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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: Third Quarter September 2026 Oil and Gas Lease Sale Protest, DOI-BLM-NV-E020-2026-0008-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 fourteen oil and gas lease parcels proposed for sale at the Bureau of Land Management's ("BLM") September 16, 2026 competitive oil and gas lease sale. *See* generally Bureau of Land Mgmt., *Elko District September 2026 Third Quarter Competitive Oil and Gas Lease Sale Environmental Assessment, DOI-BLM-NV-E020-2026-0008-EA* (July 2026) ("EA" or "Final EA"); Bureau of Land Mgmt., *Notice of Competitive Oil and Gas Internet Lease Sale* (July 17, 2026) ("Lease Sale Notice").

The Center submitted timely comments on the Lease Sale EA. *See generally* Center for Biological Diversity, *Re: September 2026 Oil and Gas Lease Sale, DOI-BLM-NV-E020-2026-0008-EA* (June 11, 2026) ("Draft EA Comments," attached hereto as Exhibit A); Center for Biological Diversity, *Re: September 2026 Oil and Gas Lease Sale, DOI-BLM-NV-E020-2026-0008-EA* (March 11, 2026) ("Scoping Comments," attached hereto as Exhibit B). As explained below, BLM's decision to offer fourteen 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 Third Quarter Competitive Oil and Gas Lease Sale until it remedies the legal deficiencies outlined below.

Statement of Reasons

I. The Final 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* Final EA at Appendix H, CBD-3. BLM alleges that it did, in fact, "consider direct, indirect, and cumulative impacts from the lease sale within the context of the previous land use planning documents" at Section 1.5 of the EA, as well as an analysis of the same for issues analyzed both in brief and in detail at Appendix D and Section 3.4, respectively. *Id.* Appendix D, however, reiterates the issues *not* analyzed in detail within the Final 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. Such topics include impacts to migratory birds and other wildlife, effects from hazardous and solid wastes, human health and safety, and visual and paleontological resources. *Id.* at Appendix D. With respect to issues analyzed in detail, the Final EA offers little to no substantive changes from its draft stage based on the Center's previous comments, leaving the arguments continuously falling short of the meaningful analysis required in the *San Juan* factors test. 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.

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," 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 <u>respond</u> 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

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

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

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).

BLM's response to the Center's comments regarding its violation of the hard look standard under NEPA allege that the "level of environmental analysis conducted in th[e] EA is consistent with the purpose and requirements of NEPA," citing to *Dakota Res. Council v. United States DOI*, No. 22-cv-1853 (CRC), (D.D.C. Mar. 22, 2024). It is not made clear which portion of the aforementioned citation BLM is referencing, but it should be noted that, while much of the specified discussion in *Dakota* is surrounding the cumulative impacts analysis of GHG emissions, *Dakota* does affirmatively lay out the requirement for BLM to adhere to the *San Juan* factors test. *See Dakota Res. Council v. United States DOI*, 2024 U.S. Dist. LEXIS 51013, 32-33* (D.D.C. 2024) (quoting Tomac v. Norton, 433 F.3d 852, 864 (D.D.C. 2006). BLM's own logic confirms that the *San Juan* factors test is, therefore, a requirement the agency must meet when conducting a NEPA review.

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."). Courts have held that,

> 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).

Contrary to BLM's assertion, the Final 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 adequately 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 prior 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 action or possible outcome of the lease sale yield development of at least 50 percent of the parcels, instead relying on an arbitrary, copy-and-paste scenario that assumes only six wells will be developed on an unknown parcel(s). *See* Final EA at 13-14 (discussing alternatives); *id.* at 23-24 (discussing "Reasonably Foreseeable Future Actions Common to All Issues"); *id.* at 25-36 (discussing "Air Quality Conditions"); *id.* at 36-40 (discussing "Social and Economic Conditions"); *id.* at 40-43 (discussing "Special Status Species"); *id.* at 43-46 (discussing "Big Game Species"); *id.* at 46-47 (discussing "Potential Spread and/or Management of Noxious and Invasive Weed Species"); *id.* at 47-51 (discussing "Range Improvements and Livestock Grazing"); *id.* at 51-54 (discussing "Historic, Prehistoric, and Cultural Resources"); *id.* at 54-55 (discussing "Water Resources"); *id.* at 56-57 (discussing "Soil Resources").

For factor 3, BLM discloses some past, present, and reasonably foreseeable future actions, but not all of them. *See* Final EA at 23-24. As discussed above, the Final EA, much like the Draft EA, does not disclose any reasonably foreseeable future actions related to the most substantial scenario: that is, one in which all of the parcels are sold and all of the parcels are developed. BLM must assess the likely combined impacts of leasing thousands of acres, which cannot be limited by the assumption that only six wells 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."). This assumption—that 10 percent (or six) wells will go into production over the 10-year lease period—is what BLM has referred to separately as a Reasonably Foreseeable Development Scenario based on "the development history observed within Railroad Valley, as well as the observed development history in Elko District's Pine Valley." *See* Draft EA at 14-16. The RFDS is not to be confused with the RFFA: Reasonably Foreseeable Future Actions, the analysis of which is required to satisfy the third factor. The RFDS is not a viable substitute for analyzing the reasonably foreseeable future actions, as such future actions may or may not include the development hypothetical that the RFDS relies on, although its pervasive presence in not only the alternatives analysis but throughout the Draft EA postures as though it is attempting to be conflated with an alternative or future action.

Additionally, the RFFA outlines "reasonably foreseeable influences on the landscape that have occurred[,] and are likely to continue in the vicinity of the nominated lease parcels." *See* Draft EA at 24. This further confuses the analysis: an "influence" is not the same as an "action" is not the same as a "development scenario." Further, the brief, one page analysis of said "influences" do not fulfill the third factor, as they do not denote what of the listed influences are past, present, future, nor does it denote in which parcels these influences have occurred and to what extent and when. BLM alleges in their comment responses that "the number of wells and disturbance predicted under the RFDS assumptions in the RMP have not been exceeded. The Proposed Action would not exceed, nor likely significantly contribute to, the level of development predicted in the RFDS[.]" *See* Final EA, Appendix H, CBD-3. BLM offers no other response to this portion of the *San Juan* factors test, nor does it explain why they have proposed the level of development predicted in the RFDS if the proposed action is not likely to significantly contribute to such development.

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 Final EA, like the draft EA, does nothing with that information. The Final EA does, however, present the RFDS (discussed above) as a hypothetically foreseeable scenario, albeit, one that is intricately detailed down to the size of potential oil fields discovered, the likely production from the same, and the relative disturbance of the land. *See* Final EA at 14-22. However, this is a stale forecast from a 2016 oil and gas Draft EA. *See* 2016 Leasing EA at 113-116; Appendix C. The information is dated in nature and has not been specifically analyzed with respect to this lease sale. 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* Final EA at 15. It is curious, then, that BLM would allege to know such detailed information about oil field discovery in the area when it cannot, with any amount of certainty, say where the locations for development or exploration are within the parcels.

Most jarring in the Draft EA, however, is evaluating factor 5, which assesses the "overall impact that can be expected if the individual impacts are allowed to accumulate." The Draft EA states that "only a few" oil wells in the Elko District have been drilled over the last 10 years, one of which has been put in production. *See* Final EA at 40. The EA goes on to assume that, based off of this, that only "one or two wells would be drilled as a result of the Proposed Action over the 10-year lease term and that none of those wells would go into production." *Id.* While unclear, the claim that an estimated "one or two wells" could be drilled during the 10-year lease period while simultaneously providing detailed analysis of anticipated well field discoveries with extensive build out in the RFDS is incongruous and demonstrates that the Final EA fails to provide a reasonable estimate of buildout of the proposed action for analysis. *See generally* Final EA at 14-22. It seems a contrived conclusion to assume that such a minimal number of wells will be drilled from the Proposed Action when so much production information was analyzed and provided for the *potential* discovery of oil fields that will have 30 wells drilled, four producing wells, and an abundance of accompanying infrastructure. *See generally* Final EA at 14-22. 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 Final EA to begin with.

In their comments, BLM relies on *Seven Cty. Infrastructure Coal v. Eagle Cty.*, 605 U.S. 168 (2025) for the sufficiency of their cumulative impact review, stating that "agencies are only required to consider environmental effects that have a reasonably close causal relationship to the project at hand and that fall within the agency's regulatory authority." *See* Final EA, Appendix H, CBD-3. BLM conveniently ignores, however, that *Seven County* does not permit agencies to ignore any impact that is somewhat removed from the project, but reaffirms proximate causation principles. *See Seven Cty.*, 605 U.S. at 187 (discussing the causal chain between projects as it relates to evaluation of environmental effects). If the challenged impacts are proximately caused by the federal action at issue, then the Agency, therefore, has a duty to conduct a cumulative impacts analysis on such. *Id.* at 187-188. If the impacts are foreseeable consequences of a project, *Seven County* does not relieve BLM of the duty to analyze them simply because they occur after project approval. "The goal of the law is to inform agency decision making, not to paralyze it." *Id.* at 173. The only thing at risk of paralyzing agency decision making here is the agency's failure to adhere to the clear statutory obligations of NEPA.

Under NEPA, BLM is obligated to prepare an adequate report addressing environmental consequences and feasible alternatives as to the relevant project. *Id.* at 180. "Because an EIS is only one input into an agency's decisions and does not itself require any particular substantive outcome, the adequacy of an EIS is relevant only to the questions of whether an agency's final decision…was reasonably explained." *Id.* If NEPA is to be viewed as merely procedural, and the agencies performing NEPA analysis are doing so out of procedural necessity, then how would that procedural yardstick be better equipped to assess the relevancy of substantive facts to a decision as opposed to any other entity? And while *Seven County* iterates that "a reviewing court may not 'substitute its judgment for that of the agency as to the environmental consequences of its actions,'" *id.* at 183, there is a notable difference between substitution of judgment and interpretation of facts. Additionally, *Seven County* contends that the "risk" of not providing "the level of deference demanded by the statutory texts" results in slowing down or blocking projects. The purpose of NEPA, however, is not to advance projects—it is to adequately evaluate environmental baselines and consequences from proposed projects to ensure habitats, species, and natural resources remain intact. *See Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016) ("Establishing appropriate baseline conditions is critical to any NEPA analysis."); *see Half Moon Bay Fishermans' Mkth. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988)("Without establishing the baseline conditions which exist…before [a project] begins, there is simply no way to determine what effect the [project] will have on the environment and, consequently, no was to comply with NEPA.").

Further, the language of "within the agency's regulatory authority," which BLM relies on in their comments again, has limits. *See* Final EA, Appendix H, CBD-3. In *Seven County*, the Court addressed a situation where the agency was being asked to analyze environmental effects caused by *other governmental decisions or independent actors* over whom the agency has no authority. *Seven County*, 605 U.S. at 173-175 (emphasis added). In this case, if BLM authorizes a lease sale, then the environmental consequences of performing that lease sale and the predicted buildout of oil and gas production fall squarely within the federal action under review. BLM will have direct regulatory authority over the lease sale and buildout of any subsequent oil and gas production field—a scenario that runs opposite to the one presented in *Seven County*. If *Seven County* is to be adhered to as the BLM wishes, then they have, again, pointed out actions within their regulatory authority (in this case, oil leasing and potential oil production) that must be properly analyzed within the Final EA. That much was not done here. At minimum, *Seven County* does not allow agencies to simply label impacts as too attenuated to the project at issue. The agency must explain where, how, and why the causal chain breaks. In this case, that has not occurred

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. Further, BLM has failed to analyze the "reasonably close causal effects" of the Project, as required under their preferred precedent, *Seven County*. 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 Final EA Improperly Defers Analysis of Foreseeable Impacts

Previously discussed in the Center's comments were the shortcomings of adequate analysis for RFFAs within the EA. The Final EA does not differ and continues to offer a "Reasonably Foreseeable Development Scenario," or RFDS for short, as briefly touched on above. *See generally* Final EA at 14-15. This development scenario, found under Chapter 2 "Alternatives" of the Final EA, is a scenario based "on the development history observed within Railroad Valley, as well as the observed development history in the Elko District's Pine Valley." *Id.* at 2.3. The RFDS assumes an analysis for environmental effects of oil and gas leasing based on a 15-year projection. *Id.* Notably, it is not normally 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 markedly missing the word "alternative," it does not meet the definition. Instead, this is presented as one future development scenario of the proposed action. 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.

BLM responded to the Center's comments concerning this issue by stating that "the proposed action would not exceed, nor likely significantly contribute to, the level of development predicted in the RFDS." *See* Final EA, Appendix H, CBD-12. That assertion alone runs afoul of the very purpose that the RFDS purports to serve within the EA—a reasonably foreseeable future scenario that contains a field of 54 wells to be drilled during the 10-year lease period wherein approximately six of those wells will go into production. *See* Final EA at 14-15. The Final EA, much like the Draft EA, does not provide information on how it arrived at these numbers aside from a convoluted discussion on exploration drilling trends throughout the state, throughout Railroad Valley, and throughout the Elko District over a variety of time spans—from 1954 up to the last ten years. *See* Final EA at 15-16. It is curious, then, how the proposed project—which outlines a very in-depth and well thought out RFDS—would not "exceed, nor likely significantly contribute to, the level of development predicted in the RFDS" if what makes the RFDS a reasonably foreseeable future scenario is predicated on the outcome of the at issue oil and gas leasing. If the proposed project is not predicted to exceed or contribute to the RFDS, why include the RFDS at all? BLM does not and cannot answer this.

It is further curious that they should suggest a maximum well scenario to be highly speculative when the objective itself of the lease sale is, seemingly, to comply with the MLA mandate to offer quarterly lease sales, and in turn, do so successfully. This would suggest that the proper evaluation of the proposed action should actually be the maximum allowable scenario. BLM cannot at once say that they predict potential oil fields encompassing 80 wells *within the area of the at issue oil and gas leasing*, while simultaneously saying that they will analyze the impacts of such at the APD stage, and then also saying that the proposed action would not significantly contribute to said RFDS. *See* Final EA *et seq*. It is clear that the RFDS demonstrates a substantial well field development and, as the title suggests, is reasonably foreseeable. Meaningful analysis of this scenario can, therefore, not be postponed to the future APD-level review.

Finally, the Center will point out again that the RFDS scenario presented in the Final EA is an identical scenario that was presented in a 2016 Oil and Gas Draft EA for the Elko District. *See* 2016 Draft EA at Appendix C. It begs the question: how, then, can a copy and paste job of a 10-year-old scenario still be applicable to the present proposed action? How were the foreseeable actions or, for that matter, any suggested development scenario, evaluated pursuant to NEPA if the site-specific analysis for this lease sale was not performed? How does this constitute being included under the chapter on "Alternatives" within the Draft EA? The RFDS is an admission that significant development is foreseeable and, therefore, the impacts to come with such foreseeable development must be adequately analyzed.

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

The Center offered multiple comments concerning different valleys within the water shed and their varying characteristics with relation to hydrogeology. These comments were widely ignored, acknowledged only as having laid out the explanations that were previously offered, went unchanged, and remained insufficient. *See* Final EA, Appendix H, CBD-55; CBD-69. BLM contends in its comment responses, among other things, that the Final EA does, in fact, "address surface and groundwater resources." *Id.* at CBD-69. 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* Final EA at 55-56, Effects of the Proposed Action. And while BLM provides some information regarding the affected environment in Pine Valley, it does almost nothing with this information beyond identification of major wetlands, springs, and the structure of the basin. *Id.* at 54-55, Affected Environment.

BLM did, however, respond in more detail to the Center's previous comments and concerns surrounding leaky wellbores and other water degradation factors. *See* Final EA, Appendix H, CBD-55 (discussing wellbore protection of usable water, site specific analysis, and fluid flow between zones). BLM alleges that they are in compliance with requirements for cementing and casing as described in 43 C.F.R. §3172.7(a), stating ultimately that certain "analysis cannot be completed until site specific information is provided in an APD and effects are reasonably foreseeable or even known." *Id.* Contrary to BLM's belief, whether site-specific casing and cementing plans are ultimately approved during the APD process does not relieve BLM of its EA-stage duty to evaluate the reasonably foreseeable environmental consequences of drilling wells that may traverse usable groundwater zones and include intentionally uncemented casing intervals. BLM's response does not analyze the potential environment effects of such a practice or the uncertainty associated with relying on geologic assumptions—as it does in its response—let alone analyze the consequences of those assumptions should they prove to be incorrect. *See* Final EA, Appendix H, CBD-55; CBD-69; CBD-71.

Instead, BLM merely explains that it will conduct a future engineering review and ensure regulatory compliance at the APD stage. *Id.* But, as discussed here extensively, NEPA requires more than a promise of future review—it requires the agency to disclose and evaluate reasonably foreseeable environmental risks before making an irreversible commitment of resources. *See Conner v. Burford*, 848 F.2d 1441, 1446 (9th Cir. 1988) (discussing that oil and gas leasing constitutes an irretrievable and irreversible commitment of resources and requires further analysis where an EA did not sufficiently consider the impacts). Further, the mere existence of regulations contained within 43 C.F.R. § 3172.7(a) demonstrate that groundwater protection is a central consideration in oil and gas development. NEPA's independent requirement to evaluate the environmental consequences of drilling wells that will likely impact usable groundwater areas is not relieved simply because regulatory framework governing well construction exists.

BLM's response does not analyze the reasonably foreseeable environmental risks associated with well construction, including the assumptions underlying approval of uncemented intervals, the uncertainty surrounding long-term well integrity, or the environmental consequences should those assumptions fail. They continuously call for punting analysis of such to the APD stage, circumventing the required "hard look" necessary prior to an irreversible and irretrievable commitment of resources is made. As has been firmly established, NEPA 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).

The impacts of the proposal to groundwater, aquifers, and any potential connectivity to the surface springs, streams, lakes, wetlands, or any other bodies of water were not thoroughly evaluated in the Final EA, despite the Center's extensive previous comments. BLM has therefore failed to comply with their NEPA obligations to adequately analyze the environmental baseline of the groundwater conditions.

The Final EA speculates what could possibly occur on a generalized level to water resources but does little to fulfil the requirement of particularized NEPA analysis prior to a commitment of irretrievable resources. *See generally see N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 718-720 (10th Cir. 2009) (discussing that, prior to committing resources that will be rendered irretrievable after such a commitment, a thorough and site-specific analysis is required of the foreseeable impacts). Like the Draft EA, the Final EA remained completely unchanged in its language and analysis, noting that the proposed action could lead to "increased deposition from fugitive dust, increased sediment loads during runoff events, increased erosion during construction phases, and alteration of overland flow patterns" but does nothing with this information is of critical concern for an already overdrawn valley.

The Final EA failed to evaluate how often accidents can be expected to occur, and the effect of chemical and fluid spills, the identification of the particular harms faced by communities near oil and gas fields, 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.

The Final EA 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.

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. BLM themselves acknowledge in the Final EA that water quantity may be affected, discussing the possibility for "water wells developed for oil and gas drilling could also result in a drawdown in the quantity of water in nearby residential areas." *See* Final EA at III, p. F-5. Despite that recognition, BLM's response to the Center's previous comments regarding water quantity allege that the "EA analyzes the potential risk of contamination related to well development." *Id.* at Appendix H, CBD-79. This is misleading, as there is scant, generalized information offered regarding impacts to water quantity, let alone water pollution, that merely acts as general inferences lacking in any meaningful analysis. *See* Final EA at 3.4.8, p. 54.

BLM, therefore, failed to develop very specific stipulations on where and how the water would be obtained as a part of the environmental review process, including meaningful analysis of impacts to water quantity throughout the regional aquifer.

IV. 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* Draft EA Comments at 10. The Final 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 Final 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* Final EA at 3.4.1, p. 27 ("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 Final EA makes vague references to SIP and other state regulatory authority but never analyzes the Third Quarter Lease Sale in conformance therewith. *See* Final EA at 3.4.1, p. 27. BLM failed to perform a full conformity determination and advancing the Third Quarter Lease Sale without such constitutes a violation of the Clean Air Act. The Center previously offered directives on how to do so: by using the per-well estimates provided in the Final EA, BLM should have calculated 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 could have provide BLM with the reasonably foreseeable emissions of this project, which, because they certainly would be above the *de minimis* threshold, should have been made to conform with the applicable SIP before BLM can proceed with this action.

V. The Final EA fails to fully consider the environmental health and social impacts of oil and gas extraction

a. Air Quality

Given the likelihood that fracking and other similarly harmful techniques would be employed in the exploration and development of the parcels, BLM has an obligation to analyze and disclose the potential impacts to air quality resulting from such frequently used practices.

The purpose of an environmental assessment is for BLM to look at the impacts in total and to take a hard look at all "reasonably foreseeable" impacts now, prior to the lease of the land. NEPA regulations and case law clearly establish that uncertainty about the precise extent and nature of environmental impacts does not relieve an agency of the obligation to disclose and analyze those impacts utilizing the best information available. *See* 40 C.F.R. § 1502.22(a),(b).

The Final EA did not rely on the most up-to-date information regarding the contribution of oil and gas operations to air pollution levels. Additionally, the Final EA failed to study the potential for oil and gas operations sites in the planning area to emit such air toxins and any other pollutants that may pose a risk to human health, paying particular attention to the impacts of air pollution on environmental justice communities that already bear the burden of disproportionately high levels of air pollution.

The Final EA failed to provide an adequate analysis and disclosure of the effects the lease sale could have on air quality, including the impacts that would result from fracking. The Final EA cannot postpone the discussion of air pollution impacts until site-specific plans are proposed. Because BLM must analyze impacts at "the earliest practicable time,"[3] and no benefit would be gained from postponing the analysis, BLM must discuss these cumulative impacts before the lease sale.

The Final EA failed to incorporate a literature review of the harmful effects of each of these chemicals known to be used in fracking and other unconventional oil and gas extraction methods. Without knowing the effects of each chemical, the EA cannot accurately project the true impact of unconventional oil and gas extraction. Before concluding that the lands in question should be available for oil and gas leasing, BLM must assess the quantity and timing of air pollution that will result from such development in light of an development scenario that reflects the most current information. Only then can BLM make an informed decision about whether making the lands available is consistent with proper management of those lands.

b. Wildlife and Sensitive Plant 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 Third 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 Final EA, "may have potential to occur within the nominated parcels." *See* Final EA at 3.4.3, p. 41. The Final EA states that "all parcels were

[3] *N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 717-18 (10th Cir. 2009) (citing 42 U.S.C. § 4332(2)(C)(v)); compare with *Center for Biological Diversity*, 937 F. Supp. 2d at 1152 (N.D. Cal. 2013) ("Agencies are required to conduct this review at the 'earliest possible time' to allow for proper consideration of environmental values. . . A review should be prepared at a time when the decisionmakers 'retain a maximum range of options.'").

shown to have at least one sensitive species identified as occurring within them." *Id.* at 3.4.3, p. 40. Numerous sensitive status animal and plant species occur within the parcels as well, including pygmy rabbits, burrowing owl, greater sage-grouse, golden eagle, ferruginous hawk, pinyon jay, and the desert horned lizard. *Id.*

Additionally, the Final EA notes that golden eagle nests are contained within two parcels; prairie falcon nest is contained within one parcel; bat colonies are contained within five parcels; springsnail colonies are contained within one parcel; and two Ferruginous hawk nests are contained within one parcel. *See* Final EA at 3.4.3, p. 40. There are an additional 15 sensitive species of plant documents within the parcels as well, though the parcels are not specified for each particular plant. *Id.* at 41. Similar to the information provided for impacts to the GRSG, the Final EA states that adverse impacts to sensitive species habitat are likely to occur from oil and gas development, including habitat fragmentation, increased noise and disturbance from human activity, possibly collisions with vehicles, reduction in reproduction for plant communities, and potential to introduce invasive plant species. *Id.* at 41-42. The Final EA, too, alleges here that "further analysis and surveying would be required at the project (APD) level," and while that much is true, the analysis required now at the leasing level cannot, once again, be delayed to a future time. *See N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 718-720 (10th Cir. 2009). BLM failed to include a more particularized analysis of the impacts to the listed sensitive species, including but not limited to adherence to 16 U.S.C. 668-668d, otherwise known as the Bald and Golden Eagle Protection Act, and impacts to migratory corridors, nesting and brooding grounds for all sensitive species, and other harmful impacts with mitigation measures to be enacted for the same.

Likewise, BLM has failed to consider the effects of ambient dust from roads and construction on plant species in the vicinity of the Third 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 affect 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.[4] One study found that dust impacted reproduction capabilities of plants from 100 to 700 meters from heavily used roads for oil and gas development.[5]

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.

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[4] 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).
[5] *Id.* at 436.

c. Human Health

Oil and gas leasing and foreseeably-resulting fracking entail significant public health risks that should compel BLM to consider alternatives banning these practices. The BLM must consider the potential threats that oil and gas leasing pose to human health and safety, such as carcinogenic, developmental, reproductive, and endocrine disruption effects. The Center presented ample evidence of these impacts in our previous comment letters, which BLM failed to adequately respond to in the Final EA.

There are a wide array of possible impacts from fossil fuel extraction and fracking to human health, both well-documented and those that remain unknown. BLM failed to disclose and analyze these impacts in the Final EA.

d. Visual Resources

Development of oil and gas resources by necessity entails impacts to visual resources. Examples include surface infrastructure such as roads and power lines, equipment such as drill rigs, pump jacks, alterations of surface characteristics including grading and leveling, and other disturbances to the visual environment. A full visual resources inventory must be conducted and an assessment of the impacts of leasing and developing over 20,000 acres must be made based on the results of that inventory, should any recommendation to proceed with leasing be made.

e. Recreational Opportunities and Values

Leasing and development of oil and gas resources within Eureka and Elko County have the potential to impact recreational opportunities and values, including, but not limited to, hunting, fishing, wildlife watching, hiking, backpacking, off-roading, geocaching, camping, botanizing, photography, and other activities. BLM failed to fully analyze the impacts to such within the proposed project as well as the alternatives.

f. Environmental Justice

The BLM failed to consider the environmental justice implications of making the lands in question available for oil and gas leasing. Thus, BLM must consider all of the above impacts with regard to which communities will be most affected by the harms. For example, with regard to health risks from air pollution, methods of collecting and analyzing emissions data often underestimate health risks by failing to adequately measure the intensity, frequency, and duration of community exposure to toxic chemicals from fracking and drilling; failing to examine the effects of chemical mixtures; and failing to consider vulnerable populations. Of high concern, numerous studies highlight that health assessments drilling and fracking emissions often fail to consider impact on vulnerable populations including environmental justice communities and children. In particular, BLM failed to assess how the various impacts in particular affect Native American communities and other communities that historically have been exposed to unfair burdens from destructive and polluting activities.

VI. The Final EA Failed to Comply with the Applicable Resource Management Plans

The Center previously commented on the outdated nature of the RMPs at issue, citing that because impact information has changed significantly in the last 40 years. BLM's response was simply that they "reviewed the applicable RMPs and determined that they remain valid and appropriate for guiding leasing decisions." *See* Final EA, Appendix H, CBD-16. However, this does nothing to show that BLM was in compliance with those obviously applicable RMPs. Instead, they allege that simply "offering parcels for competitive oil and gas leasing…in a manner consistent with multiple use management" is enough to muster compliance. *Id.* As BLM themselves point out, public lands managed by the BLM "shall [be] manage[d]…under principles of multiple use and sustained yield, in accordance with the land use plans developed…under section 1712 of this title." 43 U.S.C. § 1732(a). Nothing in this section confines the breadth of "multiple use and sustained yield," yet BLM conveniently ignores that such directives inherently include uses pertaining to recreation, wildlife management, and conservation.

As stated in the Center's previous comments, there are three applicable management plans in this matter: The 1987 Elko RMP and Record of Decision[6], the 1986 Shoshone-Eureka RMP and ROD[7], and the 2025 Greater Sage-Grouse (GRSG) Rangewide Planning: Approved Resource Management Plan Amendment for Nevada and Northeastern California (2025 ARMPA).[8] BLM failed to adhere to the management provisions laid out by the RMPs with respect to vegetation, wildlife, grazing, migratory corridors, water conservation, habitat management, and special status species and instead merely hold out competitive oil and gas leasing as somehow immune from the discretion of their oversight.

a. Elko District RMP

As noted in the Final EA, the Elko RMP objective for minerals is to "maintain public lands open for exploration, development, and production of mineral resources while mitigating conflicts with wildlife, wild horses, recreation, and wilderness resources." *See* Elko RMP at 35. While it's clear that mineral leasing is permissible, the Final EA fails adequately analyze the conflict mitigation component of the minerals objective in the RMP.

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[6] Bureau of Land Management, Elko District, *Record of Decision and Approved Resource Management Plan* (Jan. 1987).

[7] Bureau of Land Management, Eureka District, *Record of Decision and Approved Resource Management Plan* (Mar. 1986).

[8] Bureau of Land Management, *Record of Decision and Approved Resource Management Plan Amendment for the Greater Sage-Grouse Rangewide Planning—Nevada* (Dec. 2025).

BLM cannot simply forego analysis of conflict mitigation to the APD stage and claim to be in compliance with the RMP. The lease sale is a part of "maintaining open lands" that falls squarely within the requirement to mitigate conflicts of such actions with the aforementioned resources. That the same thing would have to also be done at subsequent stages of development is irrelevant. "NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can be reasonably done." *Kern v. Bureau of Land Mgmt.*, 284 F.3d 1062, 1072 (9th Cir. 2002). Additionally, BLM cannot rely on previous stipulations to ameliorate all mitigation issues. *See* Final EA at 43 ("Notices and timing stipulations would minimize some effects to special status species); *see N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 718-720 (10th Cir. 2009) (discussing that, prior to committing resources that will be rendered irretrievable after such a commitment, a thorough and site specific analysis is required of the foreseeable impacts); *S. Fork Band Council of W. Shoshone v. U.S Dep't. of Interior*, 588 F.3d 718, 727 (9th Cir. 2009) (holding that mitigation measures in an EIS must be discussed as to whether the proposed mitigation measures can be effective).

Further, the RMP specifically references a number of resource values, including wildlife, wilderness, recreation, and the like. The Final EA acknowledges, however briefly, that the parcels contain a number of big game and other fauna, stating that "oil and gas exploration and possible production has the potential to impact numerous species and their habitats" as well as "sensitive vegetation" in a variety of ways, including but not limited to habitat fragmentation, increased mortality from construction and operation efforts, increased disturbance from construction and operation efforts, reduction in production for vegetation, and more. *See generally* Draft EA at 42-43. Despite the impacts that will occur to various flora and fauna should the lease sale go forward, BLM offers a terse analysis of effects from the proposed action, giving little more than conclusory statements that, again, punt further analysis to the APD stage. *Id.* What's remarkable, however, is that the RFDS in the Final EA forecasts industrial-scale oil and gas development and infrastructure on the landscape while providing no analysis for the same. Instead, it provides scant analysis with the conflicts concerning the resource values BLM is aware of and has repeatedly mentioned in relation to the Reasonably Foreseeable Future Actions (RFFAs). *See* Final EA at 43, *Effects from Reasonably Foreseeable Future Actions.* It seems the BLM continues to conflate acknowledging that impacts will occur and, to at least some degree, can be reasonably predicted, with actually analyzing those predictable impacts at the scale forecasted in the RFDS, leaving compliance with the Elko RMP to remain desired.

b. Eureka RMP

The Final EA cites that "all areas designated...prospectively valuable for oil and gas will be open to leasing except as modified by other resources." *See* Final EA at 1.4, p. 9; Eureka-Shoshone Resource Management Plan (RMP) and Record of Decision (ROD) (1986) at 28. The language "except as modified by other resources" preserves the agency's discretion and implies that a balancing of resources is required. Contrary to belief of the Final EA, mineral development is not the primary concern or use requirement on public lands but is rather subject to resource constraints. Like the Elko RMP, the Final EA does not adequately analyze any of the impacts to resource values while predicting a development scenario equal to the size of Kate Springs and Bacon Flat oil fields, nor do BLM's comments respond to these previously expressed concerns. *See* Final EA at 18. Because the RMP requires a balancing of resources, BLM's failure to perform a thorough analysis on the foreseeable impacts of the project given that, once the lease sale occurs, the resources are irretrievably committed, is a violation of FLPMA. See *N.M. ex rel.*, 565 F.3d at 718. Without such an analysis, the Final EA is not in compliance with the RMP, as the BLM failed to perform the required analysis to ensure that "oil and gas are open to leasing except as modified by other resources."

c. 2025 Greater sage-grouse ARMPA

Greater sage-grouse are iconic birds of the interior West and highly imperiled due to loss and fragmentation of their native sagebrush-steppe habitats. The 2015 Greater Sage-Grouse ARMPAs were designed with conservation of the bird as a top priority, designating sage-grouse habitat in increasing levels of protection, including General Habitat Management Areas (GHMA) and Priority 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.

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.[9] Birds may return to disturbed areas even if they can no longer successfully reproduce or survive there, which limits their adaptability to human disturbance.[10] 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 13916-17. 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 13927.

Despite the Center's extensive comments on the need for compliance with the ARMPA, BLM offered almost no substantive response, instead using their response space to repeat facts that are already established and known in both the Draft EA and Final EA. *See* Final EA, Appendix H, CBD-22. According to the Final EA, parcels NV-2026-09-7097, NV-2026-09-7106, NV-2026-09-7109, NV-2026-09-7110, NV-2026-09-7111, NV-2026-09-7113, NV-2026-09-7114,

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[9] 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).
[10] *Id.*

NV-2026-7117, and NV-2026-09-7118 contain PHMA. Further, the Final EA states that the nearest lek is located "less than half a mile west of the proposed parcels." *See* Final EA at 40. The Final EA goes on to state that parcels NV-2026-09-2378 and NV-2026-09-7119 both contain GHMA, and parcels NV-2026-09-7101, NV-2026-09-7109, NV-2026-09-7116, NV-2026-09-7117, and NV-2026-09-7101 include OHMA, with "all parcels containing nesting, early-brood, late-brood, and winter GRSG seasonal habitats." *Id.* There is no elaboration on how much of the parcels comprise PHMA, GHMA, and OHMA; however, the admission that all parcels contain multiple levels of habitat assumes that all of the parcel acreage is comprised of GRSG habitat at any level in its totality. The Final EA cites one inactive lek within half a mile of the proposed leasing parcels but gives no further information regarding leks or lek clusters in the area beyond a one-half mile buffer. This critical piece of information is missing from and fails to inform the analysis in the Final EA.

Indirectly, BLM's responses to the Center's previous comments attempt to circumvent the requirement to avoid GRSG habitat by stating that prioritization outside of PHMA and GHMA is no longer required for the over-arching fluid mineral objection. *See* Final EA, Appendix H, CBD-28. These changes to the ARMPA do not absolve BLM from the directive to avoid GRSG habitat "when practicable then minimize and compensate for adverse impacts to GRSG habitat to the extent required under the law." *See* 2025 ARMPA ROD at 25. "PHMA have the highest value for maintaining sustainable GRSG populations." *Id.* at 10. What's more is that the BLM states that the amendments to the GRSG ARMPA "increased protections for GRSG, particularly in PHMA," out of necessity. *Id.* Finally, there is a no surface occupancy allocation for fluid minerals in PHMA with exception if "specified criteria can be met." *Id.* at 12. Under their own plan, BLM must first ensure compliance with the applicable RMPs before opening GRSG habitats up to oil and gas leasing. *Id.* In this case, and as discussed above, the Final EA fails to be consistent with management directives in all three applicable RMPs, including the 2025 GRSG ARMPA.

The disturbance from development of these parcels would result in fragmentation of important habitat, devastating sage-grouse seasonal migration and survival within the area. BLM did not respond to this comment whatsoever in the Final EA, even though they are required to minimize adverse impacts to GRSG habitat under the GRSG ARMPA. *See* 2025 ARMPA ROD at 25. 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 4, while acknowledging that long-term effects from oil and gas leasing could include permanent vegetation removal and obstacles for seasonal migration movements. *Id.* Curiously, nowhere in the unsigned FONSI for the lease sale are sage-grouse directly mentioned at all.

The lease sale moving forward contradicts the obligation of the ARMPA on its face. Even if leases are issued, if the parcel(s) in which PHMA is contained requires a No Surface Occupancy, it cannot be developed—no well pads, no roads, no pipelines. BLM has not affirmatively provided specific data as to what acreage areas in the PHMA parcels contain such habitat, making it impossible to know or evaluate the appropriate adaptive management response to the same. BLM further incorrectly responds to the Center's previous comments that "the commentor suggests adding a 'buffer' to NSO leases adjacent to Non-NSO leases." *See* Final EA, Appendix H, CBD-47. The Center's previous comments suggested, instead, that BLM "could include NSO stipulations on all parcels to limit impacts to PHMA and GHMA." *Id.* at CBD-46. While the Center welcomes BLM's idea of a buffer fulfilling that function, that such an act would "require the creation of a new stipulation through the LUP" that cannot be achieved at this stage is incorrect. It is not uncommon for BLM to introduce new amendments to LUPs during NEPA processes and there is nothing prohibiting them from doing so here. Further, the GRSG NSO modifications direct BLM to comply with other management actions such as mitigation, seasonal restrictions, and disturbance caps. *See* 2025 GRSG ROD at 37. BLM is already directed, through existing NSO stipulation, to avoid adverse effects, direct impacts, or disruptions to GRSG habitat. *Id.* at 36-37. The Final EA fails to adhere to those management directives.

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). Courts have recognized and affirmed the ARMPAs' language to delineate a requirement to prioritize 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 Final EA indicates that prioritization away from sage-grouse habitat was considered in the lease sale. 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.

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.[11] Birds may return to disturbed areas even if they can no longer successfully reproduce or survive there, which limits their adaptability to human disturbance.[12] Second, sage-grouse tend to self-select habitats that maximize survival and

[11] 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).
[12] *Id.*

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.

As discussed above, the project is situated within close proximity to large regions of PHMA, GHMA, and OHMA. Moreover, surface water connections exist between some parcels and their neighboring areas through Pine Creek, which connects to the Humboldt River and other bodies of water flowing into PHMA. The potential impacts to the region's groundwater and rivers, creeks, streams, lakes, vegetation, runoff pollution, and recharge was not considered in the Final EA, despite the Center's previous comments regarding the same.

The greater sage-grouse is a sagebrush obligate species, depending upon large expanses of contiguous sagebrush to survive. For this reason, sage-grouse is considered an "umbrella species," meaning that the status of sage-grouse populations is indicative of the overall health of sagebrush ecosystems. Although greater sage-grouse once numbered in the millions across the United States and Canada, the species has declined with the fragmentation and destruction of its sagebrush habitat. Greater sage-grouse populations have now declined by 80 percent since 1965, with the few remaining birds confined to roughly half of their former range. A recent USGS report found a nearly 40 percent range-wide population decline since 2002, with an accelerated rate of decline in the western portions of the species range in recent decades. [13]

In 2013, the U.S. Fish and Wildlife Service (FWS) warned of the "urgent need to 'stop the bleeding' of continued population declines and habitat losses by acting immediately to eliminate or reduce the impacts contributing to population declines and range erosion. There are no populations within the range of sage-grouse that are immune to the threat of habitat loss and fragmentation."[14]

Meanwhile, invasive plants, particularly cheatgrass, continue to spread rapidly, from being present on a little over 50 percent of sage-grouse habitat in 2013 to now nearly 70 percent of habitat in 2018. The areas in which invasive plants are abundant (>25 percent of vegetative cover) have also increased, from about 10 percent in 2013 to nearly 30 percent in 2018. More

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[13] Coates, P.S., B.G Prochazka, M.S. O'Donnell, C.L. Aldridge, D.R. Edmunds, A.P. Monroe, A.P., M.A. Ricca, G.T Wann, S.E. Hanser, L.A. Wiechman and M.P. Chenaille. 2021. Rangewide greater sage-grouse hierarchical monitoring framework—Implications for defining population boundaries, trend estimation, and a targeted annual warning system: U.S. Geological Survey Open-File Report 2020–1154, p. 243 https://pubs.usgs.gov/of/2020/1154/ofr20201154.pdf (accessed on June 7, 2026).

[14] U.S. Dept. of Interior, Greater Sage-Grouse Conservation Objectives: Final Report 31-32 (USFWS 2013) (hereinafter, "COT Report"), *et. seq.*

concerning, the BLM found that hard and soft population triggers were tripped in 42 instances since 2015, signaling serious population declines.

BLM failed to acknowledge the current state of regional sage-grouse populations in the project area, declining population trends, and continuing habitat losses. BLM failed to conduct site-specific baseline surveys of the project area, including lek status and male counts; lek noise levels; habitat quality, including nonnative vegetation cover and fire risk; and population numbers in order to accurately determine the project's impacts on sage-grouse leks, habitat, and populations.

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 impact 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. Moving forward with the lease sale, therefore, violates both the ARMPA and NEPA.

BLM failed to disclose and analyze the prioritization process used which resulted in leasing parcels within PHMA areas and failed to cancel or defer the lease sales of any parcels where leks or lek clusters are impacted.

VII. The Lease Sale Violates FLPMA and the MLA

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 <u>must</u> be allowed on [federal lands]." *N.M. ex rel. Richardson,* 565 F.3d at 710 (emphasis in original). Oil and gas development is one "<u>possible use</u>, 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 in 2024 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* Final EA at Table G-2. More specifically, every single parcel to be offered at the lease sale is designated as "low" preference for leasing and will impair important wildlife habitats or connectivity areas, among other important resource values. Interestingly, BLM's response to the Center's previous comments regarding the same state that the "June 2026 parcels conformance with their underlying RMPs, low resources concerns, and protections offered through stipulations and COAs, the BLM chose to move forward with the leasing." *See* Final EA at Appendix H, CBD-31. The copy and paste job of the response aside (since the June parcels are not at issue here), it is patently false that there are low resource concerns, as discussed above, nor can BLM rely solely on stipulations. Further, their response alleges that the protesting party does not identify any specific resource concerns, *id.*, when the response was being made to a comment contained from the Center's previous protest comments encompassing dozens of pages of information detailing very specific resource concerns. Again, here, the Center raises the same specific resource concerns.

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. 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 <u>will</u> 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, the Final EA does not explain why it chose to offer only "low preference parcels," or how doing so is consistent with the MLA regulations. At a minimum, BLM was required to explain 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 14 parcels for sale arbitrary and capricious, in violation of FLPMA, the MLA, and the APA.

VIII. The Final EA Failed to Consider Climate Change

Meaningful consideration of greenhouse gas emissions (GHGs) is clearly within the scope of required NEPA review. *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008). As the Ninth Circuit has held, in the context of fuel economy standard rules:

> The impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct. Any given rule setting a CAFE standard might have an "individually minor" effect on the environment, but these rules are "collectively significant actions taking place over a period of time." *Id.* at 1216 (quoting 40 C.F.R. 1508.7).

The courts have ruled that federal agencies consider indirect GHG emissions resulting from agency policy, regulatory, and leasing decisions. For example, agencies cannot ignore or dismiss as speculative the indirect air quality and climate change impact of decisions that would open up access to coal reserves. *See High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1197-98 (D. Colo. 2014). In *WildEarth Guardians v. U.S. Bureau of Land Management*, the Court of Appeals ruled unanimously that BLM "failed to comply with the National Environmental Policy Act (NEPA) when it concluded that issuing the leases would not result in higher national carbon dioxide emissions than would declining to issue them." No. 15-8109 (10th Cir. Sept. 15, 2017). Agencies cannot ignore basic economic principles and assume that there will be no net effect on oil and gas production, markets, price, and ultimate consumption when it opens new federal minerals to oil and gas exploration and development.

Fugitive methane emissions that escape from wells, oil storage, and processing equipment are a "major source of global CH4 emissions." Methane is a highly potent greenhouse gas with a large global warming potential (GWP). The 2023 Intergovernmental Panel on Climate Change ("IPCC") Sixth Assessment Report established that, in 2019, methane emissions were the highest they have been in over 800,000 years, measuring at 1,866 parts per billion.[15] The EA must quantify the fugitive and non-fugitive CH4 emissions that would come from the wells. The EA also must quantify the indirect downstream emissions from the end-use combustion of oil and gas produced by the wells. Additionally, the EA must provide estimates of the indirect methane and N2O emissions that would be produced from combustion of oil and gas.

Furthermore, a large body of scientific research has established that the vast majority of global and U.S. fossil fuels must stay in the ground in order to hold temperature rise to well below 2°C. The IPCC estimates that, in order to limit warming to 2°C, gas and oil reserves must be limited in their use, necessitating at least 50 and 30 percent to remain unextracted and unburned, respectively.[16] Effectively, fossil fuel emissions must be phased out globally within the next few decades.[17]

Fracking has also opened up vast resources that otherwise would not be available, increasing the potential for future greenhouse gas emissions. The long-lived GHG emissions and fossil fuel infrastructure that would result from this project will contribute to

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[15] Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023), at Table 2.1.1.

[16] *Id.* at Section 2, Table 2.2.

[17] Rogelj et al. (2015) estimated that a reasonable likelihood of limiting warming to 1.5° or 2°C requires global CO2 emissions to be phased out by mid-century and likely as early as 2040-2045. *See* Rogelj, Joeri et al., Energy system transformations for limiting end-of-century warming to below 1.5°C, 5 Nature Climate Change 519 (2015).

undermining national and state climate commitments and increase climate change impacts, at a time when there is urgent need to keep most fossil fuels in the ground.

IX. BLM Failed to Analyze a Reasonable Set of Alternatives

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 purpose 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 it 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).

Here, the Final EA does not analyze any viable alternative apart from the no action alternative. *See generally* Final EA at 13-14. Additionally, as previously discussed, the Final EA does hold out the RFDS as a scenario under the alternatives chapter. *See generally* Final EA at 14-15. This is plainly not an alternative. 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. Instead, this is one future development scenario of the proposed action masquerading as a would be alternative. 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.

Because the Final EA evaluates only the no action alternative and failed to introduce a reasonable set of alternatives that do not constitute only the extremes of either end, BLM has violated NEPA. *See Rocky Mountain Wild v. Bernhardt*, 506 F. Supp. 3d 1169, 1185-88 (D. Utah 2020) (BLM must analyze more than just two "polar opposite" alternatives). BLM responds to the Center's previous comments regarding the same by stating 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* Final EA, Appendix H, CBD-36. This is confusing given the precedent in *Rocky Mountain Wild*, as discussed above, stating that BLM must do exactly that—analyze more than simply two opposite alternatives. That BLM further alleges that doing such would be "outside the scope of the decision under review" is asinine, considering that the following paragraph of their comment response states that the DOI handbook of NEPA implementing procedures "directs BLM to evaluate the Proposed Action, the No Action Alternative as a baseline, and other 'Reasonable Alternatives' that meet the BLM's purpose and need and are within the BLM's authority." *See* Final EA, Appendix H, CBD-36. To allege that "the commentor does not identify what, if any, unresolved resource conflict associated with the lease sale would be resolved by consideration of this alternative," *id.*, is plainly erroneous to say with respect to a multi-page letter containing comments to dozens of resource concerns and conflicts.

It can only be concluded that BLM is aware that they are well within their purview to consider other alternatives in line with their purpose and need, have been duly put on notice of the resource concerns and conflicts, and are, therefore, choosing to willfully ignore the precedent established in *Rocky Mountain Wild* regarding the breadth of alternatives that must be analyzed.

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. <u>The OBBBA May Have Limited BLM's Ability to Defer Parcels</u>

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, <u>if</u> 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).

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 OBBBA 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)

What's more is that the OBBBA's requirement to offer at least 50 percent of the nominated parcels for development, as discussed above, would necessitate an evaluation of an alternative that fits this scenario, as the OBBBA makes it highly reasonable and plausible that at least 50 percent of the nominated parcels will undergo development. Any alternative offering less than 50 percent of the nominated parcels—including the RFDS scenario—is not a viable alternative.

At a minimum, to make a reasonable, informed decision, BLM must introduce 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 PHMA and GHMA, removing parcels where leks 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.

In conclusion, BLM made very few targeted plan-conformance clarifications or substantive changes to the Final EA, despite the Center's comments regarding the above. Instead, they focused on defending their existing analysis. For the foregoing reasons, the Final 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,

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