failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983). Here, it would be arbitrary and capricious to quantify the costs of selling so many leases but disregard the other side of the cost-benefit scale. *See High Country Conserv. Advocs. v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1191 (D. Colo. 2014) (holding it was "arbitrary and capricious to quantify the *benefits* of the lease modifications and then explain that a similar analysis of the *costs* was impossible when such an analysis was in fact possible"); *Montana Env. Info. Ctr. v. U.S. Office Surf. Mining*, 274 F. Supp. 3d 1074, 1098 (D. Mont. 2017) (ruling in favor of plaintiff's argument that it was "arbitrary and capricious for [agency] to quantify socioeconomic benefits while failing to quantify costs"). Such a one-sided analysis also violates NEPA. *Id.*

The need to consider both costs and benefits is also part of BLM's obligation under the multiple-use mandate of FLPMA. FLPMA requires striking a balance between conflicting uses, such as oil and gas development and climate (and numerous other uses). As the Supreme Court has noted "multiple use" describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, "including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values." *Norton v. SUWA*, 542 U.S. 55, 58 (2004) (quoting 43 U.S.C. § 1702(c)). BLM cannot strike that balance without even considering what it is balancing.

Generating an estimate of the economic benefits from the proposed lease sales is entirely feasible. The Interior Department and other agencies routinely produce estimates of the economic impacts from oil and gas development. For example, "numerous prior environmental impact studies for BLM RMPs involving substantial oil and gas activity" have included such projections.[21]

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[20] The Montana draft EA provides an estimate of the bonus and rental payments that would be generated by the lease sale but not the economic impacts from production. That incomplete estimate (either $121,670 or $255,963 (depending on the alternative)), BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-MT-0000-2021-0006-EA, at 76–78 (Apr. 18, 2022), represents **only two percent or less of the social cost of GHG emissions resulting from the sale**. *Id.* at 44–45.

[21] BLM, DRAFT RESOURCE MANAGEMENT PLAN AND ENVIRONMENTAL IMPACT STATEMENT CARLSBAD FIELD OFFICE, PECOS DISTRICT, NEW MEXICO at 4-450 (Aug. 2018), https://eplanning.blm.gov/public_projects/lup/64444/153042/187358/BLM_CFO_Draft_RMP_-_Volume_I_-_EIS_-_August_2018_(1).pdf; *see, e.g.*, BUREAU OF OCEAN ENERGY MANAGEMENT, ECONOMIC ANALYSIS METHODOLOGY FOR THE 2017–2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM (Nov. 2016), https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/Economic-Analysis-Methodology.pdf#page10; U.S. DEP'T OF ENERGY, THE ECONOMIC BENEFITS OF OIL AND GAS (2020), https://www.energy.gov/sites/prod/files/2020/10/f80/Economic%20Impact%20of%20Oil%20and%20Gas.pdf; FEDERAL RESERVE BANK OF DALLAS, ANTICIPATED FEDERAL RESTRICTIONS WOULD SLOW PERMIAN BASIN

BLM has already forecasted potential oil and gas production from the leases proposed for the June sales, which would allow the agency to estimate royalties and other economic benefits from that production. BLM's estimate of GHG impacts further illustrates that the agency can make such projections. While recognizing uncertainties, the agency used "estimated well numbers based on State data for past lease development combined with per-well drilling, development, and operating emissions data from representative wells in the area. . . . For purposes of estimating production and end-use emissions, reasonably foreseeable wells are assumed to produce oil and gas in similar amounts as existing nearby wells." EA at 26. A similar methodology could be used to estimate production royalty and related economic benefits from the leases.[22]

BLM should withdraw all parcels from this sale because it fails to explain how the benefits of leasing justify the enormous societal costs.

g. The EA Failed to Adequately Analyze Mitigation to Address the Impacts of GHG Emissions.

The EAs fail to adequately identify or evaluate mitigation to address the acknowledged GHG emissions and resulting climate impacts associated with eventual oil and gas development from the lease sale. NEPA requires BLM to include a discussion of mitigation of impacts in the environmental review. 40 C.F.R. § 1508.9; *see also WildEarth Guardians v. U.S. Fish & Wildlife Serv.*, 784 F.3d 677, 698 (10th Cir. 2015) (ruling that an EA must "explore mitigation measures where it acknowledges the possibility that the agency action will cause environmental harm").

BLM's own Mitigation Manual and Mitigation Handbook call for robust evaluation and discussion of mitigation and direct doing so early in the decision-making process.[23] Importantly, "BLM generally has broad discretion to grant, grant with modifications, or deny a proposed public land use."[24] These directives belie BLM's assertion that it can wait "to determine appropriate mitigation measures to reduce/offset GHG emissions" until the APD stage.[25] Courts have held that BLM makes an irretrievable commitment of resources when it issues an oil and gas lease without reserving the right to later prohibit all development, as would occur in this

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PRODUCTION (Mar. 4, 2021), https://www.dallasfed.org/research/economics/2021/0304. Indeed, researchers produced reports on behalf of oil and gas industry interests predicting the economic impacts of pausing federal oil and gas leasing in 2021. The same kind of analysis can and must be done for BLM's decision to re-start leasing now. *See, e.g.*, May 19, 2021, Laura Zachary declaration, attached (discussing examples); *see also* https://suwa.org/wp-content/uploads/CEI-Economic-Effects-of-Pausing-Oil-and-Gas-Leasing-on-Federal-Lands.pdf. The analyses cited above often use flawed assumptions in their modeling that generated grossly exaggerated estimates of the economic impacts from halting new leasing. *See* Zachary Decl. (discussing flaws in modeling). We reference these reports only to illustrate that it is entirely feasible to prepare such forecasts.

[22] *E.g.*, THE WILDERNESS SOCIETY ET AL., COMMENTS ON THE WYOMING BUREAU OF LAND MANAGEMENT QUARTER ONE 2022 OIL AND GAS LEASE SALE DRAFT ENVIRONMENTAL ASSESSMENT 15–18 (DOI-BLM-WY-0000-2021-0003-EA).

[23] DEP'T OF THE INTERIOR BLM, MITIGATION MANUAL 1-1, 1-4, 2-10, 6-1 (Sept. 22, 2021) ("Mitigation should not be an afterthought; mitigation should be considered early and throughout the NEPA analysis process."); DEP'T OF THE INTERIOR BLM, MITIGATION HANDBOOK 2-1, 2-11, 2-15 (Sept. 22, 2021).

[24] MITIGATION MANUAL at 6-2.

[25] BLM, WYOMING RESPONSE TO PUBLIC COMMENTS at *186–87.

lease sale. *New Mexico ex rel. Richardson*, 565 F.3d at 718; *Pennaco Energy, Inc. v. United States Dep't of the Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004). As such, the EA must include an adequate discussion of mitigation, which it does not.

Mitigation of GHG emissions is also required to satisfy BLM's obligation to prevent unnecessary or undue degradation under FLPMA. *See, e.g.*, *Rocky Mountain Oil & Gas Ass'n v. Watt*, 696 F.2d 734, 739 (10th Cir. 1982) ("In general, the BLM is to prevent unnecessary or undue degradation of the public lands."). In other contexts, BLM has defined its obligation to avoid unnecessary and undue degradation as requiring mitigation for adverse impacts. *E.g.*, 43 C.F.R. §§ 3809.5, 3809.420(a)(4) (stating that, in the hard rock mining context, UUD means conditions, activities or practices that are not "reasonably incident" to the mining operation or that fail to comply with other laws or standards of performance, which include "mitigation measures specified by BLM to protect public lands"). The Interior Board of Land Appeals (IBLA) and courts have likewise recognized that BLM has authority to incorporate mitigation measures into project authorizations to observe its FLPMA obligations. *See, e.g.*, *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 76, 78 (D.C. Cir. 2011) (citing with approval *Biodiversity Conservation Alliance*, 174 IBLA 1, 5–6 (March 3, 2008), which held that an environmental impact may rise to the level of unnecessary and undue degradation if it results in "something more than the usual effects anticipated from [] development, subject to *appropriate mitigation*" (emphasis added)); *Biodiversity Conservation Alliance v. BLM*, No. 09-CV-08-J, 2010 U.S. Dist. LEXIS 62431, at *1, *27 (D. Wyo. June 10, 2010) (holding infill drilling project would not result in unnecessary and undue degradation where BLM required enforceable mitigation of project impacts). Just as BLM can deny a project outright to protect the environmental uses of public lands, it can also condition a project's approval on the commitment to mitigation measures that lessen environmental impacts. *See, e.g.*, *Pub. Lands Council v. Babbitt*, 167 F.3d 1287, 1300–01 (10th Cir. 1999) ("FLPMA unambiguously authorizes the Secretary to specify terms and conditions in livestock grazing permits in accordance with land use plans."); *Grynberg Petro*, 152 IBLA 300, 307–08 (2000) (describing how appellants challenging conditions of approval bear the burden of establishing that they are "unreasonable or not supported by the data").

The EA briefly discusses mitigation that *could* occur and what other government agencies might do, but it did not identify, evaluate, or recommend imposing mitigation to address emissions. *See* EA at 34–35. BLM asserts that most GHG emissions result offsite and outside of the agency's "authority and control." EA at 35. This assertion is misplaced. While the actual combustion of the majority of the fossil fuel occurs downstream, the production – the supply – of the fuel is directly within BLM's control. Because BLM manages the source, it indeed retains the authority, and the obligation, to mitigate emissions from oil and gas produced on public lands it oversees.

The Annual Report, which the EA references, does list several mitigation measures.[26] But BLM fails to evaluate or include any of those measures in the EA. This failure violates BLM's obligations under NEPA, FLPMA, and its own mitigation policies, requiring withdrawal of the parcels from this lease sale.

[26] Annual Report at 100–05.

h. BLM's Argument that Not Issuing New Federal Onshore Leases May Lead to an Even Greater Rise in Oil and Gas Consumption Is Arbitrary and Capricious.

BLM argues that not issuing new federal onshore leases may lead to an even greater rise in oil and gas consumption from non-federal lands and from other countries to meet consumer demand and to help stabilize prices in the short term (meaning through the end of 2023). EA at 33–34. This logic is problematic for several reasons.

First, the bulk of production from leases issued in 2022 would likely not be in circulation until after 2032 and would not contribute to short term supply. At a minimum, around 14.5 months pass between when a lease is issued and an average well could come online and start producing.[27] In practice, operators historically have taken much longer than 14.5 months to begin producing after acquiring a lease. Operators often do not begin development of onshore federal oil and gas leaves until between years 8 to 10 of an initial lease term.[28]

Second, there is very little action that the BLM could make that would increase oil and gas supply to meet consumer demand and to reduce consumer prices in the short term. The main actions that BLM could take to support supply increases in the near term have already been attempted. As of March this year, operators have 9,000 onshore federal drilling permits approved and waiting to be used on existing leases.[29]

Third, BLM's argument that issuing no new federal leases may result in higher net emissions given the current high consumer demand/high price conditions projected for the next two years is inconsistent with findings from modeling that explicitly focuses on the impacts of federal leasing policies. Modeling by economist Brian Prest indicates that issuing fewer leases

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[27] After obtaining an onshore federal lease, operators submit an APD on the lease. On average, BLM takes 212 days (or 7 months) to approve an APD. Surveying New Mexico data on new federal wells that both received an APD and were spud since 2018, an average of 3.5 months passed between when the operator received the APD approval and when it began to drill (spud date). New Mexico Oil Conservation Division, Federal APDs New Wells Data (Feb. 2021), http://www.emnrd.state.nm.us/OCD/documents/ExpandedWellsFedNewWells20200203.xlsx. (This average likely underestimates the length of time between APD approval and commencement of drilling for federal wells in New Mexico because it does not include the 25% of already approved APDs where operators had yet to start drilling.) Once a well is spud (drilling begins), an average of 4 months passes before first production begins. BRIAN PREST, SUPPLY-SIDE REFORMS TO OIL AND GAS PRODUCTION ON FEDERAL LANDS: MODELING THE IMPLICATIONS FOR CLIMATE EMISSIONS, REVENUES, AND PRODUCTION SHIFTS 51, Resources for the Future, [hereinafter Prest], https://www.rff.org/documents/3229/WP_20-16__Dec_2021.pdf (also published as Prest, B. 2022. "Supply-Side Reforms to Oil and Gas Production on Federal Lands: Modeling the Implications for CO2 Emissions, Federal Revenues, and Leakage." Journal of the Association of Environmental and Resource Economists. Vol. 9, No. 4. July 2022. https://www.journals.uchicago.edu/doi/abs/10.1086/718963). That means, all combined, at least 14.5 months pass between when a lease is issued and an average well could possibly come online and start producing.

[28] CONGRESSIONAL BUDGET OFFICE, OPTIONS FOR INCREASING FEDERAL INCOME FROM CRUDE OIL AND NATURAL GAS ON FEDERAL LAND (2016), https://www.cbo.gov/publication/51421.

[29] BLM, APPLICATIONS FOR PERMITS TO DRILL APPROVED AND AVAILABLE TO DRILL (MARCH 2022), https://www.blm.gov/sites/blm.gov/files/docs/2022-04/FY%202022%20APD%20Status%20Report%20March.pdf.

would likely mean even *greater reductions* in net emissions in the face of high consumer demand, not lower reductions.[30]

BLM also notes that another reason to continue issuing federal onshore leases is that it is better to have production come from the US rather than from other countries that may have higher emitting fuels. Even if a portion of the reduction in US supply is partially offset by an increase in production from imports from abroad, the variation in emissions intensity among major producers is nowhere near large enough to negate the overall reductions in consumption and thus in net emissions that would be expected to occur if there were little to no new federal leases issued. In fact, a paper published in the journal Science found that US crude oil production emissions are slightly higher than the average.[31] A study by the Carnegie Endowment finds that the differences in estimated lifecycle emissions of crude oil from major producing regions in the United States and abroad are small.[32] For the locations where U.S. fields do have a slight emissions advantage compared to top regions from which the United States imports oil, the differences are nowhere near large enough to outweigh the climate benefits from net emission reductions that would come from the levels of reduced overall production and consumption that would result from restricted federal leasing.

A recent paper published in Climatic Change calculates that lifecycle emissions from the extraction and use of onshore and offshore federal fossil fuels resulted in an average of 1,408 million metric tons of CO_2e per year since 2005 and are projected to be around 1,130 MMT CO_2e by 2030.[33] In other words the projected lifecycle emissions from federal fuels are equivalent to around 20% of business-as-usual U.S. net emissions in 2030. Climate policies being pursued by the US and other top emitting nations are far from sufficient to avoid a 1.5°C rise and the worst impacts of climate change. The International Energy Agency's 1.5°C-consistent pathway requires "no investment in new fossil fuel supply projects" starting immediately.[34] Decisions to restrict new leasing impact long term supply, and it is an important tool alongside demand-side actions for helping to meet long term global climate goals and for a chance to limit temperatures from rising more than 1.5°C.[35] Accordingly, the claim that no leasing for this sale could lead to greater GHG emissions is arbitrary and capricious.

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[30] *See, e.g.*, Prest at 8, fig. 1. This effect appears in modeling of the expected impacts of a leasing ban by Prest. Compare the baseline and high price scenario results. The high price scenario results in larger global emission reductions.

[31] M.S. Masnadi et al., Global carbon intensity of crude oil production. 361 Science 6405 (2018), https://www.science.org/doi/10.1126/science.aar6859.

[32] CARNEGIE ENDOWMENT, OIL-CLIMATE INDEX, https://oci.carnegieendowment.org/#supply-chain.

[33] N. RATLEDGE, L. ZACHARY, AND C. HUNTLEY, EMISSIONS FROM FOSSIL FUELS PRODUCED ON US FEDERAL LANDS AND WATERS PRESENT OPPORTUNITIES FOR CLIMATE MITIGATION *2–*5, Climatic Change 171, 11 (Mar. 14, 2022), https://link.springer.com/article/10.1007/s10584-021-03302-x.

[34] STÉPHANIE BOUCKAERT ET AL., INTERNATIONAL ENERGY AGENCY, NET ZERO BY 2050: A ROADMAP FOR THE GLOBAL ENERGY SECTOR 21 (2021), https://iea.blob.core.windows.net/assets/beceb956-0dcf-4d73-89fe-1310e3046d68/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf.

[35] A new report demonstrates the benefits of pursuing supply-side and demand-side policies in parallel to achieve global climate goals and to mitigate price impacts. Brian Prest, Partners, Not Rivals: The Power of Parallel Supply-Side and Demand-Side Climate Policy, Resources for the Future (Apr. 21, 2022), https://media.rff.org/documents/Report_22-06.pdf.

i. The Environmental Justice Analysis in the EA Is Inadequate.

The EA offers a paltry analysis of environmental justice impacts. Beyond citing Executive Order 12898 and punting most analysis to the APD stage, the EA provides no evaluation of the impacts on those communities from oil and gas leasing and development. EA at 58–59. This omission is arbitrary and capricious under NEPA. The failure to address environmental justice impacts demands remediation and withdrawal of the lease parcels from the lease sale.

j. BLM Failed to Take a Hard Look at Impacts to Resources, Other Than Climate, from Reasonably Foreseeable Development of the Proposed Leases.

All the draft EAs violate NEPA because they fail to analyze and disclose the reasonably foreseeable impacts to a variety of non-climate resources from drilling on these lease acres. In particular, BLM has failed to take a hard look at the impacts to groundwater, wildlife, and other resources that will be harmed by oil and gas development resulting from its leasing decisions.

Courts have long made clear that "the sale of leases cannot be divorced from post-leasing exploration, development, and production." *Bob Marshall All. v. Hodel*, 852 F.2d 1223, 1229 (9th Cir. 1988). BLM's issuance of leases typically is an irretrievable commitment of resources, and before taking that step the agency must consider the reasonably foreseeable impacts – such as oil and gas drilling – to other resources. Making an irreversible commitment of resources, without analyzing effects of developing those leases, is an "approve now and ask questions later" approach – "precisely the type of environmentally blind decision-making NEPA was designed to avoid." *Conner v. Burford*, 848 F.2d 1441, 1450–51 (9th Cir. 1988); *Sierra Club v. Peterson*, 717 F.2d 1409, 1413–15 (D.C. Cir. 1983).

The EAs, however, provide only broad descriptions of categories of impacts that result from oil and gas development generally, without examining how severe those impacts are likely to be for the particular leases being offered here. The EAs' boilerplate could be applied to virtually any oil and gas proposal anywhere on public lands, and provides the agency and the public no useful information about the specific leases proposed in these lease sales. This does not satisfy NEPA. "General statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided." *Conservation Cong. v. Finely*, 774 F.3d 611, 621 (9th Cir. 2014).

The draft EAs' assertion that additional analysis is not feasible at the leasing stage is arbitrary and capricious and violates NEPA. There is ample information available to forecast reasonably foreseeable development on the specific leases being offered and to evaluate the potential impacts of that development on groundwater, wildlife, and other resources. Indeed, BLM has already done that for its climate analysis: its EAs "analyz[e] potential GHG emissions from projected oil and gas development on the parcels proposed for leasing using estimates based on past oil and gas development and available information from existing development within the State." EA at 24. For each alternative considered, BLM used its projection of future development on the leases to estimate the direct on-site emissions and indirect (downstream)

emissions over the entire life of the leases, for the average year of production, and for the year of maximum production. *Id.* EA at 23–34.

As discussed below, it is entirely feasible for BLM to use the same projection of future development on the leases to estimate impacts to other resources. Indeed, BLM has sought to focus these sales on lease parcels that are adjacent to existing oil and gas development. *See, e.g.*, Colorado draft EA at Appx. G; Wyoming draft EA at 239. BLM can use evidence of impacts from existing development on wildlife, groundwater, etc., to predict what will happen from allowing even more oil and gas development in these areas.

While any projection of future development impacts necessarily involves uncertainty, that uncertainty does not excuse BLM from making any projection at all. Failure to use readily available resources to forecast reasonably foreseeable impacts to these resources would be arbitrary and capricious and violate NEPA. *New Mexico ex rel. Richardson*, 565 F.3d at 718–19 (failure to discuss impacts from developing oil and gas lease was arbitrary and capricious where "[c]onsiderable exploration has already occurred on parcels adjacent to the" proposed lease); *N. Plains Res. Council*, 668 F.3d at 1078–79 (rejecting agency argument that impacts from future coalbed methane development were "too speculative" to evaluate where there was "available data concerning likely future development").

i. Groundwater quality and water demands

NEPA's requirement to assess all the potential environmental impacts from oil and gas leases, before it offers those leases to operators, includes taking a "hard look" at how ensuing development could impact groundwater. *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 457 F. Supp. 3d 880, 886–89 (D. Mont. 2020). BLM's draft EA fails to do so.

With the exception of Montana and to a certain degree New Mexico and Nevada, the draft EAs contain only cursory sections containing generic boilerplate about potential water resource impacts from oil and gas development, summarizing various RMP and other standard stipulations that would apply, and then asserting that adequate protections for groundwater will be applied at the APD stage. *See, e.g.*, Colorado draft EA at 15–17 (including surface and groundwater resources in list of "Issues Considered but Not Analyzed in Detail," which lists applicable regulatory and other requirements intended to protect water resources); Wyoming draft EA at 41–44. Similarly, most of the EAs say almost nothing about the water demands from development on the proposed leases. *See, e.g.*, Wyoming draft EA at 41–44.

It is entirely feasible for BLM to take a hard look at the foreseeable water resource impacts from its leasing decisions – in fact, the agency's draft Montana EA has a much more extensive discussion of these impacts. Montana draft EA at 80–98. In addition, the attached report from PSE Healthy Energy (PSE) illustrates the readily available data that can be used for such an analysis in Wyoming.[36] The PSE analysis also shows that existing federally approved oil and gas development in Wyoming does not adequately protect usable groundwater resources.

[36] Rebecca Tisherman et al., *Examination of Groundwater Resources in Areas of Wyoming Proposed for the June 2022 BLM Lease Sale* (May 12, 2022) (hereinafter PSE 2022 Wyoming Review).

Groundwater is a critical resource that supplies many communities, particularly rural ones, with drinking water. Protecting these resources is imperative to protect human health and the environment, especially because groundwater will become more important as increased aridity and higher temperatures alter water use. The U.S. Environmental Protection Agency (EPA) has noted that existing drinking water resources "may not be sufficient in some locations to meet future demand" and that future sources of fresh drinking "will likely be affected by changes in climate and water use."[37] As a result, BLM must protect both aquifers currently used for drinking water and deeper and higher-salinity aquifers that may be needed in coming decades.

Oil and gas drilling involves boring wells to depths thousands of feet below the surface, often through or just above groundwater aquifers. Without proper well construction and vertical separation between aquifers and fractured formations, oil and gas development can contaminate underground sources of water.[38] However, federal rules and regulations do not provide specific direction for BLM and operators to protect all usable water. Even rules that purport to do so, like Onshore Order No. 2's requirement to "protect and/or isolate all usable water zones" are inconsistently applied and often disregarded in practice.[39] State regulations are similarly inadequate to ensure protection of groundwater.

Moreover, industry has admitted that it often does not protect usable water in practice. Western Energy Alliance and the Independent Petroleum Association of America have told BLM that the "existing practice for locating and protecting usable water" does not measure the numerical quality of water underlying drilling locations, and therefore does not consider whether potentially usable water would be protected during drilling.[40] For example, reports studying a sample of existing oil and gas well records in Montana and Wyoming confirm industry admissions that well casing and cementing practices do not always protect underground sources of drinking water.[41] A review of lease parcels proposed for the proposed Wyoming sale concluded:

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[37] U.S. Environmental Protection Agency, *Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States*, EPA/600/R-16/236F, at 2–18 (Dec. 2016) [EPA 2016 Report], www.epa.gov/hfstudy.

[38] *See, e.g.*, Gayathri Vaidyanathan, *Fracking Can Contaminate Drinking Water*, at 8, Sci. Am. (Apr. 4, 2016); Dominic C. DiGiulio & Robert A. Jackson, *Impact to Underground Sources of Drinking Water and Domestic Wells from Production Well Stimulation and Completion Practices in the Pavillion, Wyoming Field*, 50 Am. Chem. Society, Envtl. Sci. & Tech. 4524, 4532 (Mar. 29, 2016); EPA 2016 Report.

[39] *See* BLM, Regulatory Impact Analysis for the Final Rule to Rescind the 2015 Hydraulic Fracturing Rule, at 44–45 (Dec. 2017), https://www.govinfo.gov/content/pkg/FR-2017-07-25/pdf/2017-15696.pdf.

[40] Western Energy Alliance and the Independent Petroleum Association of America, Sept. 25, 2017, comments Re: RIN 1004-AE52, Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule (82 Fed. Reg. 34,464), at 59 [2017 WEA comments], https://www.regulations.gov/document?D=BLM-2017-0001-0412.

[41] Dominic Digiulio, *Examination of Selected Production Files in Southcentral Montana to Support Assessment of the March 2018 BLM Lease Sale* (December 22, 2017) (Exhibit D to David Katz and Jack and Bonnie Martinell's protest of the March 13, 2018, BLM Montana-Dakotas oil and gas lease sales), https://eplanning.blm.gov/public_projects/nepa/87551/136880/167234/Earthjustice_Protest_1-12-2018.pdf.

- Numerous proposed lease parcels are located in areas with usable water, particularly those in the Green River Basin (Colorado Plateaus aquifers) and the Powder River Basin (Lower Tertiary aquifers).

- The EA, however, does not identify the depths of usable water covered by the proposed lease parcels, which creates ambiguity in surface casing and cementing requirements for new wells in WY.

- Existing federal wells in the Powder River basin are not protecting usable water. Of 61 wells reviewed in the same township and ranges as the proposed parcels, most (at least 36) had inadequate construction.

- If current active federal wells (completed since January 1, 2000) are not adequately cased and cemented, then it can be assumed that a significant portion of future wells installed on these proposed parcels will also be inadequately cased/cemented and thus pose a threat to usable water.[42]

PSE 2022 Wyoming Review at 15. Similarly, a study of hydraulic fracturing in Pavillion, Wyoming, confirmed that oil and gas drilling had contaminated underground sources of drinking water in that area due to lack of vertical separation between the aquifer and target formation.[43]

In light of these risks to a critical resource, BLM must evaluate potential groundwater impairment. As a threshold matter, BLM must provide a detailed account of all regional groundwater resources that could be impacted, including usable aquifers that may not currently be used as a drinking water supply. The accounting must include, at minimum, all aquifers with up to 10,000 parts per million total dissolved solids, and it cannot substitute existing drinking water wells or any other incomplete proxy for a full description of all usable or potentially usable groundwater in the region. Second, BLM must use that accounting to assess how new oil and gas wells might impact these resources. That evaluation must assess the sufficiency of protective measures that will be employed, including wellbore casing and cementing and vertical separation between aquifers and the oil and gas formations likely to be hydraulically fractured. In assessing these protections, BLM cannot presume that state and federal regulations will protect groundwater, because of the shortcomings and industry noncompliance described above. BLM may not defer this analysis of groundwater impacts to the APD stage. *WildEarth Guardians*, 457 F. Supp. 3d at 888. Failure to conduct this analysis constitutes a NEPA violation. *Id.*

With regard to the water demands from development, BLM should address the potential use of surface water and groundwater for hydraulic fracturing and drilling by assessing the reasonably foreseeable development on groups of proximate parcels, and evaluate the potential for aquifer drawdown or overdraft due to cumulative effects of past, present, and future activities

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[42] PSE 2022 Wyoming Review at 15.

[43] Dominic C. DiGiulio & Robert A. Jackson, *Impact to Underground Sources of Drinking Water and Domestic Wells from Production Well Stimulation and Completion Practices in the Pavillion, Wyoming Field*, 50 Am. Chem. Society, Envtl. Sci. & Tech. 4524, 4532 (Mar. 29, 2016), https://pubs.acs.org/doi/10.1021/acs.est.5b04970.

that could impact nearby groundwater wells, as well as the potential for cumulative effects on surface water quantity and stream/river structure and function. *See, e.g.*, Colorado Draft EA at *342–48 (EPA comment).

ii. Big game

The draft EAs' analyses of big game have similar flaws. The EAs describe: (a) the regulatory and management frameworks applicable to big game species, along with the scientific literature; (b) existing conditions, and which lease parcels are in different categories of habitat (such as crucial winter habitat and migration corridors); (c) the lease stipulations that would apply; and (d) how BLM selected which parcels in big game habitat to offer or defer. *See, e.g.*, EA at 44–45; Wyoming draft EA at 77–100.

This information provides a basis for analyzing the likely impacts to big game from development on the proposed leases – but it does not substitute for that analysis. The EAs generally fail to analyze the likely impacts to big game populations from the leases it proposes to offer. Instead, the EAs provide boilerplate statements about categories of impacts and state that impacts would be similar to those discussed in the RMP-level EISs. *See, e.g.*, *id.* This does not satisfy NEPA.

k. BLM Failed to Analyze and Evaluate Mitigation for the impact of Methane Emissions.

BLM has long recognized the growing problem of waste of federal resources through venting and flaring. Although BLM is apparently working on federal regulations to address the problem, it has failed to analyze whether in the interim it is complying with its statutory obligation under the Mineral Leasing Act to take all reasonable precautions to prevent waste. The EA contains no discussion of the environmental impacts of these wasteful practices in violation of NEPA. For example, numerous studies show that flaring has significant impacts to the health and welfare of people living in the vicinity of oil and gas development.[44] Yet, the EA contains no discussion whatsoever of flaring practices in Nevada.

III. CONCLUSION

We appreciate your consideration of the information and concerns addressed in this protest, as well as the information in the attached exhibits.

Please do contact us if you have any questions.

Respectfully,

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[44] *See, e.g.*, Wesley Blundell & Anatolii Kokoza, *Natural gas flaring, respiratory health, and distributional effects*, 208 J. of Public Economics, at 4–23 (Apr. 2022); EDF, https://www.permianmap.org/flaring-emissions/;. Alexander Gvakharia et al., Methane, Black Carbon, and Ethane Emissions from Natural Gas Flares in the Bakken Shale, North Dakota, Env. Science & Tech. 2017, 51, 5317–5325 (Apr. 12, 2017); Lara J Cushing et al 2021 Environ. Res. Lett. 16 034032.

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