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

May 17, 2022

Submitted via ePlanning and mail

U.S. Bureau of Land Management
Montana/Dakotas State Office
Attn: Theresa M. Hanley, Acting State Director
5001 Southgate Drive
Billings, MT 59101

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

Dear Acting State Director Hanley:

The Wilderness Society, Rocky Mountain Wild, Wild Montana, Coalition to Protect America's National Parks, National Audubon Society, Audubon Rockies, and Friends of the Earth respectfully protest all parcels in the June 2022 Competitive Oil and Gas Lease Sale. The reference identification for the Environmental Assessment[1] and Finding of No Significant Impact[2] for this lease sale is DOI-BLM-MT-0000-2021-0006-EA. On April 18, 2022, The Bureau of Land Management (BLM) Montana/Dakotas State Office announced the proposed sale of 23 parcels containing 3405.80 acres. For the reasons stated herein, our groups protest all parcels:

MT-2022-06-0246 Split Estate
MTMT105295014
MT, Miles City Field Office

MT-2022-06-0245 Split Estate
MTMT105295015
MT, Miles City Field Office

MT-2022-06-0243 Split Estate
MTMT105295016
MT, Miles City Field Office

MT-2022-06-0242 Split Estate
MTMT105295017
MT, Miles City Field Office

MT-2022-06-0244 Split Estate
MTMT105295018
MT, Miles City Field Office

MT-2022-06-0234 Split Estate
MTMT105295019
MT, Miles City Field Office

MT-2022-06-0235
MTMT105295021
MT, Miles City Field Office

[1] BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-MT-0000-2021-0006-EA (Apr. 18, 2022) [hereinafter EA].

[2] BUREAU OF LAND MGMT., DRAFT FINDING OF NO SIGNIFICANT IMPACT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-MT-0000-2021-0006-EA (Apr. 18, 2022) [hereinafter FONSI].

MT-2022-06-0241
MTMT105295023
MT, Miles City Field Office,

ND-2022-06-0238
NDMT105295025
ND, North Dakota Field Office

ND-2022-06-0543
NDMT105295028
ND, North Dakota Field Office

ND-2022-06-1848
NDMT105295031
ND, North Dakota Field Office

ND-2022-06-0248
NDMT105295032
ND, North Dakota Field Office

ND-2022-06-0700
NDMT105295033
ND, North Dakota Field Office

ND-2022-06-2312
NDMT105295034
ND, North Dakota Field Office

ND-2022-06-0545
NDMT105295038
ND, North Dakota Field Office

ND-2022-06-0242
NDMT105295039
ND, North Dakota Field Office
ND-2022-06-0074 Split Estate
NDMT105295040
ND, North Dakota Field Office

ND-2022-06-0075 Split Estate
NDMT105295041
ND, North Dakota Field Office

ND-2022-06-0230 Split Estate
NDMT105295042
ND, North Dakota Field Office

ND-2022-06-0544
NDMT105295030
ND, North Dakota Field Office

ND-2022-06-0243
NDMT105295035
ND, North Dakota Field Office

ND-2022-06-0240
NDMT105295036
ND, North Dakota Field Office

ND-2022-06-0241
NDMT105295037
ND, North Dakota Field Office

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

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

I. INTERESTS OF THE PROTESTING PARTIES

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

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

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

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

preservation and protection of the National Park System, and mission-related programs of the National Park Service. More information can be found at https://protectnps.org.

Friends of the Earth (FoE) is a 501(c)(3) non-profit, membership-based organization with offices located in Berkeley, California and Washington, DC. FoE currently has over 4.7 million activists and over 290,000 members, located across all 50 states and the District of Columbia. FoE is also a member of Friends of the Earth-International, which is a network of grassroots groups in 74 countries worldwide. FoE's primary mission is to defend the environment and champion a more healthy and just world by collectively ensuring environmental and social justice, human dignity, and respect for human rights and peoples' rights. FoE is dedicated to fighting climate change and advocating for clean energy alternatives. FoE's Climate & Energy program directly engages in administrative and legal advocacy to protect the environment and society from climate change, pollution, and industrialization associated with fossil fuel development on public lands and associated greenhouse gas emissions. Key to this work is fighting to reduce greenhouse gas emissions and domestic reliance on fossil fuels, and advance justly-sourced, renewable energy.

The **National Audubon Society** protects birds and the places they need, today and tomorrow. A nonprofit conservation organization since 1905, Audubon works throughout the Americas using science, advocacy, education, and on-the-ground conservation. National Audubon Society works on behalf of over 1.8 million members across the country. **Audubon Rockies** is a regional office of National Audubon Society, serving over 40,000 members in Colorado. Audubon is committed to working with partners and stakeholders, using science as a guide to sustainably managing our nation's public lands.

Since moving to North Park (Jackson County, CO) in 2005, **Barbara Vasquez** has been involved as a citizen scientist in issues including public lands management, oil/gas development, clean air/water and climate change. The headwaters of the North Platte River, this is a lightly populated, high elevation basin surrounded by forest and wilderness areas with abundant wildlife. Shale oil/gas development began in North Park in 2006. It is then that she began work with various organizations to prevent and/or minimize impacts of operations in habitats important wildlife including the imperiled Greater Sage Grouse as well as large game. She has been involved in rule making for oil/gas operations at the state and national level, including the EPA and BLM methane emissions rules.

II. STATEMENT OF REASONS IN SUPPORT OF THE PROTEST OF THE MONTANA/DAKOTAS JUNE 2022 LEASE SALE PARCELS

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

- *Louisiana v. Biden* does not require holding a lease sale or issuing any lease.
- BLM failed to analyze the cumulative or reasonably foreseeable impacts of all the lease sales it announced concurrently in this national action, which requires preparing an EIS.

- Resources Management Plans (RMPs) must be amended to account for and address climate change before any leasing could occur.
- BLM failed to determine whether greenhouse gas (GHG) emissions and climate impacts are significant, in violation of the National Environmental Policy Act (NEPA).
- BLM failed to determine whether leasing is necessary and will comply with the Federal Land Policy and Management Act (FLPMA) anti-degradation mandate.
- The EA arbitrarily ignored whether there are any benefits from the lease sale that warrant incurring the enormous social and environmental costs of the sale.
- The EA failed to adequately analyze mitigation to address the impacts of GHG emissions.
- BLM's argument that not issuing new federal onshore leases may lead to an even greater rise in oil and gas consumption is arbitrary and capricious.
- The environmental justice analysis in the EA is inadequate.
- BLM failed to take a hard look at impacts to resources – including to groundwater and wildlife (sage-grouse, big game) – other than climate, from reasonably foreseeable development of the proposed leases.
- BLM failed to consider its Mineral Leasing Act mandate to take all reasonable precautions to prevent waste.

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

As an initial matter, the Department of the Interior's reasoning that it must proceed with lease sales to remain "[i]n compliance with an injunction from the Western District of Louisiana,"[3] is incorrect. The preliminary injunction order issued by the U.S. District Court for the Western District of Louisiana does not require holding any lease sales. *See Louisiana v. Biden*, No. 2:21-cv-778-TAD-KK, 2021 WL 2446010 (W.D. La. June 15, 2021).

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

The court stated that "[t]he agencies could cancel or suspend a lease sale due to problems with that specific lease [sale], but not as to eligible lands for no reason other than to do a comprehensive review pursuant to Executive Order 14008." *Id.* at *14. The court added: "there is a huge difference between the discretion to stop or pause a lease sale because the land has become ineligible for a reason such as an environmental issue," and halting lease sales "with no such issues and only as a result of Executive Order 14008." *Id.* at *13. The *Louisiana* ruling held that the plaintiffs had shown a likelihood of success on the merits of the case because BLM's postponement of some sales expressly relied on Executive Order 14008 or did not identify any NEPA concerns. *Id.* at *16; *see also id.* at *21 ("at least some of the onshore lease [sale]s were

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

cancelled due to the Pause, without any other valid reason. Some were cancelled to do additional environmental analysis . . . but the Pause has obviously been implemented by Agency Defendants for some of the lease sales").

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

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

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

The proposed lease sales in each state are driven by a national Interior Department decision to proceed with oil and gas leasing in direct response to the *Louisiana* litigation. By failing to analyze the cumulative or reasonably foreseeable impacts of all the June 2022 lease sales, BLM improperly and arbitrarily has minimized the overall environmental effects – particularly the aggregated GHG emissions and climate impacts.

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

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

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

That means preparing an Environmental Impact Statement (EIS) to address the cumulative or reasonably foreseeable impacts[6] of the tens of millions of acres that might be leased both onshore and offshore.[7] Cumulative or reasonably foreseeable impacts include those related not only to climate and GHG emissions, but also to wildlife habitat, water pollution, impacts to wildlife and recreation and other uses of these lands and waters, and other relevant issues. The current NEPA regulations require BLM to evaluate cumulative impacts "result[ing] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.1(g)(3) (2022). The 2020 NEPA regulations, under which BLM prepared the EA, require BLM to evaluate impacts that are "reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives." 40 C.F.R. § 1508.1(g) (2020). Under either regulatory effects definition, BLM must analyze the impacts of all June 2022 lease sales together. BLM's effects analysis "must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 342 (D.C. Cir. 2002); *see Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 973–74 (9th Cir. 2006) (holding agency's cumulative impacts analysis insufficient based on failure to discuss other mining projects in the region); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214–16 (9th Cir. 1998) (overturning Forest Service EA that analyzed impacts of only one of five concurrent logging projects in the same region); *see also Kern v. BLM*, 284 F.3d 1062, 1078 (9th Cir. 2002) (holding that BLM arbitrarily failed to include cumulative impacts analysis of reasonably foreseeable future timber sales in the same district as the current sale).

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

As discussed in more detail below, here, the Interior Department announced potential leasing that it predicts will cause billions of dollars in social and environmental costs from

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

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

greenhouse gas emissions alone. Collectively, these actions impose significant impacts. It would be arbitrary and capricious to conclude that leasing on this scale will not be significant.

BLM's claim that analyzing the cumulative GHG emissions from all these lease sales "would result in an inflated, unrealistic, quantity of estimated emissions that would not be useful to the decision maker and would not accurately inform the public of the magnitude of probable cumulative emissions and impacts," *see, e.g.*, EA at 45, is arbitrary and capricious. The EA for each proposed lease sale provides a similar analysis of the reasonably foreseeable GHG emissions from that sale, making it entirely feasible to aggregate and assess their cumulative impacts. *See, e.g.*, EA at 34–47; BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-WY-0000-2021-0003-EA 29–40 (Apr. 18, 2022); BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-CO-0000-2022-0001-EA 32–43 (Apr. 18, 2022); *see also* Bureau of Land Mgmt., 2020 Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends 50, table 5-13, 51, table 5-14, 52, table 5-15, 53, table 5-16 (Oct. 29, 2021) [hereinafter Annual Report], https://www.blm.gov/content/ghg/ (demonstrating that, despite BLM's contention in this EA, it can estimate aggregated emissions from oil and gas leasing across the states and this does better inform the public of the magnitude of probable cumulative emissions and impacts). Not doing so results in a *deflated* and unrealistic quantity of estimated GHG emissions that fails to inform the public of the magnitude of GHG emissions and the resulting climate impacts.

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

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

BLM must withdraw all parcels from this sale because it has not revised or amended the underlying land use plans to properly account for climate change impacts resulting from GHG emissions. The EA incorrectly asserts that the sale and prospective lease issuance conform to the respective RMPs. EA at 8. True, oil and gas leasing is allowed under the relevant RMPs. But because none of the operable land use plans adequately accounts for GHG emissions and climate change impacts, revision or amendment of the RMPs is needed before BLM could consider offering parcels for lease.

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

"take any action necessary to prevent unnecessary or undue degradation of the lands." *Id.* § 1732(b).

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

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

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

Similarly, in *Western Organization of Resource Councils v. BLM*, the court directed BLM to prepare supplemental EISs to address deficiencies in the environmental analyses for the 2015 Miles City and Buffalo RMPs. No. CV 16-21-GF-BMM, 2018 U.S. Dist. LEXIS 49635, at *55–56 (D. Mont. Mar. 26, 2018). Among other things, the court held that the RMPs failed to consider alternatives that would decrease the amount of coal available for leasing, evaluate the consequences of downstream fossil fuel combustion, or justify the exclusive use of 100-year global warming potential (GWP). *Id.* at 20–48. The court explained, "Deferral of such analysis 'based on a promise to perform a comparable analysis in connection with later site-specific projects' risks defeating entirely the purpose of completing an EIS at the RMP stage." *Id.* at *33; *see also id.* at *40 ("In light of the degree of foreseeability and specificity of information available to the agency while completing the EIS, NEPA requires BLM to consider in the EIS

the environmental consequences of the downstream combustion of the coal, oil and gas resources potentially open to development under these RMPs. . . . BLM may not defer wholesale such analysis to the leasing stage.").

After a court held that BLM did not sufficiently analyze impacts from the combustion of oil and gas as part of preparing the Colorado River Valley RMP, the agency has now committed to amending the RMP. A recent lawsuit making similar claims with respect to the Grand Junction RMP has led to a pause on leasing in the Grand Junction Field Office. And a recent settlement has put 53 leases on hold until the applicable land use plans can be updated to address climate impacts in the Grand Junction and Colorado River Valley RMPs.[8]

Recently issued Instruction Memorandum 2021-027 also contemplates not issuing oil and gas leases when an RMP must be revised or amended. It recognizes that where "necessary terms and conditions under which leasing would be appropriate are not in conformance with the RMP, it will be necessary to amend the RMP before leasing is appropriate." Instruction Memorandum No. 2021-027 (Apr. 30, 2021). In such cases, "the affected lease parcels must be withdrawn or deferred from leasing until a plan amendment or revision can be completed at a later date."[9] *Id.* Such is the case here.

The Biden Administration has painstakingly set forth new policy, standards, and plans regarding climate change.[10] None of the RMPs covering the parcels under consideration for this lease sale comes close to accounting for or adequately addressing climate change, its adverse environmental impacts on resources and land uses, or GHG emissions in relation to oil and gas leasing and development:

- BLM Miles City Field Office, Approved RMP (Sept. 2015): discusses climate change but only in a limited capacity.[11]
- BLM North Dakota Field Office, Approved RMP (July 1987): no discussion of climate change or GHG emissions.[12] Additionally, this RMP is currently being revised and release of the draft EIS/RMP is pending.
- Land and Resource Management Plan for the Dakota Prairie Grasslands: no discussion of climate change or greenhouse gas emissions.[13]

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

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

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

[11] BLM MILES CITY FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN (Sept. 2015).

[12] BLM NORTH DAKOTA FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN (July 1987).

[13] U.S. FOREST SERVICE, LAND AND RESOURCE MANAGEMENT PLAN FOR THE DAKOTA PRAIRIE GRASSLANDS, NORTHERN REGION (2001).

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

Underscoring the inadequacy of existing RMPs' consideration of climate change and the need for land use plans to do so, a recent Utah State University study that reviewed 225 papers published between 2009 and 2018 found that active uses on BLM lands, such as energy development, threaten passive uses such as conservation and ecosystem services.[14] Climate change is seriously exacerbating these impacts. Yet, in reviewing 44 RMPs the study found that there was little, if any, consideration of climate change or its impacts to ecosystems and land uses, and adaptive responses to climate change were not considered.[15]

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

> Statewide average annual temperatures are projected to warm by 2.5°F to 5°F by 2050. . . . Projected hotter temperatures increase probabilities of decadal to multidecadal megadroughts, which are persistent droughts lasting longer than a decade, even when precipitation increases. Increased warming, drought, and insect outbreaks, all caused by or linked to climate change, will continue to increase wildfire risks and impacts to people and ecosystems.[16]

The serious ecological and environmental degradation of the climate crisis constitutes new data and a change in circumstances affecting the entirety of the RMPs or, at the least, major portions of them. NEPA requires full and proper analysis of GHG emissions and the resulting climate change impacts. *See, e.g.*, *Sierra Club v. Fed. Energy Regulatory Comm'n*, 867 F.3d 1357, 1374 (D.C. Cir. 2017); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 67–77 (D.D.C. Mar. 19, 2019).

The assertion in the FONSI that the EA did not identify any significant effects beyond those already analyzed in the RMPs and their EISs, FONSI at 1, is inapposite. First, for reasons discussed below, BLM has not affirmatively determined whether climate impacts from estimated GHG emissions are significant. Second, as explained above, the existing RMPs and associated EISs utterly fail to analyze GHG emissions or climate impacts. As such, the statement that the EA found no significant effects beyond what the RMPs and EISs have already analyzed is true only if BLM ignores the glaring omission of adequate climate and GHG emissions analysis from the respective RMPs.

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

[15] *Id.*

[16] Annual Report at 93–94.

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

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

The assertion in the FONSI that BLM cannot evaluate the significance of GHG emissions, FONSI at 2, is arbitrary and capricious. The Annual Report and the tremendous wealth of high-quality information on climate change combined with BLM's long history of environmental analyses under NEPA provide the agency with ample resources to ascertain whether this action presents significant environmental effects.

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

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

Here, while the EA and FONSI provide some comparisons of the lease sale's estimated GHG emissions to broader GHG emissions, *e.g.*, EA at 40–41, table 13 & 14, as noted above, BLM fails to contextualize emissions from all June 2022 lease sales and, moreover, claims that because there are no established thresholds to determine the significance of GHG emissions' climate impacts, it simply finds that leasing will have no significant impacts. *See* FONSI at 2. In fact, contrary to its express finding of no significant impact, BLM states that it "cannot render a determination of significance for a proposed action based on GHG emissions or climate impacts alone."[17]

Although it may be challenging to determine significance, that does not relieve BLM of this burden. BLM's conclusion that it cannot do so is confounding given that the Annual Report

[17] *See* Appendix J, 100.

itself appears to envision enabling the agency to make the type of significance determination that the FONSI claims is infeasible:

> Comparing emissions levels between proposed actions, current emissions and conditions, and published predictions based on forecasted emission scenarios allows decisionmakers to form a qualitative judgment about the potential for climate impacts from a proposed action. . . . The annual global and U.S. emissions data presented in chapter 6 can be compared with the estimated annual GHG emissions from BLM fossil fuel authorizations in chapter 5 to provide context around the scale and potential impact of estimated emissions from BLM's fossil fuel authorizations. Evaluating the magnitude of estimated emissions from a particular category in the context of other categories or total geographic emissions is one way to evaluate their relative potential impact on climate change.[18]

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

BLM's finding is all the more concerning given the Annual Report's own conclusion that "[s]taying within the 1.5°C carbon budget implies that CO_2 emissions need to start declining this decade to maintain reasonable progress to reach net zero by about 2050."[19] Rather than fulfill its legal obligations under NEPA and grapple with the imminent threat posed by locking in future GHG emissions through leasing, BLM avers that it "does not have the authority to *arbitrarily* set a comparison, limit, threshold, or standard for GHG emissions."[20] But BLM does have the responsibility to make a *non*-arbitrary significance determination and has the tools to do so. Otherwise, no matter the size of the project or the amount of GHG emissions, BLM would *always* find climate impacts to be insignificant. Such reasoning is capricious, ignoring the pressing reality of the climate crisis, the clearly adverse impacts it is causing both globally and locally to resources that BLM manages, and the mandate "to prevent unnecessary or undue degradation of the lands" under FLPMA. *See* 43 U.S.C. § 1732(b).

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

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

The EA failed to determine whether the adverse impacts of leasing would result in unnecessary or undue degradation of the lands, as FLPMA requires. BLM must manage public lands according to "multiple use" and "sustained yield" and "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water

[18] *See* Annual Report at 64.
[19] *Id.* at 67.
[20] *See* Appendix J, 109.

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

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

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

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

However, the EA arbitrarily ignores an important aspect of the problem: what economic benefits and revenues would result from the lease sale, and how do they compare to the enormous social and environmental costs of the sale? The EA asserts that "SC-GHG is provided only as a useful measure of the benefits of GHG emissions reductions *to inform agency decision-making*." EA at 43 (emphasis added). But it is unclear how it has so informed decision-making, given the sales are projected to impose billions of dollars in harm, yet the agency is moving forward with leasing nonetheless. Moreover, as noted above, BLM has failed to analyze benefits and costs of all the lease sales collectively – important for understanding the true impact of this national decision. None of the draft EAs offer any estimate of this at all. The EAs provide only boilerplate text describing how lease revenues are distributed and generic descriptions of economic and social issues related to oil and gas development. *See, e.g.*, EA at 35–45; BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-WY-0000-2021-0003-EA, at 100–01 (Apr. 18, 2022). The EA provides an estimate of the bonus and rental payments that would be generated by the lease sale but not the economic impacts from production. That incomplete estimate (either $121,670 or $255,963 (depending on

the alternative)), EA at 76–78, represents **only two percent or less of the social cost of GHG emissions resulting from the sale**. *Id.* at 44–45.

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

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

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

[21] BLM, DRAFT RESOURCE MANAGEMENT PLAN AND ENVIRONMENTAL IMPACT STATEMENT CARLSBAD FIELD OFFICE, PECOS DISTRICT, NEW MEXICO at 4-450 (Aug. 2018), https://eplanning.blm.gov/public_projects/lup/64444/153042/187358/BLM_CFO_Draft_RMP_-_Volume_I_-_EIS_-_August_2018_(1).pdf; *see, e.g.*, BUREAU OF OCEAN ENERGY MANAGEMENT, ECONOMIC ANALYSIS METHODOLOGY FOR THE 2017–2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM (Nov. 2016), https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/Economic-Analysis-Methodology.pdf#page10; U.S. DEP'T OF ENERGY, THE ECONOMIC BENEFITS OF OIL AND GAS (2020), https://www.energy.gov/sites/prod/files/2020/10/f80/Economic%20Impact%20of%20Oil%20and%20Gas.pdf; FEDERAL RESERVE BANK OF DALLAS, ANTICIPATED FEDERAL RESTRICTIONS WOULD SLOW PERMIAN BASIN PRODUCTION (Mar. 4, 2021), https://www.dallasfed.org/research/economics/2021/0304. Indeed, researchers produced reports on behalf of oil and gas industry interests predicting the economic impacts of pausing federal oil and gas leasing in 2021. The same kind of analysis can and must be done for BLM's decision to re-start leasing now. *See, e.g.*, May 19, 2021, Laura Zachary declaration, attached (discussing examples); *see also* https://suwa.org/wp-content/uploads/CEI-Economic-Effects-of-Pausing-Oil-and-Gas-Leasing-on-Federal-Lands.pdf. The analyses cited

BLM has already forecasted potential oil and gas production from the leases proposed for the June sales, which would allow the agency to estimate royalties and other economic benefits from that production. BLM's estimate of GHG impacts further illustrates that the agency can make such projections. While recognizing uncertainties, the agency used "estimated well numbers based on State data for past lease development combined with per-well drilling, development, and operating emissions data from representative wells in the area. . . . For purposes of estimating production and end-use emissions, reasonably foreseeable wells are assumed to produce oil and gas in similar amounts as existing nearby wells." EA at 37–38. A similar methodology could be used to estimate production royalty and related economic benefits from the leases.[22]

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

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

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

BLM's own Mitigation Manual and Mitigation Handbook call for robust evaluation and discussion of mitigation and direct doing so early in the decision-making process.[23] Importantly, "BLM generally has broad discretion to grant, grant with modifications, or deny a proposed public land use."[24] These directives belie BLM's assertion that it can wait to "determine appropriate mitigation measures to reduce/offset GHG emissions" until the APD stage. EA at 76. Courts have held that BLM makes an irretrievable commitment of resources when it issues an oil and gas lease without reserving the right to later prohibit all development, as would occur in this lease sale. *New Mexico ex rel. Richardson*, 565 F.3d at 718; *Pennaco Energy, Inc. v. United States Dep't of the Interior,* 377 F.3d 1147, 1160 (10th Cir. 2004). As such, the EA must include an adequate discussion of mitigation, which it does not.

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above often use flawed assumptions in their modeling that generated grossly exaggerated estimates of the economic impacts from halting new leasing. *See* Zachary Decl. (discussing flaws in modeling). We reference these reports only to illustrate that it is entirely feasible to prepare such forecasts.

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

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

[24] MITIGATION MANUAL at 6-2.

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

The EA briefly discusses mitigation that *could* occur and what other government agencies might do, but it did not identify, evaluate, or recommend imposing mitigation to address emissions. *See* EA at 46–48. BLM asserts that most GHG emissions result offsite and outside of the agency's "authority and control." *Id.* This assertion is misplaced. While the actual combustion of the majority of the fossil fuel occurs downstream, the production – the supply – of the fuel is directly within BLM's control. Because BLM manages the source, it indeed retains the authority, and the obligation, to mitigate emissions from oil and gas produced on public lands it oversees.

The Annual Report, which the EA references, does list several mitigation measures.[25] But BLM fails to evaluate or include any of those measures in the EA. This failure violates BLM's obligations under NEPA, FLPMA, and its own mitigation policies, requiring withdrawal of the parcels from this lease sale.

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

[25] Annual Report at 100–05.

BLM argues that not issuing new federal onshore leases may lead to an even greater rise in oil and gas consumption from non-federal lands and from other countries to meet consumer demand and to help stabilize prices in the short term (meaning through the end of 2023). EA at 36–37. This logic is problematic for several reasons.

First, the bulk of production from leases issued in 2022 would likely not be in circulation until after 2032 and would not contribute to short term supply. At a minimum, around 14.5 months pass between when a lease is issued and an average well could come online and start producing.[26] In practice, operators historically have taken much longer than 14.5 months to begin producing after acquiring a lease. Operators often do not begin development of onshore federal oil and gas leaves until between years 8 to 10 of an initial lease term.[27]

Second, there is very little action that the BLM could make that would increase oil and gas supply to meet consumer demand and to reduce consumer prices in the short term. The main actions that BLM could take to support supply increases in the near term have already been attempted. As of March this year, operators have 9,000 onshore federal drilling permits approved and waiting to be used on existing leases.[28]

Third, BLM's argument that issuing no new federal leases may result in higher net emissions given the current high consumer demand/high price conditions projected for the next two years is inconsistent with findings from modeling that explicitly focuses on the impacts of federal leasing policies. Modeling by economist Brian Prest indicates that issuing fewer leases would likely mean even *greater reductions* in net emissions in the face of high consumer demand, not lower reductions.[29]

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

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

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

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

BLM also notes that another reason to continue issuing federal onshore leases is that it is better to have production come from the US rather than from other countries that may have higher emitting fuels. Even if a portion of the reduction in US supply is partially offset by an increase in production from imports from abroad, the variation in emissions intensity among major producers is nowhere near large enough to negate the overall reductions in consumption and thus in net emissions that would be expected to occur if there were little to no new federal leases issued. In fact, a paper published in the journal Science found that US crude oil production emissions are slightly higher than the average.[30] A study by the Carnegie Endowment finds that the differences in estimated lifecycle emissions of crude oil from major producing regions in the United States and abroad are small.[31] For the locations where U.S. fields do have a slight emissions advantage compared to top regions from which the United States imports oil, the differences are nowhere near large enough to outweigh the climate benefits from net emission reductions that would come from the levels of reduced overall production and consumption that would result from restricted federal leasing.

A recent paper published in Climatic Change calculates that lifecycle emissions from the extraction and use of onshore and offshore federal fossil fuels resulted in an average of 1,408 million metric tons of CO_2e per year since 2005 and are projected to be around 1,130 MMT CO_2e by 2030.[32] In other words the projected lifecycle emissions from federal fuels are equivalent to around 20% of business-as-usual U.S. net emissions in 2030. Climate policies being pursued by the US and other top emitting nations are far from sufficient to avoid a 1.5°C rise and the worst impacts of climate change. The International Energy Agency's 1.5°C-consistent pathway requires "no investment in new fossil fuel supply projects" starting immediately.[33] Decisions to restrict new leasing impact long term supply, and it is an important tool alongside demand-side actions for helping to meet long term global climate goals and for a chance to limit temperatures from rising more than 1.5°C.[34] Accordingly, the claim that no leasing for this sale could lead to greater GHG emissions is arbitrary and capricious.

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

The EA offers a paltry analysis of environmental justice impacts. Beyond citing Executive Order 12898 and punting most analysis to the APD stage, the EA provides no evaluation of the impacts on those communities from oil and gas leasing and development. EA at

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

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

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

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

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

74–75. This omission is arbitrary and capricious under NEPA. The failure to address environmental justice impacts demands remediation and withdrawal of the lease parcels from the lease sale.

j. BLM Failed to Take a Hard Look at Impacts to Resources – Including to Groundwater and Wildlife (Sage-Grouse, Big Game) – Other Than Climate, from Reasonably Foreseeable Development of the Proposed Leases.

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

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

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

The draft EAs' assertion that additional analysis is not feasible at the leasing stage is arbitrary and capricious and violates NEPA. There is ample information available to forecast reasonably foreseeable development on the specific leases being offered and to evaluate the potential impacts of that development on groundwater, wildlife, and other resources. Indeed, BLM has already done that for its climate analysis: its EAs "analyz[e] potential GHG emissions from projected oil and gas development on the parcels proposed for leasing using estimates based on past oil and gas development and available information from existing development within the State." EA at 35. For each alternative considered, BLM used its projection of future development on the leases to estimate the direct on-site emissions and indirect (downstream) emissions over the entire life of the leases, for the average year of production, and for the year of maximum production. *Id.* at 35–42.

As discussed below, it is entirely feasible for BLM to use the same projection of future development on the leases to estimate impacts to other resources. Indeed, BLM has sought to

focus these sales on lease parcels that are adjacent to existing oil and gas development. *See, e.g.*, Colorado draft EA at Appx. A; Wyoming draft EA at 239. BLM can use evidence of impacts from existing development on wildlife, groundwater, etc., to predict what will happen from allowing even more oil and gas development in these areas.

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

i. Groundwater quality and water demands

NEPA's requirement to assess all the potential environmental impacts from oil and gas leases, before it offers those leases to operators, includes taking a "hard look" at how ensuing development could impact groundwater. *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 457 F. Supp. 3d 880, 886–89 (D. Mont. 2020). By and large, BLM's draft EAs for the June 2022 lease sales fail to do so.

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

It is entirely feasible for BLM to take a hard look at the foreseeable water resource impacts from its leasing decisions – in fact, the agency's draft Montana EA has a much more extensive discussion of these impacts. Montana draft EA at 80–98. In addition, the attached report from PSE Healthy Energy (PSE) illustrates the readily available data that can be used for such an analysis in Montana.[35]

Groundwater is a critical resource that supplies many communities, particularly rural ones, with drinking water. Protecting these resources is imperative to protect human health and the environment, especially because groundwater will become more important as increased aridity and higher temperatures alter water use. The U.S. Environmental Protection Agency

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

(EPA) has noted that existing drinking water resources "may not be sufficient in some locations to meet future demand" and that future sources of fresh drinking "will likely be affected by changes in climate and water use."[36] As a result, BLM must protect both aquifers currently used for drinking water and deeper and higher-salinity aquifers that may be needed in coming decades.

Oil and gas drilling involves boring wells to depths thousands of feet below the surface, often through or just above groundwater aquifers. Without proper well construction and vertical separation between aquifers and fractured formations, oil and gas development can contaminate underground sources of water.[37] However, federal rules and regulations do not provide specific direction for BLM and operators to protect all usable water. Even rules that purport to do so, like Onshore Order No. 2's requirement to "protect and/or isolate all usable water zones" are inconsistently applied and often disregarded in practice.[38] State regulations are similarly inadequate to ensure protection of groundwater.

Moreover, industry has admitted that it often does not protect usable water in practice. Western Energy Alliance and the Independent Petroleum Association of America have told BLM that the "existing practice for locating and protecting usable water" does not measure the numerical quality of water underlying drilling locations, and therefore does not consider whether potentially usable water would be protected during drilling.[39] For example, reports studying a sample of existing oil and gas well records in Montana and Wyoming confirm industry admissions that well casing and cementing practices do not always protect underground sources of drinking water.[40] A review of lease parcels proposed for the proposed Wyoming sale concluded:

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

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

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

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

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

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

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

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

- If current active federal wells (completed since January 1, 2000) are not adequately cased and cemented, then it can be assumed that a significant portion of future wells installed on these proposed parcels will also be inadequately cased/cemented and thus pose a threat to usable water.[41]

Similarly, a study of hydraulic fracturing in Pavillion, Wyoming, confirmed that oil and gas drilling had contaminated underground sources of drinking water in that area due to lack of vertical separation between the aquifer and target formation.[42]

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

With regard to the water demands from development, BLM should address the potential use of surface water and groundwater for hydraulic fracturing and drilling by assessing the reasonably foreseeable development on groups of proximate parcels, and evaluate the potential for aquifer drawdown or overdraft due to cumulative effects of past, present, and future activities that could impact nearby groundwater wells, as well as the potential for cumulative effects on surface water quantity and stream/river structure and function. *See, e.g.*, Appendix J at 135–41 (EPA comment).

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[41] PSE 2022 Wyoming Review at 15.

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

ii. Greater Sage-grouse:

Several of the proposed lease sales involve important habitat for the greater sage-grouse. *See, e.g.*, EA at 55; Wyoming draft EA at 44–76. For the most part, however, the draft EAs fail to evaluate reasonably foreseeable impacts to sage-grouse from development on the proposed leases. Instead, by and large, the EAs describe: (a) the regulatory and management frameworks applicable to sage-grouse; (b) existing conditions and which lease parcels are in different categories of sage-grouse habitat (such as priority or general habitat, and proximity to active leks), and (c) the lease stipulations that would apply. Wyoming draft EA at 44–76. They also discuss the "prioritization" process under which BLM selected which parcels in sage-grouse habitat to offer or defer. Wyoming draft EA at 44–76

Notably absent from BLM's analysis in most states is any effort to assess the likely impacts to grouse from the leases it proposes to offer. Instead, the EAs provide boilerplate statements about categories of impacts. *See, e.g.*, Wyoming draft EA at 76. This does not satisfy NEPA, and BLM cannot rely for these sales on the plan-level NEPA analysis conducted for the 2015 RMP amendments. Tiering is only appropriate when a subsequent NEPA document incorporates by reference earlier general matters into a subsequent narrower statement; but it does not allow a subsequent analysis to ignore the *specific* environmental issues that are presented in the later analysis. 40 C.F.R. § 1508.28. The 2015 RMP EISs do not address the site-specific impacts associated with issuing these particular lease parcels. On the contrary, by requiring a prioritization analysis, the 2015 RMP amendments contemplate that such an analysis will occur at the leasing stage. *See S. Fork Band Council of W. Shoshone of Nevada v. U.S. Dep't of the Interior*, 588 F.3d 718, 726 (9th Cir. 2009) (holding that while tiering is sometimes permissible, "the previous document must actually discuss the impacts of the project at issue").

BLM must use its available information on lek location, reasonably foreseeable development, and other factors to provide a forecast of the impacts from these specific leases to sage-grouse in the affected areas. For example, the agency can look to nearby existing development to assess where and how much drilling may occur on the proposed leases. BLM already has identified whether the leases would be adjacent to existing leases, in an area with high development potential, and how close the lease would be to a lek. Similarly, the Montana draft EA provides a site-specific analysis of specific leases in relationship to nearby sage-grouse leks. *See* Montana draft EA at 62–66. Failing to use this type of readily available information to forecast development would violate NEPA. *See New Mexico ex rel. Richardson*, 565 F.3d at 718–19 (failure to discuss impacts from developing oil and gas lease was arbitrary and capricious where "[c]onsiderable exploration has already occurred on parcels adjacent to the" proposed lease).

BLM should defer all lease parcels in Greater sage-grouse general habitat management areas (GHMA), along with the PHMA parcels it already plans to defer. Deferring all PHMA and GHMA is warranted because BLM is in the process of reviewing and amending its 2015 Greater Sage-Grouse Resource Management Plan Amendments (the 2015 Plans) to address changed conditions and new information since 2015 (>300 publications since 2015), which includes the U.S. Geological Survey's finding of alarming declines of sage-grouse populations range-wide, including the impacts of climate change and drought on the sage-grouse. *See* Notice of Intent to

Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements, 86 Fed. Reg. 66,331 (Nov. 22, 2021). In light of this review, BLM should defer all parcels in sage-grouse habitat until amendments to the 2015 Plans are completed. Given the plethora of scientific publications that have documented the population level impacts of oil and gas development on sage-grouse, this more cautious approach is warranted.

iii. Big game

The draft EAs' analyses of big game have similar flaws. The EAs describe: (a) the regulatory and management frameworks applicable to big game species, along with the scientific literature; (b) existing conditions, and which lease parcels are in different categories of habitat (such as crucial winter habitat and migration corridors); (c) the lease stipulations that would apply; and (d) how BLM selected which parcels in big game habitat to offer or defer. *See, e.g.*, EA at 11–12, 18–20, 48–57; Wyoming draft EA at 77–100.

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

iv. Other species and resources

BLM also has not taken a hard look at impacts to other resources. For example, the EA provides no analysis at all of foreseeable impacts to cultural and heritage resources, wilderness study areas and lands with wilderness characteristics, and special status species. EA at 13 ("issues identified but eliminated from further analysis").

In addition, the Wyoming and Montana EAs fail to address the Pallid Sturgeon, an endangered species listed in 1990. 55 Fed. Reg. 36,641, 36,641 (Sept. 6, 1990). The Pallid Sturgeon are:

> among the rarest surviving fish species in North America and are a federally endangered species in the Missouri River Watershed which includes the Yellowstone River and [Powder River Basin]. Once estimated to support over 1,000 adults, now, fewer than 125 naturally produced pallid sturgeon are estimated to live in the Upper Missouri Basin above Lake Sakakawea in North Dakota. Surviving wild sturgeon in the Upper Missouri River Basin are estimated to be at least 44 years old.[43]

The Yellowstone River and its tributaries are critical to the survival and recovery of this unique species because – unlike the upper Missouri River – the Yellowstone River provides vital spawning habitat for a small group of Pallid Sturgeon that has not hybridized with other sturgeon

[43] Marcus Griswold, Pallid Sturgeon Synthesis Report at 8 (2021) [Synthesis Report].

species.[44] Since 2014, Pallid Sturgeon have repeatedly migrated up the Powder River in Montana, traveling as far as 96 miles beyond the confluence with the Yellowstone River.[45] BLM acknowledges that Pallid Sturgeon are present on lease parcels in Richland County and Roosevelt County, Montana, Montana draft EA at Table 1, and would attach a lease stipulation precluding surface occupancy within 0.25 mile of the waters edge of the Yellowstone and Missouri Rivers. *See* Montana Stipulation NSO 11-78.[46] But the Montana draft EA provides no analysis of whether a quarter-mile buffer is adequate, and how development of the leases may impact the species. In addition, Pallid Sturgeon habitat lies downstream of the group of lease parcels north of Gillette, Wyoming, and could be impacted by development of those parcels.[47] The draft Wyoming EA, however, does not even mention the Sturgeon.

Oil and gas operations may harm both water quality and water quantity in the Powder River Basin.[48] The cumulative impacts of oil and gas development, other fossil fuel development, and climate change may adversely impact the survival and recovery of pallid sturgeon in the Yellowstone and Powder Rivers (and indeed, in the upper Missouri River basin).[49] This habitat – in which Pallid Sturgeon populations have not hybridized – is impacted by fossil fuel development in the Powder River basin and oil and gas development in the Bakken. Both cause water pollution, which threaten Pallid Sturgeon.[50]

Prior to offering these leases, BLM should take a hard look at the reasonably foreseeable impacts to the Pallid Sturgeon. In addition, the Miles City Field Office has already reinitiated consultation with the Fish and Wildlife Service regarding the impacts of the Mile City RMPs on the Sturgeon. Under Endangered Species Act Section 7(d), 16 U.S.C. § 1536(d), BLM may not "make any irreversible or irretrievable commitment of resources," such as issuing new oil and gas leases, that would foreclose alternative measures to protect the Sturgeon.

k. BLM Failed to Consider Its Mineral Leasing Act Mandate to Take All Reasonable Precautions to Prevent Waste.

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

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[44] *Id.* at 9.

[45] *Id.* at 1.

[46] *See* Montana lease sale notice, https://eplanning.blm.gov/public_projects/2015346/200495288/20057740/250063922/2022%20June%20Lease%20Sale%20Sale%20Notice.pdf.

[47] *See* Synthesis Report; FWS, *Pallid Sturgeon Basin-Wide Contaminants Assessment* [Contaminants Assessment].

[48] *See* Synthesis Report at 8; Contaminants Assessment.

[49] Synthesis Report at 8.

[50] Contaminants Assessment; U.S. Army Corps of Engineers, Yellowstone River Cumulative Effects Analysis at 206-07 (Apr. 2016) (discussing increased pollution from pipeline ruptures and spills of produced water from oil development in Bakken).

the health and welfare of people living in the vicinity of oil and gas development. Yet, the EA contains no discussion whatsoever of flaring practices in Montana or North Dakota.

Under the Mineral Leasing Act (MLA), BLM has a mandate to ensure that federal and tribal oil and gas lessees and operators "use all reasonable precautions to prevent waste." 30 U.S.C. § 225. BLM has long recognized that public and tribal minerals are being wasted at an alarming rate. *See, e.g.*, 81 Fed. Reg. 83,008, 83,008–83,017 (Nov. 18, 2016). To comply with the MLA and its duty to consider a reasonable range of alternatives under NEPA, BLM must consider an alternative that imposes lease stipulations requiring operators to minimize waste. At a minimum, these lease stipulations must prohibit the wasteful practice of routine venting and flaring, similar to regulations recently passed in Colorado and New Mexico. COGCC Rule 903; 19.15.27.8 NMAC. Absent consideration of such reasonable measures to prevent waste before leases are issued, BLM cannot comply with its legal obligations under the MLA or NEPA.

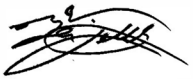
BLM must also consider the many impacts of wasteful practices under NEPA, including the climate impacts of methane waste and the public health and welfare impacts of venting, flaring, and leaks. For example, BLM has ignored the significant impacts of flaring on public health.[51] BLM must also consider whether wasteful practices, such as flaring, have disproportionate impacts on indigenous people or other communities.[52] Additionally, BLM must consider the particular impact of wasteful practices in areas that are already suffering from degraded air quality, such as ozone pollution. BLM's failure to fully consider these impacts violates NEPA.

III. CONCLUSION

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

Please do contact us if you have any questions.

Respectfully,



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[51] *See, e.g.*, Wesley Blundell & Anatolii Kokoza, *Natural gas flaring, respiratory health, and distributional effects*, 208 J. of Public Economics, at 4–23 (Apr. 2022); EDF, Flaring Aerial Survey Results (2021) https://www.permianmap.org/flaring-emissions/; Gvakharia et al., *Methane, Black Carbon, and Ethane Emissions from Natural Gas Flares in the Bakken Shale, North Dakota*, Environmental Science & Technology 5317, 5317 (2017) (accessible at: https://ngi.stanford.edu/sites/g/files/sbiybj14406/f/acs.est_.6b05183.pdf); Cushing et al., *Up in Smoke: Characterizing the Population Exposed to Flaring From Unconventional Oil and Gas Development in the Contiguous U.S.*, 16 Environmental Research Letters 1, 1 (2021), https://iopscience.iop.org/article/10.1088/1748-9326/abd3d4/pdf

[52] *See, e.g.*, https://cdn.catf.us/wp-content/uploads/2018/05/21094517/Tribal_Communities_At_Risk.pdf.

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