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May 20, 2026

Via BLM E-Planning

Bureau of Land Management
Nevada State Office
Attn: Lacy Trapp
Deputy State Director of Energy and Minerals (Acting)
1340 Financial Blvd.
Reno, Nevada 89502-7147

Submitted via Hard Copy

Re: Second Quarter 2026 Protest, DOI-BLM-NV-L000-2026-0001-EA

Ms. Trapp,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.13, the Center for Biological Diversity ("the Center") hereby timely protests the offering of all four oil and gas lease parcels proposed for sale at the Bureau of Land Management's ("BLM") June 23, 2026 competitive oil and gas lease sale. *See* generally Bureau of Land Mgmt., *Ely District 2026 Second Quarter Competitive Oil and Gas Lease Sale Environmental Assessment, DOI-BLM-NV-L000-2026-0001-EA* (February 2026) ("EA" or "Leasing EA"); Bureau of Land Mgmt., *Notice of Competitive Oil and Gas Internet Lease Sale* (April 24, 2026) ("Lease Sale Notice").

The Center submitted timely comments on the Lease Sale EA. *See generally* Center for Biological Diversity, *Re: EYDO Second Quarter 2026 Oil and Gas Lease Sale, DOI-BLM-NV-L000-2026-0001-EA* (March 19, 2026) ("Leasing EA Comments," attached hereto as Exhibit A); Center for Biological Diversity, *Re: EYDO Second Quarter 2026 Oil and Gas Lease Sale, DOI-BLM-NV-L000-2026-0001-EA* (December 16, 2025) ("Scoping Comments," attached hereto as Exhibit B). As explained below, BLM's decision to offer four parcels for oil and gas leasing and development violates the Congressional Review Act ("CRA"), 5 U.S.C. §§ 801-808 *et seq.*; National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*; the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701 *et seq.*; the Mineral Leasing Act ("MLA"), 30 U.S.C. §§ 181 *et seq.*; the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 *et seq.*; the

Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 *et seq.*; and the Administrative Procedure Act ("APA"), 5 U.S.C. 551-559, 701-706; and the regulations and policies that implement these laws.[1] BLM cannot lawfully hold the EYDO 2026 Second Quarter Competitive Oil and Gas Lease Sale until it remedies the legal deficiencies outlined below.

Statement of Reasons

I. The Leasing EA Fails to Analyze Cumulative Impacts for Required Resource Values, Thereby Violating NEPA's Hard Look Standard

As the Center noted in its previous comments regarding this project, NEPA requires that BLM include cumulative impacts analyses for all analyzed resource values. In response to those comments, BLM misinterpreted NEPA's requirements regarding cumulative impacts analysis when it claimed that it had not abandoned cumulative impacts analysis in response to the Center's comments. *See* Leasing EA at Appendix I, CBD-1. BLM alleges that it did, in fact, analyze "potential direct, indirect, and cumulative impacts for multiple resource issues analyzed in brief" at EA Appendix E. *Id.* This Appendix, however, reiterates the issues *not* analyzed in detail within the EA, instead offering brief, oftentimes sweeping, conclusions that fail to meet the meaningful analysis required in the *San Juan* factors test, described in detail below. Cumulative impacts necessarily fall within NEPA's statutory mandate for agencies to consider the reasonably foreseeable effects of its action, "to the fullest extent possible," 42 U.S.C. § 4332, tracing back to NEPA's original understanding, as interpreted by CEQ, the courts, BLM, and the Department of Interior.

Courts have found in NEPA's statutory text the requirement to consider cumulative impacts and "focus concern on the 'big picture' relative to environmental problems." *Swain v. Brinegar*, 517 F.2d 766, 775 (7th Cir. 1975). In *Swain*, the Seventh Circuit observed NEPA "expressly requires recognition of 'the worldwide and long-range character of environmental problems," 42 U.S.C. § 4332(2)(E) (1975) (now codified at 42 U.S.C. § 4332(2)(I)), and one of its specific elements to be studied in the EIS is 'the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.'" 42 U.S.C. § 4332(2)(C)." *Swain*, 517 F.2d at 775. Thus, NEPA recognizes that "each 'limited' federal project is part of a large mosaic of thousands of similar projects and that cumulative effects can and must be considered on an ongoing basis." *Id.*; *see also Kleppe v. Sierra Club*, 427 U.S. 390, 409-410 (1976) ("comprehensive impact statement may be necessary" for agency to meet its duties under NEPA; "[w]hen several proposals … will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together").

As has been discussed in previous comments, NEPA has "twin aims:" obligating the agency "to consider every significant aspect of the environmental impact of a proposed action,"

[1] The arguments raised *infra* apply to <u>all</u> protested lease parcels unless otherwise stated.

and ensuring "that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process." *Balt. Gas & Elec. Co. v. Nat. Res. Defense Council*, 42 U.S. 87, 97 (1983). Thus, BLM "has a duty to assess, consider, and respond to all comments." *Or. Nat. Res. Council v. Marsh*, 52 F.3d 1485, 1490 (9th Cir. 1995) (emphasis added; original emphasis omitted); *see also* Bureau of Land Mgmt., *National Environmental Policy Act Handbook H-1790-1*, § 6.9.2 (2008) ("NEPA Handbook") (BLM "must respond to all substantive written comments submitted during the...public comment period").[2] When responding to substantive public comments, BLM's response should 1) "supplement[], improv[e], or modify[] the environmental analysis," 2) "make factual corrections," or 3) "explain[] why the comments do not warrant further agency response, citing cases, authorities, or reasons to support the BLM's position." NEPA Handbook § 6.9.2.2.To that end, courts have also recognized that cumulative impacts analysis is necessary to put a proposed action's effects into meaningful context and fulfill NEPA's informed decision making purpose. In other words, a cumulative impacts analysis is an integral to ensuring that an agency has taken a "hard look" at the environmental consequences of a proposed action. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

In *Hanly v. Kleindienst*, 471 F.2d 823 (2d Cir. 1972), the court stated that agencies are required to consider "the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area." *Id.* at 830-31. "[E]ven a slight increase in adverse conditions that form an existing environmental milieu may sometimes threaten harm that is significant. One more factory polluting air and water in an area zoned for industrial use may represent the straw that breaks the back of the environmental camel." *Id.* at 831; *see also Minn. Pub. Int. Rsrch. Grp. v. Butz*, 498 F.2d 1314, 1322 (8th Cir. 1974) ("There has been increasing recognition that man and all other life on this earth may be significantly affected by actions which on the surface appear insignificant," and citing CEQ guidelines on cumulative impacts); *Nat. Res. Def. Council v. Callaway*, 524 F.2d 79, 88 (2nd Cir. 1975) (Congress intended "to instill in the environmental decisionmaking process a more comprehensive approach so that long term and cumulative effects of small and unrelated decisions could be recognized, evaluated and either avoided, mitigated, or accepted as the price to be paid for the major federal action under consideration"); *Swain v. Brinegar II*, 542 F.2d 364, 370 (7th Cir 1976) (finding illegal segmentation of highway project, because "the combined statements of course do not consider the overall environmental effects of the 42-mile freeway"); *id.* at 368 ("although the individual environmental impact might be slight, the cumulative consequences could be devastating"); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994 (9th Cir. 2004) ("Cumulative impacts of multiple projects can be significant in different ways. The most obvious way is that the greater total magnitude of the environmental effects ... may demonstrate by itself that the environmental

[2] Substantive comments are those that "present new information relevant to the analysis." BLM Handbook § 6.9.2.1.

impact will be significant. Sometimes the total impact from a set of actions may be greater than the sum of the parts.").

Accordingly, for decades courts have held that NEPA reviews "must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. FAA*, 290 F.3d 339, 342 (D.C. Cir. 2002); *see also Healthy Gulf v. FERC*, 107 F.4th 1033, 1043 (D.C. Cir. 2024) ("NEPA's mandate to consider the cumulative effects of a project makes sense: A project's incremental emissions do not exist in a vacuum, and requiring consideration of the overall state of the surrounding environment helps ensure that agencies do not overlook the full impact of those emissions."). In the Tenth Circuit,

> A meaningful cumulative impact analysis must identify five things: (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.

San Juan Citizens All. v. Stiles, 654 F.3d 1038, 1056 (10th Cir. 2011) (citations omitted).

Here, the Leasing EA does not include a cumulative impacts analysis for nearly any resource value and thus falls short of this standard for factors 2-5. Regarding factor 2, for each of the issues analyzed, BLM did not analyze "the impacts that are expected in [the cumulative impact analysis area] from the proposed project" for two reasons: first, because the agency instead attached and relied on seventeen-year-old stipulations and notices and concluded, based on those measures, that their existence alone was enough to circumvent more thorough analysis; and second, none of the analyses analyze the reasonably foreseeable outcome or possible outcome that the lease sale will yield development of at least 50 percent of the parcels, instead relying on an arbitrary scenario that assumes only one parcel will be developed. *See* Leasing EA at 10-12 (discussing alternatives); *id.* at 18-29 (discussing "Air Pollutant Emissions, Effect on Air Quality, Air Quality related values"); *id.* at 29-33 (discussing "Social and Economic Conditions"); *id.* at 33-35 (discussing "BLM Sensitive Status Species"); *id.* at 35-37 (discussing "Potential and Occupied Habitat for Threatened, Endangered, and Candidate Species"); *id.* at 40 (discussing "Riparian Areas with Threatened and Endangered Species"); *id.* at 37-39 (discussing "Potential Spread and/or Management of Noxious and Invasive Weed Species"); *id.* at 39-41 (discussing "Range Improvements and Livestock Grazing"); *id.* at 41-44 (discussing "Historic, Prehistoric, and Cultural Resources"); *id.* at 44-47 (discussing "Water Resources"); *id.* at 47-48 (discussing "Soil Resource")

For factor 3, BLM discloses some past, present, and reasonably foreseeable future actions, but not all of them. *See* Leasing EA at 17. For instance, the EA does not disclose any reasonably foreseeable future actions related to a substantiated manner: that is, one in which all

of the parcels are sold and all of the parcels are developed, even though the Center's comments identified that this needed to be considered. *See* Leasing EA Comments at ⁋ 1. BLM must assess the likely combined impacts of leasing thousands of acres, which cannot apply to the assumption that only one well will be producing. *See San Juan Citizens All. v. Stiles*, 654 F.3d 1038, 1056 (10th Cir. 2011); *See WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77 (D.D.C. 2019) ("[NEPA]…require[s] that BLM quantify the emissions from each leasing decision—past, present, or reasonably foreseeable—and compare those emissions to regional and national emissions, setting forth with reasonable specificity the cumulative effect of the leasing decision at issue.").

With respect to factor 4, it has already been noted that BLM identified some projects (not all) that have impacted or will impact the same resource values threatened by the proposed action, but the Leasing EA does nothing with that information. For example, BLM identified within its analysis area: "200 wells and 1,000 miles of road; 8,406 acres of short-term disturbance; 1,401 acres of long-term disturbance; 140 well field developments; and 108 abandoned well pads" in unknown locations within the Ely District. *See* Leasing EA at 2.3.1, p.10 at Table 2-1. It is not made clear where this data is coming from, nor does the EA use this information to analyze and disclose the past, present, and/or foreseeable or expected impacts to the numerous resource values within the analysis area, despite the fact that the Center raised this exact same issue in its EA comments. *See* Leasing EA comments at ⁋ 1. Additionally, there is no known location where these speculative operations are to occur within the leasing area, making the analysis insufficient on its face. "Actual locations of potential exploration wells and field development are unknown. The impacts associated with these activities could occur anywhere within the leased parcels that are of high, moderate, or even low potential for oil and gas resources." *See* Leasing EA at 2.3.1, p. 13. Moreover, this information likely does not take into account reasonably foreseeable oil and gas leasing projects where BLM has approved or is in the process of approving leasing parcels.

Most jarring in the Leasing EA, however, is evaluating factor 5, which assesses the "overall impact that can be expected if the individual impacts are allowed to accumulate." The Leasing EA states that 19 APDs have been approved in the past 10 years in Ely District, with one going into production, and that the subset of well numbers analyzed within the EA are only an estimate based on historical drilling, geological data, resource expertise, and current development. While unclear, the claim that it would be "highly speculative" if 448 wells were drilled is frivolous and characterizes the Leasing EA as analyzing only the averages for the last 10 years; that is to say, 19 APDs and one well in production. *See generally* Leasing EA at 16. This scenario alone makes fulfilling the 5th San Juan factor an impossibility, as it is unclear that the overall impact is even accounted for in the Leasing EA to begin with. The Leasing EA goes on to state in its individual resource impacts analysis that it does assume for those individual sections that only 19 wells will be drilled with one in production. *See* generally Leasing EA at

2.3.2. BLM's analyses of these resources, therefore, do not comply with the fifth *San Juan* factor.

In short, BLM's failure to provide cumulative impacts analysis for required resource values is arbitrary, capricious, and in violation of NEPA. As discussed in detail above and in previous comments, BLM, contradictory to their belief, has not fulfilled its statutory obligation to "give a realistic evaluation of the total impacts" without "isolating a proposed project in a vacuum." *Grand Canyon Trust,* 290 F.3d at 342. BLM cannot lawfully approve the proposed action (or its alternatives) and offer the leases for sale until it conducts analyzes cumulative impacts in a manner that complies with *San Juan* and NEPA.

II. The Lease Sale Violates the Clean Air Act

The Center previously provided comments regarding BLM's requirements under the CAA to adequately quantify impacts from oil and gas leasing on climate change and the environment, including emissions. *See* Leasing EA Comments at 10. The Leasing EA, however, contains plenty of emissions inventory without actually providing meaningful impact analysis. BLM's failure to analyze exposure, ozone formation, health effects, or airshed impacts is not cured by the EA's provided inventory of pollutants. Further, although the EA identifies emissions of Hazardous Air Pollutants (HAPs) like benzene and formaldehyde, it neglects to analyze the public health implications and exposure risk. *See e.g. Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.,* 538 F. 3d 1172, 1223 (9th Cir. 2008) (Discussing the requirement for meaningful analysis of potential health effects of criteria air pollutants).

The issuance of non-NSO leases is the point at which BLM irretrievably commits public resources to development. *Rocky Mountain Wild v. Bernhardt*, 506 F. Supp. 3d 1169, 1183-84 (D. Utah 2020); *see also N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 719 (10th Cir. 2009); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 66 (D.D.C. 2019). Whereas the "granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted" may be properly exempted under 40 C.F.R. § 93.153(c)(2)(xi), BLM's Fourth Quarter Oil and Gas Lease Sale is of a different category. Here, BLM's "granting of leases" is the final stage at which it can perform a conformity determination for mineral extraction activities within the parcels it has identified in the Leasing EA. This action constitutes an emissions generating activity and will cause foreseeable emissions from the development of oil and gas wells on the leased parcels. BLM, instead, is deferring any meaningful analysis to the APD stage despite acknowledging that the leasing stage has been long held to constitute an irretrievable commitment of resources. *See* Leasing EA at 3.4.1, p. 20 ("Actual development on a lease is likely to vary from what is analyzed in this EA and will be evaluated…when an operator submits an APD or plan of development to the BLM.").

The requirement to perform a conformity determination at the time of leasing is not only supported by the plain language of the CAA but perfectly aligns with the spirit of that law.

Congress intended a very broad application of the conformity provision to prevent the federal government from undermining states when it came to attainment of air quality standards. The law very clearly states that no agency, including BLM, "shall engage in [or] support in any way . . . any activity" that does not conform to a SIP. 42 U.S.C. § 7506(c)(1). Further, meeting this requirement requires an "assurance of conformity" which is "the affirmative responsibility" of the BLM. *Id.* Leasing public minerals for development is surely engaging in an activity or supporting an activity that will lead to an increase in emissions of ozone precursors.

The EA makes vague references to SIP and other state regulatory authority but never analyzes the Second Quarter Lease Sale in conformance therewith. *See* Leasing EA at 3.4.1, p. 20. Thus, BLM must perform a full conformity determination prior to holding the Second Quarter Lease Sale. Using the per-well estimates provided in the Leasing EA, BLM should calculate the number of wells expected to be built each year on these parcels and the number of wells expected to be in simultaneous operation at that time. Those figures will provide BLM with the reasonably foreseeable emissions of this project, which, because they are certainly above the *de minimis* threshold, must be made to conform with the applicable SIP before BLM can proceed with this action.

III. The Leasing EA Failed to Respond to The Center's Comments Regarding Groundwater and Surface Water Quality and Quantity

The Leasing EA fails to respond to, or otherwise address, the Center's comments regarding the effects of hydraulic fracturing on surface water and groundwater quality and quantity. Instead, BLM relies on "the combination of RMP stipulations, COAs, the BLM inspection program, federal and state laws, BLM policy, and the regulations in 43 CFR 3172" as "adequate to prevent potential effects to surface and groundwater." *See* Leasing EA, Appendix I at CBD-2. NEPA, however, requires *analysis* of environmental impacts—not merely a promise based on other regulations. *See N.M. ex rel. Richardson v. BLM,* 565 F. 3d 683, 718 (10th Cir. 2009) ("[A]ssessment of all 'reasonably foreseeable' impacts must occur at the earliest practicable point, and must take place before an 'irretrievable commitment of resources' is made.")(internal citations omitted); *Conner v. Burford*, 848 F.2d 1441, 1451 (9th Cir. 1988) (holding that the sale of a non-NSO oil or gas lease constitutes the point of commitment thus requiring sufficient environmental analysis beforehand); *N. Alaska Envtl. Ctr. v. Kempthorne*, 457 F. 3d 969, 973, 977-78 (9th Cir. 2006) (holding that an agency's failure to conduct site specific analysis at the leasing stage may be challenged); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989) (holding that mitigation measures must be discussed in sufficient detail "to ensure that environmental consequences have been fairly evaluated"); *S. Fork Band Council of W. Shoshone v. U.S. Dept. of Interior*, 588 F.3d 718, 726 (2009), quoting *Klamath-Siskiyou Wildlands Center v. BLM*, 387 F. 3d 989, 998 (9th Cir. 2004) ("A non-NEPA document—let alone one prepared and adopted by a state government—cannot satisfy a federal agency's obligations under NEPA."); *Great Basin Res. Watch v. BLM*, 844 F. 3d 1095, 1104 (9th

Cir. 2016) (holding that project specific or cumulative data must be analyzed by the agency with impacts that will be caused by each successive project discussed and identified).

BLM contends in its comment responses, among other things, that the EA does, in fact, analyze the impacts to groundwater and surface water, including "the potential risk of contamination related to well development." *See* Leasing EA at Appendix I, CBD-2. This, however, is misleading in its context, as the referenced section offers a cursory glance at the possible effects on water resources through a series of generalizations as opposed to the project specific data that must be analyzed for NEPA compliance. *See* Leasing EA at 46, Effects of the Proposed Action. And while BLM provides some information regarding the affected environment in Hamlin Valley, it does almost nothing with this information beyond identification of major wetlands, springs, and the structure of the basin. *Id.* at 45, Affected Environment.

The Center raised numerous concerns about water resources in its scoping and EA comments, only to receive two pages of analysis within the Leasing EA concerning the same and a brief, cursory level response to comments. *See* Leasing EA at Appendix I, CBD-2. Most problematic still is the dubious assumption that only 19 wells will be drilled as a result of the proposed action, with only one going into production. *See* Leasing EA at 3.4.8. This informs a deficient analysis of water resources out of the gate that BLM failed to cure in both the EA and its comment responses.

A. Impacts to Groundwater

The importance of groundwater in Nevada, the driest state in the Nation, cannot be overstated. In fact, BLM itself acknowledges its importance, stating that "groundwater makes up the primary water source in Hamlin Valley with several water wells within a five-mile radius of the parcel group boundary." *Id.* This, including citations from previous studies based on groundwater level trends in the basin, is the extent of BLM's detailed analysis, which leaves much to be desired about the specific impacts, water levels, drawdown predictions, and other effects of the proposed action on water resources.

Groundwater in the project area flows from southern Spring Valley into northern Hamlin Valley at amounts estimated between 6,000 to 11,000 acre-feet per year ("afy").[3] According to the Leasing EA, Hamlin Valley's perennial yield volume is 5,000 afy. *See* Leasing EA at 3.4.8, p. 45. This number, however, is likely not accurate, as the EA subsequently states that an update to the basin perennial yield is currently underway "in light of allocations that have taken place since the original perennial yields that were established and to reflect technological advances in measurement data and acquisition methods." *Id.* As discussed above, this update to the perennial yield has not been responded to or discussed by BLM, despite the Center raising it in previous comments. Without an updated analysis on groundwater flows juxtaposed against updated

[3] U.S. Department of the Interior, U.S. Geological Survey Professional Paper 1819, Evaluating Connection of Aquifers to Springs and Streams, Eastern Part of Great Basin National Park and Vicinity, Nevada (2015) at p. 2.

numbers regarding groundwater pumping, it is difficult for BLM to say with certainty how the groundwater in the area will be affected and to what extent.

In this specific basin, Hamlin Valley contains Cenozoic basin fill-aquifers, consisting of permeable parts of the Cenozoic basin fill, and upper and lower carbonate-rock aquifers consisting of upper/lower Paleozoic carbonate rocks. Cenozoic basin fill in Hamlin Valley is extensive east of the Limestone Hills and demonstrated through gravity, seismic, and drillhole data indicating Hamlin Valley is made up of three sub-basins separated by buried bedrock highs. Further, past oil exploration has indicated that carbonate rocks in Hamlin Valley can be transmissive at depths greater than 1,000 feet below land surface.

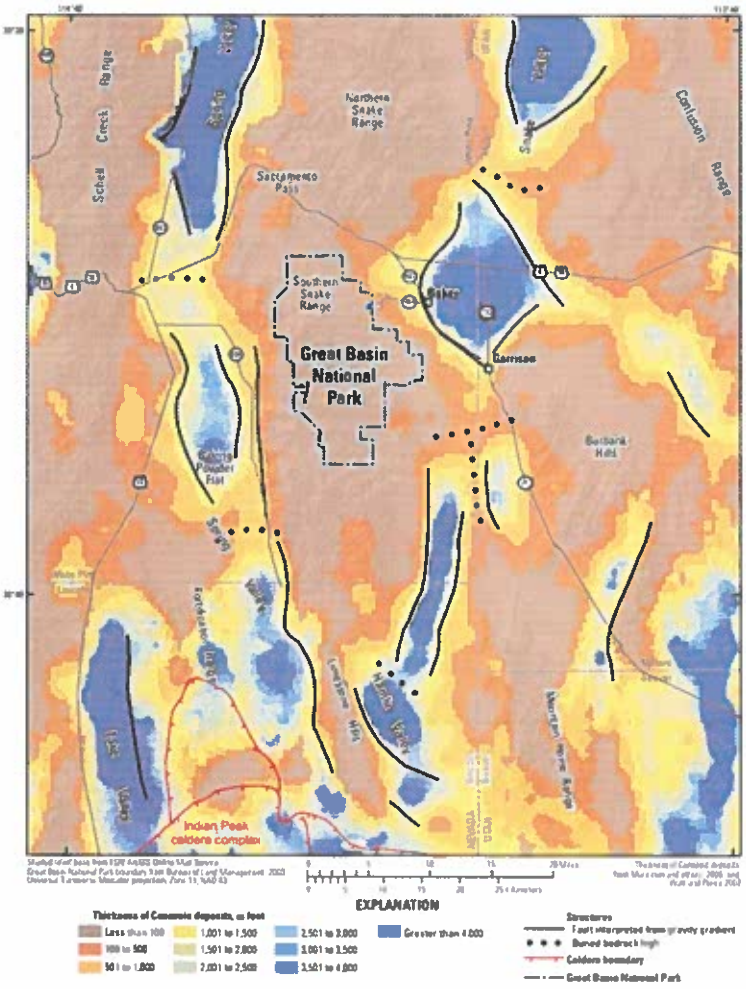

Figure 5. Thickness of Cenozoic basin fill for the study area, eastern Nevada and western Utah.

Hydraulic fracturing has been shown to degrade groundwater resources in a variety of ways, including leaky wellbores, whereby thermogenic gas can contaminate groundwater.[4]

[4] Thomas H. Darrah, Avner Vengosh, Robert B. Jackson, Nathaniel R. Warner, Robert H. Poreda, *Noble gases identify the mechanisms of fugitive gas contamination in drinking-water wells overlying the Marcellus and Barnett Shales*, Proc. Natl. Acad. Sci. U.S.A. 111 (39) 14076- 14081, https://doi.org/10.1073/pnas.1322107111 (2014).

However, carbonate aquifers like Hamlin Valley are much more vulnerable to contamination compared to other aquifer types because of: (1) rapid infiltration through fissures (more or less opened by dissolution) and swallow holes, as well as the direct input of sinking streams, all providing low resistance pathways for contaminated water and hence reducing the time available for biological purification processes; (2) soil cover is generally thin or absent hardly inhibiting flow, and enhancing rapid infiltration; (3) absence of granular rock texture, reducing natural filtration as a self-purification mechanism; (4) occurrence of zones with turbulent flow enhances transport of fine particles and contaminants.[5]

Groundwater contamination can occur in a number of ways, and the contamination may persist for many years.[6] Poorly constructed or abandoned wells are recognized as one of the most likely ways by which contaminants may reach groundwater. Faulty well construction, cementing, or casing, as well as the injection of fracking waste underground, can all lead to leaks.[7] Older wells that may not have been designed to withstand the stresses of hydraulic fracturing, but which are reused for this purpose, are especially vulnerable.[8] Current federal rules do not ensure well integrity. The well casing can potentially fail over time and potentially create pathways for contaminants to reach groundwater. Well-casing failure can occur due to improper or negligent construction. The EA should study the rates of well-casing failures over time and evaluate the likelihood that well-casing failures can lead to groundwater contamination.

Additionally, fluids and hydrocarbons may contaminate groundwater by migrating through newly created or natural fractures.[9] According to the EPA, evidence of any fracturing-related fluid migration affecting a drinking water resource could take years to discover. The EPA states that "chemicals that move slowly through the environment may act as longer-term sources of contamination if spilled," and that, because "groundwater is generally slow moving," it can "lead to an accumulation of hydraulic fracturing wastewater contaminants in groundwater from continuous or repeated discharges," the results of which "can be long-lasting."[10]

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[5] Ruggieri, R., Forti, P., Lucia Antoci, M., De Waele, J., *Accidental contamination during hydrocarbon exploitation and the rapid transfer of heavy-mineral fines through an overlying highly karstified aquifer* (Paradiso Spring, SE Sicily), Journal of Hydrology (2016), p. 2-3, (http://dx.doi.org/10.1016/j.jhydrol.2016.12.046).

[6] Myers, Tom, Potential Contamination Pathways from Hydraulically Fractured Shale to Aquifers, National Groundwater Association (2012).

[7] Kusnetz, Nicholas, North Dakota's Oil Boom Brings Damage Along with Prosperity, ProPublica , June 13, 2012

[8] 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 (Final Report), U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-16/236F, 2011.

[9] Warner, Nathaniel R., et al., Geochemical Evidence for Possible Natural Migration of Marcellus Formation Brine to Shallow Aquifers in Pennsylvania, PNAS Early Edition (2012).

[10] 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 (Final Report), U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-16/236F, 2011.

Because of the importance of the groundwater and spring system within the project area, any impact from hydraulic fracturing would be a significant aspect to consider under NEPA.

B. Impacts to Surface Water

Fracking fluid can also spill at the surface during the fracking process. For instance, mechanical failure or operator error during the process has caused leaks from tanks, valves, and pipes. At the surface, pits or tanks can leak fracking fluid or waste.[11] Surface pits, in which wastewater is often dumped, are a major source of pollution. In California, a farmer was awarded $8.5 million in damages after his almond trees died when he irrigated them with well water that had been contaminated by nearby oil and gas operations. The contamination was traced to unlined pits where one of California's largest oil and gas producers for decades dumped billions of gallons of wastewater that slowly leached pollutants into nearby groundwater.[12] In some areas hydraulic fracturing may occur at shallower depths or within the same formation as drinking water resources, resulting in direct aquifer contamination. The EA must disclose where the potential for such drilling exists.

Setbacks may not be adequate to protect groundwater from potential fracking fluid contamination. A study by the University of Colorado at Boulder suggests that setbacks of even up to 300-feet may not prevent contamination of clean water resources.[13] The study found that 15 organic compounds found in hydraulic fracturing fluids may be of concern as groundwater contaminants based on their toxicity, mobility, persistence in the environment, and frequency of use. These chemicals could have 10 percent or more of their initial concentrations remaining at a transport distance of 300 feet, the average "setback" distance in the U.S. The effectiveness and feasibility of any proposed setbacks must be evaluated.

Surface water can be contaminated in many ways from unconventional well stimulation. In addition to storm water runoff, surface water contamination may also occur from chemical and waste transport, chemical storage leaks, and breaches in pit liners.[14] The spilling or leaking of fracking fluids, flowback, or produced water is a serious problem. Harmful chemicals present in these fluids can include volatile organic compounds ("VOCs"), such as benzene, toluene, xylenes, and acetone.[15] As much as 25 percent of fracking chemicals are carcinogens,[16] and

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[11] Michaels, Craig, et al., Fractured Communities: Case Studies of the Environmental Impacts of Industrial Gas Drilling, Riverkeeper (2010).
[12] *See* Miller, Jeremy, Oil and Water Don't Mix with California Agriculture, High Country News (2012).
[13] University of Colorado Boulder, New study identifies organic compounds of potential concern in fracking fluids, CU News Center, July 1, 2015 (accessed May 18, 2026).
[14] Vengosh, Avner, et al., A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States, Environmental Science Technology (2014).
[15] U.S. Environmental Protection Agency, Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources (Nov. 2011) ("EPA Plan to Study Fracking Impacts").
[16] Colborn, Theo, et. al., *Natural Gas Operations from a Public Health Perspective*, Human and Ecological Risk Assessment: An International Journal, 17:5, 1039-1056 (2011).

flowback can even be radioactive.[17] As described below, contaminated surface water can result in many adverse effects to wildlife, agriculture, and human health and safety. It may make waters or wetlands unsafe for drinking, fishing, swimming and other activities, and may be infeasible to restore the original water quality once surface water is contaminated. BLM failed to consider this analysis in the EA.

Fluids must also be transported to and/or from the well, which presents opportunities for spills. Unconventional well stimulation relies on numerous trucks to transport chemicals to the site as well as collect and carry disposal fluid from the site to processing facilities. Accidents during transit may cause leaks and spills that result in the transported chemicals and fluids reaching surface waters. Chemicals and waste transported by pipeline can also leak or spill.

Produced waters that fracking operations force to the surface from deep underground can contain high levels of total dissolved solids, salts, metals, and naturally occurring radioactive materials.[18] If spilled, the effects of produced water or brine can be more severe and longer-lasting than oil spills, because salts do not biodegrade or break down over time. The only way to deal with them is to remove them.[19] Flowback waters (i.e., fracturing fluids that return to the surface) may also contain similar constituents along with fracturing fluid additives such as surfactants and hydrocarbons.[20] Given the massive volumes of chemicals and wastewater produced and their potentially harmful constituents, and their persistence in the environment, the potential for environmental disaster is real.

The EA also failed to evaluate how often accidents can be expected to occur, and the effect of chemical and fluid spills. Such analysis should also include identification of the particular harms faced by communities near oil and gas fields. The EA must include specific mitigation measures and alternatives based on a cumulative impacts assessment, and the particular vulnerabilities of environmental justice communities in both urban and rural settings.

On-site storage of chemicals is also an issue warranting analysis. Thousands of gallons of chemicals can be potentially stored on-site and used during hydraulic fracturing and other unconventional well stimulation activities. These chemicals can be susceptible to accidental spills and leaks. Natural occurrences such as storms and earthquakes may cause accidents, as can negligent operator practices.

Some sites may also use on-site wastewater treatment facilities. Improper use or maintenance of the processing equipment used for these facilities may result in discharges of

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[17] EPA Plan to Study Fracking Impacts; White, Ivan E., Consideration of radiation in hazardous waste produced from horizontal hydrofracking, National Council on Radiation Protection (2012).
[18] Mall, Amy & Bemnet Alemayehu, *A Hot Fracking Mess: How Weak Regulation of Oil and Gas Production Leads to Radioactive Waste in Our Water, Air, and Communities* (Natural Resources Defense Council, July 2021)
[19] King, Pamela, *Hydraulic Fracturing: Limited study supports findings on bigger brine spill risks*, E&E News, Nov. 4, 2015.
[20] *Id.*

contaminants. Other spill causes include equipment failure (most commonly, blowout preventer failure, corrosion and failed valves) and failure of container integrity.

The EA additionally failed to examine and quantify the risks to human health and the environment associated with on-site chemical and wastewater storage, including risks from natural events and negligent operator practices. Again, such analysis must also include an analysis of potential impacts faced by environmental justice communities in both rural and urban settings.

C. Impacts to Water Quantity

Nevada's most precious resource is its groundwater. Abundant relative to the aridity of the climate, Nevada's groundwater supports hundreds of thousands of Nevadans for domestic use, the majority of Nevada's agricultural output and almost the entirety of Nevada's biodiversity. As a result of the critical importance of this resource, any federal action which may cause impacts to groundwater quantity must include a rigorous analysis of the possibility of those impacts, and the potential effects should impacts to groundwater quantity occur.

Nevada water law is structured to encourage full development of water resources, so it can be argued that Nevada state water law is actively detrimental to public land water-dependent resources. As such, BLM cannot rely on Nevada's water law as an indicator of the potential for groundwater impacts and over appropriation. An independent analysis must be made by BLM of any groundwater withdrawals associated with development of these leases, to examine the impacts of such withdrawals and how they may affect the environment.

Despite the previously discussed voluminous information provided on the groundwater characteristics of the aquifer in the Center's scoping comments as well as EA comments, nothing was done with that information, with the majority of said information being outright ignored. BLM must fully analyze the effects on groundwater and surface water, both in quantity and quality, from fracking within the project area.

IV. BLM failed to consider effects from habitat fragmentation, dust, and cumulative impacts to big game, sensitive species, and listed species

BLM has failed to consider impacts from habitat fragmentation, dust, and the cumulative impacts of other reasonably foreseeable development projects on big game, endangered, threatened, and listed species. The Second Quarter parcels contain habitat for the proposed threatened monarch butterfly (*Danaus plexippus*) as well as Suckley's cuckoo bumblebee (*Bombus suckleyi*), and, according to the EA, "may have potential to occur within the nominated parcels." *See* Leasing EA at 3.4.4, p. 36. Numerous sensitive status animal and plant species occur within the parcels as well, including: burrowing owl, greater sage-grouse, golden eagle, ferruginous hawk, pinyon jay, desert horned lizard, rayless tansy aster (*Xanthisma grindeliodes*), hanging bladderpod (*Physaria pendula*), and Great Basin fishhook cactus (*Sclerocactus pubispinus*). *See* Leasing EA at 3.4.3, p. 34. However, BLM's analysis of impacts to these

species is inadequate: it merely states that fragmentation may occur and does not consider the necessary comprehensive review of negative effects or the likelihood of plant or animal mortality or extirpation due to habitat fragmentation, instead relying on "the notices and stipulations" attached to parcels to justify its brief analysis. *See e.g.*, Leasing EA, Appendix E at 2, 3. It is curious that BLM contends "no population level impacts are anticipated to occur as a result of the proposed action" when BLM itself has omitted to perform a comprehensive analysis of the impacts to species habitat in the area. *Id*; *See also Kleppe,* U.S. 390 at 409-410 ("comprehensive impact statement may be necessary" for agency to meet its duties under NEPA; "[w]hen several proposals … will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together").

Likewise, BLM has failed to consider the effects of ambient dust from roads and construction on plant species in the vicinity of the Second Quarter Parcels. It states that fugitive dust has potential impacts but does not quantify the amount of dust, the rate of deposition, the grain size of the dust, nor, crucially, how dust deposition might affects known species and habitat within the area. Dust has known impacts on plants and pollinators, including limiting reproduction, reducing light availability, CO2 uptake, and reduction of photosynthetic capacity.[21] One study found that dust impacted reproduction capabilities of plants from 100 to 700 meters from heavily used roads for oil and gas development.[22]

Finally, BLM has failed to assess cumulative impacts on State listed sensitive species within the area. Cumulative impacts, discussed in length above, from known oil and gas development projects in this region may have compounding effects on species' ability to maintain minimum population levels necessary for survival.

V. The Lease Sale Violates the 2025 Greater sage-grouse Approved Resource Management Plan (Amended)

To fulfill the mandates of NEPA, the agency must take a "hard look" at all direct, indirect, and cumulative environmental impacts of the proposed action and reasonable alternatives thereto. *Kern v. United States BLM*, 284 F.3d 1062, 1071 (9th Cir. 2002). Essential to a "hard look" in this instance is a comprehensive analysis of impacts to greater sage-grouse and a careful consideration of the efficacy of any measures proposed to mitigate impact to, or loss of, sage-grouse habitat.

The Center raised these concerns in previous comments on these iconic birds, and the BLM continues to rely on the lease stipulations and notices as sufficient, making conclusory statements about mitigation and impacts. *See* Leasing EA at Appendix I, CBD-3. The stipulations, however, do not constitute guaranteed mitigation. The 2015 Greater Sage-Grouse

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[21] Lewis, M.B., et. Al., Road Dust Correlated with Decreased Reproduction of the Endangered Utah Shrub Hesperidanthus suffrutescens. Western North American Naturalist, 77(4), 430-439 (2017).
[22] *Id.* at 436.

ARMPA was designed with conservation of the bird as a top priority, designating sage-grouse habitat in increasing levels of protection including Other Habitat Management Areas (OHMA), General Habitat Management Areas (GHMA), andPriority Habitat Management Areas (PHMA). *See* 2015 ARMPA; *Mont. Wildlife Fedn. v. Haaland*, 127 F.4th 1, 21 (9th Cir. 2025). Avoiding and minimizing new and additional surface disturbances is an essential priority of the Plan. *See* 2015 ARMPA at 1.2, 1-8.

Additionally, BLM asserts conformance with the 2025 GRSG ARMPA without demonstrating how leasing parcels that overlap the admitted GHMA habitat will avoid or minimize impacts to GRSG habitat at the project-specific level. See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989) (holding that mitigation measures must be discussed in sufficient detail "to ensure that environmental consequences have been fairly evaluated.") A primary threat to the species is habitat loss and fragmentation, largely due to industrial activities. Several characteristics make sage-grouse particularly sensitive to development. First, sage-grouse have strong "site fidelity," meaning they are intensely loyal to their mating grounds, nesting habitat, and wintering areas.[23] Birds may return to disturbed areas even if they can no longer successfully reproduce or survive there, which limits their adaptability to human disturbance.[24] Second, sage-grouse tend to self-select habitats that maximize survival and reproductive success, meaning that when birds are forced to relocate, it is often to suboptimal habitat. Third, sage-grouse require connectivity between seasonal habitats, including leks and nearby nesting areas, wetter summer habitats, and lower-elevation wintering areas. 75 Fed. Reg. at 13,916-17. When human development—such as roads and fossil fuel activities—cuts across a landscape, it can inhibit birds from accessing required habitats and thus cause "functional" habitat loss. 75 Fed. Reg. at 13,927.

The BLM failed to also determine meaningful analysis and mitigation of impacts to GRSG habitat, instead deferring to unspecified future processes that rely on unknown and unpredictable future causation. *See* Leasing EA at Appendix I, CBD-3. BLM's response to the Center's previous comments adopts a framework that can only be described as irrational, under which, if scientific uncertainty were to arise regarding the cause of habitat decline, exceptions or modifications can be considered and would favor continued development as opposed to precautionary protection. *Id.*

According to the EA, parcel NV-2026-06-7092 contains 30 acres of General (GHMA) habitat, *see* Leasing EA at 3.4.3, p. 34, which requires "special management" to sustain sage-grouse populations. *See* 2015 ARMPA at 5-9. Further, the EA states that the nearest lek is located 3.6 miles south of the proposed parcels. *See* Leasing EA at 3.4.3, p. 34. The EA goes on to state that the GHMA habitat inclusive parcel, as well as parcel NV-2026-06-7084, also include OHMA habitat, though it does not elaborate on how much of the area is designated GRSG habitat at any level. *Id.* However, according to the 2025 Nevada and Northeastern California Approved RMP Amendment to the Greater sage-grouse plan, the parcels appear to be entirely

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[23] USFWS, 12-Month Finding on a Petition to List the Greater Sage-Grouse as an Endangered or Threatened Species, 80 Fed. Reg. 59,858, 59,866 (Oct. 2, 2015) (https://www.federalregister.gov/documents/2015/10/02/2015-24292/endangered-and-threatened-wildlife-and-plants-12-month-finding-on-a-petition-to-list-greater) (Accessed on May 17, 2026).

[24] *Id.*

surrounded by PHMA, GHMA, and OHMA. *See* Greater sage-grouse Approved Resource Management Plan Amendment for Nevada and Northeastern California, 2025, Appendix 01. The habitat loss and resulting fragmentation would be devastating to sage-grouse seasonal migration and survival within the area. BLM incorrectly relies on the stipulations of the 2025 ARMPA as a cure-all for mitigating the harm to sage-grouse habitat. *See* Leasing FONSI at 6 and 7. This is in spite of the fact that several sentences preceding, BLM stated that "oil and gas wells elicit strong avoidance response in yearling age classes, nesting/brooding hens, and wintering birds." *Id.*

Of even more particular concern is the BLM's acknowledgement in the draft EA that "a lek cluster has reached a hard trigger" without even divulging what parcel the cluster is located in. *See* Leasing EA (draft) at 3.4.3, pp. 36-37. "Hard triggers represent a threshold indicating that immediate action is necessary to stop a severe deviation from GRSG conservation goals and objectives." *See* 2015 ARMPA, Appendix J. If and when the population rate of change for a lek cluster is less than 0.10 for one year both in and of itself, as well as in relation to the BSU, a hard trigger has been reached. *Id.* Curiously, the language regarding an unknown lek cluster reaching a hard trigger disappeared from the final EA.

Per the ARMPA, once a hard trigger is met, protection is required immediately. Allowing a lease sale to move forward would contradict the obligation of the conservation plan on its face. Even if the lease sale should move forward and leases are issued, if the parcel(s) in which a hard trigger has been met requires a No Surface Occupancy, it cannot be developed—no well pads, no roads, no pipelines. The response to a hard trigger subsequently differs depending on the disturbance that led to such. BLM has not affirmatively provided reasoning as to how and why this hard trigger was reached (much less where it is located), nor how and when the hard trigger was ameliorated, given its absence in the final EA, thus, making it impossible to know or evaluate the appropriate adaptive management response to the same. BLM failed to publicly disclose the data showing that hard triggers were met, inclusive of the counts and metrics, as well as cancel or defer the lease sales of any parcels where lek clusters are impacted.

Courts have recognized and affirmed the ARMPAs language to delineate a requirement to encourage development away from sage-grouse habitat. *Id.* at 43. "Lease stipulations may be used to impose surface occupancy or use restrictions in sensitive sage-grouse habitat, including breeding and nesting areas. But those stipulations are distinct from prioritization itself." *Id.* at 44. Nothing in the Leasing EA indicates that prioritization away from sage-grouse habitat was considered in the lease sale.

Finally, it is immaterial whether, at the drilling stage, BLM applies mitigation measures (*e.g.*, stipulations, notices) as part of its approval. The Court in *Conner v. Burford*, 848 F. 2d 1441, 1450 (9th Cir. 1988) held that preparation of an EIS was necessary prior to leasing land for oil and gas development in a situation where the Environmental Assessment did not sufficiently consider such impacts. While subsequent decisions have held that an EIS may not be necessary for all cases of oil and gas leasing, see *Ctr. For Biological Diversity v. United States BLM*, 2019

U.S. Dist. LEXIS 137955, it is well understood that—once a lease sale occurs for non-NSO leases—"BLM no longer has the authority to preclude all surface disturbing activity." *Id.* at *8. To that end, leasing is the point at which BLM irretrievably commits resources to development, which requires the impacts to be analyzed at the leasing stage and not punted to later development. *See N.M. ex rel. Richardson*, 565 F.3d at 718. After all, the objective of the ARMPA is conservation of the species, not resource extraction.

Nonetheless, when a parcel's inclusion in a lease sale is challenged, BLM has the discretion to suspend such a sale. *Mont. Wildlife Fedn. v. Haaland*, 127 F.4th 1, 19-20 (9th Cir. 2025). Moving forward with the lease sale as is would be unlawful, as BLM failed to adhere to the ARMPA and violated NEPA in the process. BLM should exercise its discretion in this scenario and suspend the sale until they have sufficiently addressed the NEPA deficiencies with respect to the ARMPA.

VI. The Lease Sale Violates FLPMA and the MLA

BLM's violations of FLPMA and the MLA were raised previously by the Center and, like many previous comments, were not given much—if any—substantive consideration.

FLPMA requires that BLM provide opportunities for public involvement when maintaining land use plans. 42 U.S.C. § 1712(a), (f). "Public involvement" includes "the opportunity for participation by affected citizens in…decision making…with respect to the public lands." *Id.* § 1702(d). And, although FLPMA does not expressly require public participation opportunities for oil and gas lease sales, it does require that BLM provide the public with opportunities "to participate in the preparation and execution of plans and programs for, and the management of, the public lands." *Mont. Wildlife Fed'n*, 127 F.4th at 40 (quoting 43 U.S.C. § 1739(e)) (emphases in original). Thus, FLPMA requires that BLM "provide opportunities for public participation on the adoption of land use plans and for down-the-line decisions as to the implementation of such plans," including oil and gas lease sales. *Id.*; *see also W. Watersheds Project v. Zinke*, 336 F. Supp. 3d 1204, 1231-32, 1238-39 (D. Idaho 2018).

Under the principles of multiple use and sustained yield, 43 U.S.C. § 1732(a), FLPMA directs BLM to manage public lands and resources in a manner that accounts for "the long-term needs of future generations for minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land." *Id.* § 1702(3). Importantly, FLPMA's multiple use mandate "does not mean that [oil and gas] development must be allowed on [federal lands]." *N.M. ex rel. Richardson,* 565 F.3d at 710 (emphasis in original). Oil and gas development is one "possible use, which BLM must weigh against other possible uses—including conservation to protect environmental values." *Id.* (emphasis in original). And in doing so, BLM "shall…take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b).

In furtherance of BLM's obligation to prevent unnecessary or undue degradation, the agency updated its oil and gas leasing regulations to require that BLM undertake a leasing preference process when evaluating the lands to be offered at an oil and gas lease sale. 43 C.F.R. § 3120.32. Specifically, BLM must consider, at a minimum:

(a) Proximity to oil and gas development existing at the time of the BLM's evaluation, giving preference to lands upon which a prudent operator would seek to expand existing operations;

(b) The presence of important fish and wildlife habitats or connectivity areas, giving preference to lands that would not impair the proper functioning of such habitats or corridors;

(c) The presence of historic properties, sacred sites, and other high value cultural resources, giving preference to lands that would not impair the cultural significance of such resources;

(d) The presence of recreation and other important uses or resources, giving preference to lands that would not impair the value of such uses or resources; and

(e) The potential for oil and gas development, giving preference to lands with high potential for development.

Id. In essence, BLM is directed to offer parcels that are near existing development, have a higher chance of being developed, and have little to no conflict with ecological, cultural, and recreational uses and values. Such parcels are considered to be "high preference" parcels, while parcels that are further away from existing development, less likely to be developed, and/or conflict with one or more ecological, cultural, and/or recreational uses are considered "low preference" parcels.

Here, none of the parcels nominated for sale were determined to be "high preference" parcels. *See* Leasing EA, Appendix H at 1. More specifically, every single parcel to be offered at the Second Quarter Lease Sale is designated as "low" preference for leasing and will impair important wildlife habitats or connectivity areas, among other important resource values. Consequently, BLM's decision to offer all of these parcels for sale violates both FLPMA's unnecessary and undue degradation standard and the MLA regulations directing BLM to utilize leasing preference criteria.

In dismissing the directive of the preference regulation, the Leasing EA claims that the Second Quarter parcels conform with the RMPs and have "low resource concerns," empowering the BLM to exercise their "discretion to offer or defer any parcel during the sale." *See* Leasing EA, Appendix I at CBD-8. This response to the Center's comments begs the question: If the BLM is claiming they have low resource concerns, why are the parcels classified as low preference? While it is true that the exact language of the regulation does not expressly state that

BLM cannot offer "low preference" parcels, BLM's decision to exclusively offer "low preference parcels" contradicts the very purpose of the leasing preference criteria, which is to ensure that BLM is adhering to FLPMA's requirements that BLM prevent unnecessary or undue degradation of the federal lands and their resources. *See* 43 C.F.R. § 3120.32 ("When determining whether the BLM should offer lands…at lease sales, BLM will evaluate the Secretary's obligation[]…to take any action required to prevent unnecessary or undue degradation of the lands and their resources."); 89 Fed. Reg. 30916, 30919 (April 23, 2024) ("The preference criteria…were proposed consistent with the MLA to direct the BLM's administrative resources to leasing tracts most likely to be developed, to reduce conflicts between oil and gas development and other public land uses that were not resolved in the resource management plans, and to 'take[ ] into account the long-term needs of future generations for renewable and nonrenewable resources.'") (quoting 43 U.S.C. § 1702(c)); *id.* at 30947 (explaining that the leasing preference criteria "[w]ill increase certainty and efficiency in the leasing process by decreasing…the number of parcels that are leased but never developed . . . Additionally . . . the preference criteria will provide the BLM with an additional tool . . . to direct leasing and better avoid or manage conflicting uses of public lands at the outset of the lease process.").

Notably, neither BLM's response to the Center's comments nor the Leasing EA explain why it chose to offer only "low preference parcels," or how doing so is consistent with the MLA regulations. At a minimum, BLM should have explained how offering the proposed action parcels "giv[es] preference to lands that would not impair the proper functioning of [important fish and wildlife] habitats or corridors," "giv[es] preference to lands that would not impair [historic properties, sacred sites, and other high value cultural resources and] the cultural significance of such resources;" and "giv[es] preference to lands that would not impair the value of [recreational and other important] uses or resources." 43 C.F.R. § 3120.32(b)-(d). BLM's failure to do so renders its decision to offer all four parcels for sale arbitrary and capricious, in violation of FLPMA, the MLA, and the APA.

VII. BLM Failed to Analyze a Reasonable Set of Alternatives

The Center previously commented on the lack of reasonable alternatives in the EA, noting that no viable alternative beyond the no action alternative was analyzed. *See* EA comments at ⁋ 7. Surprisingly, and despite NEPA requiring BLM to consider a range of reasonable alternatives, BLM alleged that the Center's comment on this matter was "non-substantive to the extent it seeks to interpret legal authorities that are the best evidence of their content." *See* Leasing EA, Appendix I at CBD-9. Should that statement be considered to be true or made in good faith, then BLM grossly misunderstands the content of the legal authorities at play.

NEPA requires BLM to consider a range of reasonable alternatives to the proposed action. 42 U.S.C. § 4332(2)(H). In the Ninth Circuit, BLM's range of alternatives—including

publicly recommended alternatives—is judged by the "rule of reason" standard. That standard has two guideposts: first, that the alternative be feasible, and second, that the alternative fits within the purposes of the project. *Westlands Water Dist. V. U.S. Dep't of Interior*, 376 F.3d 853, 868 (9th Cir. 2004). This standard requires BLM to demonstrate that it took a "hard look" at alternatives to the proposed action—a "thoughtful and probing reflection of the possible impacts associated with the proposed project" so as to "provide a reviewing court with the necessary factual specificity to conduct its review." *Silverton Snowmobile Club v. U.S. Forest Serv.*, 433 F.3d 772, 781 (10th Cir. 2006). Consequently, the Ninth Circuit has stated that the spirit of discussing reasonable alternatives is to foster "informed decision-making and informed public participation." *Westlands,* 376 F.3d at 853.

The range of alternatives an agency must analyze in an EA depends on its purpose and need statement. *See City of Carmel-by-the-Sea v. U.S. Dep't of Interior, 123 F.3d 1142, 1155 (9th Cir. 1997).* Stated differently, "[i]t is the BLM purpose and need for action that will dictate the range of alternatives and provide a basis for the rationale for eventual selection of an alternative in a decision." NEPA Handbook § 6.2. After "defining the objectives of an action," the agency must "provide legitimate consideration to alternatives that fall between the obvious extremes." *Colo. Env't. Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999).

Notably, "[t]he broader the purpose and need statement, the broader the range of alternatives that must be analyzed." NEPA Handbook §§ 6.2.1, 6.6.1. "In determining the alternatives to be considered, the emphasis is on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative." *Id.* § 6.6.1.

However, the One Big Beautiful Bill Act ("OBBB") may have restricted, to some extent, BLM's authority to defer nominated parcels and therefore altered the potential range of reasonable alternatives. Specifically, the OBBB section 50101(c)(2)(A) states:

In conducting a lease sale . . . the Secretary of the Interior . . . shall not offer less than 50 percent of available parcels nominated for oil and gas development under the applicable resource management plan in effect for relevant [BLM] resource management areas within the applicable State.

139 Stat. at 138 (emphasis added).

A. The One Big Beautiful Bill Act (OBBBA)

The recently enacted OBBBA, Pub. L. No. 119-21, fundamentally alters the legal landscape governing federal oil and gas leasing in ways that heighten, rather than diminish, BLM's obligations to conduct thorough environmental review before proceeding with this sale. As amended by OBBBA, Section 17 of the Mineral Leasing Act now directs that leases "shall be subject to the terms and conditions of the approved resource management plan" and "may not require any stipulations or mitigation requirements not included in the approved resource management plan." *See* Pub. L. No. 119-21, § 50101(d)(1)(a)(2)(A). In other words, OBBBA

strips BLM of the sale-specific discretion it has historically exercised to impose protective stipulations as conditions of individual lease sales. Under the prior statutory regime, BLM could and routinely did use such lease-level stipulations to address resource conflicts identified during NEPA review. That safety valve is now closed: the RMP is the ceiling, not a floor, for lease terms and conditions.

This structural change has direct and critical implications for the adequacy of existing RMPs as a legal predicate for leasing. Because BLM can no longer cure resource conflicts or environmental deficiencies through sale-specific stipulations, the burden of ensuring that leasing will not cause unnecessary and undue degradation, as FLPMA requires, falls entirely on the RMP itself. An RMP that assumed BLM retained later discretion to impose protective conditions can no longer serve as an adequate legal foundation for leasing decisions made under OBBBA's constrained framework. This is analogous to the need, described above, for a programmatic EIS: just as the incremental and cumulative nature of the climate crisis compels a comprehensive programmatic analysis rather than piecemeal lease-level review, OBBBA's elimination of lease-level mitigation discretion compels a comprehensive RMP revision before any additional leasing proceeds. BLM cannot simply tier to stale RMPs that were developed under a different statutory framework and then disclaim responsibility for impacts it can no longer address at the leasing stage.

Accordingly, before proceeding with this sale, BLM must revisit and, where necessary, revise the applicable RMPs to ensure they affirmatively incorporate the full suite of protective stipulations and mitigation measures that can no longer be imposed on a sale-by-sale basis. OBBBA further provides that "[t]he initiation of an amendment to an approved resource management plan shall not prevent or delay the Secretary from making the applicable parcel of land available for leasing," Pub. L. No. 119-21, § 50101(d)(1)(a)(2)(B), but this provision cannot be read to authorize leasing predicated on an RMP that is facially inadequate to support a lawful leasing decision under either FLPMA or NEPA. To do otherwise would be to proceed with leasing based on plans that were never designed to bear the full legal weight OBBBA now places upon them, an arbitrary and capricious result that cannot withstand scrutiny under the APA. *See* 5 U.S.C. § 706(2)(A).

B. The OBBBA May Have Limited BLM's Ability to Defer Parcels

OBBBA section 50101(c)(2)(A) is subject to various interpretations, and under some interpretations, it may limit BLM's leasing discretion. For example, one such interpretation is that section 50101(c)(2)(A) requires BLM to offer at least 50 percent of the nominated parcels for development. However, if that interpretation is correct, then any alternative offering less than 50 percent of the nominated parcels is per se not a viable alternative. Consequently, BLM would have to analyze middle-ground alternatives that fall between the extremes that it has the authority to implement (*i.e.*, alternatives that fall between the bookend alternatives of offering 50 percent or all of the nominated parcels).

Here, the Leasing EA does not analyze any viable alternative apart from the no action alternative. *See generally* Leasing EA at 10. The EA does, however, offer a "Reasonably

Foreseeable Development Scenario," or, RFDS for short. *See generally* Leasing EA at 11-15. This is not classified as an alternative, nor is it a viable one—an alternative's function is to provide "a thoughtful and probing reflection of the possible impacts associated with the proposed project" so as to fulfill NEPA's hard look requirement. *Silverton Snowmobile Club v. U.S. Forest Serv.*, 433 F.3d 772, 781 (10th Cir. 2006). By the name alone, which is notably missing the word "alternative," it does not meet the definition. As it were, if it were to be considered an alternative, it is not a reasonable one pursuant to the guidelines found in *N.M. ex. rel. Richardson*, 565 F.3d at 709, as it does not lend itself to the objectives of the project.

Thus, if this reading is correct, BLM has considered only two viable alternatives, and they are complete opposites (lease everything and lease nothing). BLM bolsters this analysis of opposites only by alleging that "the suggestion that the BLM must analyze more than just two 'polar opposite' alternatives is outside the scope of the decision under review." See Leasing EA, Appendix I at CBD-9. Ironically, BLM misunderstands NEPA, as the consideration of just the "polar opposite" alternatives is unlawful. *See Rocky Mountain Wild*, 506 F. Supp. 3d at 1185-86. To produce the EA necessarily required the agency to study reasonable alternatives capable of avoiding these conflicts altogether, which BLM continues to not introduce to the table for discussion. Thus, by limiting its analysis to these all or nothing alternatives, the BLM failed to consider reasonable intermediate alternatives that could reduce environmental impacts while still partially satisfying the agency's objectives.

At a minimum, to make a reasonable, informed decision, BLM should have introduced and analyzed a reasonable set of alternatives that do not constitute only the extremes of either end, which could include NSO stipulations on all parcels to limit impacts to GHMA, removing parcels where lek clusters are present, removing parcels that are of close proximity or within sensitive species habitat, and imposing stipulations on all parcels to limit hydraulic fracturing to protect water resources. The failure to consider that factor renders BLM's decision arbitrary and capricious.

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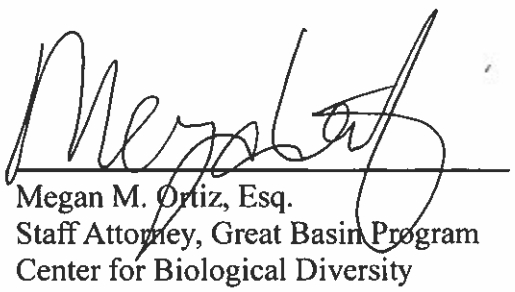
For the foregoing reasons, the Leasing EA violates the NEPA, FLPMA, the CRA, the MLA, the CAA, and the APA. BLM cannot lawfully offer, sell and/or issue these parcels until it remedies these legal errors.

Sincerely,



Megan M. Ortiz, Esq.
Staff Attorney, Great Basin Program
Center for Biological Diversity

Summaries of Attachments – 2026 Oil and Gas Lease Scoping Comments, Submitted by Center for Biological Diversity

1. U.S. Department of the Interior, U.S. Geological Survey Professional Paper 1819, Evaluating Connection of Aquifers to Springs and Streams, Eastern Part of Great Basin National Park and Vicinity, Nevada (2015) at p. 2.
    a. This USGS professional paper must be considered as relevant to the lease sale and underlying protest because it discusses the hydrologic connections of groundwater and surface water in the general areas of the lease sale as well as neighboring regions.
2. Thomas H. Darrah, Avner Vengosh, Robert B. Jackson, Nathaniel R. Warner, Robert H. Poreda, *Noble gases identify the mechanisms of fugitive gas contamination in drinking-water wells overlying the Marcellus and Barnett Shales*, Proc. Natl. Acad. Sci. U.S.A. 111 (39) 14076- 14081, https://doi.org/10.1073/pnas.1322107111 (2014).
    a. This journal paper must be considered as relevant to the lease sale and underlying protest because it discusses how fugitive gas contamination occurs in drinking water relative to oil and gas wells.
3. Ruggieri, R., Forti, P., Lucia Antoci, M., De Waele, J., *Accidental contamination during hydrocarbon exploitation and the rapid transfer of heavy-mineral fines through an overlying highly karstified aquifer* (Paradiso Spring, SE Sicily), Journal of Hydrology (2016), p. 2-3, (http://dx.doi.org/10.1016/j.jhydrol.2016.12.046).
    a. This professional paper must be considered as relevant to the lease sale parcels and underlying protest because it discusses how contamination can happen accidentally to aquifers of a similar type to the one at issue in the lease sale.
4. Myers, Tom, Potential Contamination Pathways from Hydraulically Fractured Shale to Aquifers, National Groundwater Association (2012).
    a. This professional paper must be considered as relevant to the lease sale parcels and underlying protest because it discusses how contamination can happen accidentally to aquifers of a similar type to the one at issue in the lease sale.
5. Kusnetz, Nicholas, North Dakota's Oil Boom Brings Damage Along with Prosperity, ProPublica , June 13, 2012.
    a. This article is relevant to the underlying protest and lease sale parcels because it explores the environmental and social challenges accompanying North Dakota's oil boom, highlighting issues such as pollution, infrastructure strain, and community impacts alongside economic benefits. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.
6. 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 (Dec. 2011)

a. This report is relevant to the underlying parcels and protest because it evaluates the potential impacts of hydraulic fracturing water cycle activities on U.S. drinking water resources, identifying cases of contamination but also noting data gaps and uncertainties. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA

7. Warner, Nathaniel R., et al., Geochemical Evidence for Possible Natural Migration of Marcellus Formation Brine to Shallow Aquifers in Pennsylvania, PNAS Early Edition (2012).
    a. This study presents geochemical evidence suggesting that brine from the Marcellus shale formation may naturally migrate to shallow aquifers in Pennsylvania, raising concerns about potential groundwater contamination linked to shale gas extraction. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.
8. 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 (Dec. 2011)
    a. This report is relevant to the underlying parcels and protest because it evaluates the potential impacts of hydraulic fracturing water cycle activities on U.S. drinking water resources, identifying cases of contamination but also noting data gaps and uncertainties. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA
9. Michaels, Craig, et al., Fractured Communities: Case Studies of the Environmental Impacts of Industrial Gas Drilling, Riverkeeper (2010).
    a. This study is relevant to the underlying parcels and protest because it presents case studies documenting environmental impacts of industrial gas drilling on communities, including water contamination, air pollution, and social disruptions. It highlights the need for stronger regulation and community protections. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.
10. *See* Miller, Jeremy, Oil and Water Don't Mix with California Agriculture, High Country News (2012).
    a. This study is relevant to the underlying parcels and protest because it discusses the conflicts between oil and gas development and agriculture in California, showing the risks to water and soil contamination and degradation that threaten small farming communities. Must be considered for holistic view of air and water

pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.

11. University of Colorado Boulder, New study identifies organic compounds of potential concern in fracking fluids, CU News Center, July 1, 2015 (accessed September 1, 2025).
    a. This discusses a study that identifies various organic compounds in fracking fluids that may pose environmental and health risks. The findings highlight the need for greater transparency and evaluation of chemical additives used in hydraulic fracturing. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.
12. Vengosh, Avner, et al., A Critical Review of the Risks to Water Resources from Unconventional Shale Gas Development and Hydraulic Fracturing in the United States, Environmental Science Technology (2014).
    a. This study assesses the risks that unconventional shale gas development and hydraulic fracturing pose to water resources in the U.S., highlighting concerns about groundwater contamination, water consumption, and waste management. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.
13. U.S. Environmental Protection Agency, Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources (Nov. 2011) ("EPA Plan to Study Fracking Impacts").
    a. This Plan to Study Fracking Impacts outlines a comprehensive research strategy to investigate how hydraulic fracturing may affect drinking water resources, aiming to fill critical knowledge gaps and inform future regulatory decisions. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.
14. Colborn, T. et al., Natural Gas Operations from a Public Health Perspective, 17 Human And Ecological Risk Assessment 1039 (2011)
    a. A review of the chemicals used in natural gas operations and evaluation of their potential health effects, particularly through air and water exposure. Must be considered for holistic view of air and water pollutants possible on the environment in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.
15. White, Ivan E., Consideration of radiation in hazardous waste produced from horizontal hydrofracking, National Council on Radiation Protection (2012).
    a. This report examines the presence and management of radioactive materials in hazardous waste generated by horizontal hydraulic fracturing. It discusses potential radiation risks and the need for appropriate handling and disposal

practices. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.

16. Mall, Amy & Bemnet Alemayehu, A Hot Fracking Mess: How Weak Regulation of Oil and Gas Production Leads to Radioactive Waste in Our Water, Air, and Communities (Natural Resources Defense Council, July 2021)
    a. This report highlights how insufficient regulation of oil and gas production contributes to the release of radioactive waste into water, air, and communities. It calls for stronger oversight to protect public health and the environment from radiation hazards associated with fracking. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.
17. King, Pamela, Hydraulic Fracturing: Limited study supports findings on bigger brine spill risks, E&E News, Nov. 4, 2015.
    a. This article discusses a limited study that supports concerns about increased risks of larger brine spills associated with hydraulic fracturing. Must be considered for holistic view of air and water pollutants possible on the environment and communities close to or in the project area from oil and gas leasing to be compliant with NEPA and FLPMA.
18. Lewis, M.B., et. Al., Road Dust Correlated with Decreased Reproduction of the Endangered Utah Shrub Hesperidanthus suffrutescens. Western North American Naturalist, 77(4), 430-439 (2017).
    a. This study is relevant to the lease parcels and underlying protest because it shows intricate studies on how dust can inhibit reproductive health in shrub species populations in the Great Basin.