

**THE WILDERNESS SOCIETY  
AUDUBON ROCKIES (WY, CO, UT) \* COALITION TO PROTECT AMERICA'S  
NATIONAL PARKS \* FRIENDS OF THE EARTH \* NATIONAL AUDUBON  
SOCIETY \* NATURAL RESOURCES DEFENSE COUNCIL \* POWDER RIVER  
BASIN RESOURCE COUNCIL \* ROCKY MOUNTAIN WILD \* WYOMING  
OUTDOOR COUNCIL \* WYOMING WILDERNESS ASSOCIATION**

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*SUBMITTED VIA E-PLANNING*

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**Re: Scoping Comments on Parcels for the Wyoming Bureau of Land Management  
2023 Fourth Quarter Competitive Oil & Gas Lease Sale (DOI-BLM-WY-0000-2023-  
0004-EA).**

Dear State Director Archuleta:

Thank you for the opportunity to submit these scoping comments on parcels under consideration for the Bureau of Land Management's (BLM's) 2023 Fourth Quarter Oil & Gas Lease Sale. Our organizations and members are deeply invested in sound stewardship of our public lands and committed to ensuring they equitably benefit all people, address environmental justice, protect biodiversity, and serve as a solution to—not a cause of—climate disruption.

We appreciate that the Department of the Interior (DOI or Interior Department or Interior) has acknowledged the federal oil and gas leasing program's significant "deficiencies"<sup>1</sup> and is taking strides to address them. In its *Report on the Federal Oil and Gas Leasing Program*, DOI recognized that, among other issues, the oil and gas program "inadequately accounts for environmental harms to lands, waters, and other resources; fosters speculation by oil and gas

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<sup>1</sup> U.S. DEP'T OF THE INTERIOR, REPORT ON THE FEDERAL OIL AND GAS LEASING PROGRAM 3 (Nov. 2021) [hereinafter DOI REPORT].

companies”; “extends leasing into low potential lands that may have competing higher values”; “leaves communities out of important conversations about how they want their public lands and waters managed”; and “fails to provide a fair return to taxpayers, even before factoring in the resulting climate-related costs.”<sup>2</sup> The report highlighted the “urgent” need for tackling long “overdue reform” of the program.

We were grateful to see the BLM release several Instruction Memoranda (IMs) beginning to implement program reforms and provisions in the Inflation Reduction Act (IRA).<sup>3</sup> The IRA, however, addressed only some of the needed reforms, and we are concerned that DOI is proceeding with leasing before initiating a rulemaking to revise the BLM’s fossil fuel leasing and permitting regulations.

Our scoping comments thus recommend:

- (1) **Ensuring that any parcels included in the proposed BLM Wyoming Oil and Gas Competitive Lease Sale comport with the guidance provided in the IMs** released on November 21, 2022.
- (2) **Immediately issuing additional guidance on other important reforms** to steer all leasing decisions before a final rule is in place.
- (3) **Releasing a proposed rule to revise the BLM’s fossil fuel leasing and permitting regulations** before holding the proposed sales to ensure the rulemaking moves forward expeditiously.
- (4) **Prioritizing conservation and climate by exercising the agency’s considerable discretion to defer parcels** to protect public lands, waters, and wildlife, cultural resources and sacred sites, and community health and safety.
- (5) **Properly analyzing and mitigating the impacts of leasing.**

**I. The Bureau of Land Management should ensure that the proposed Wyoming BLM Oil and Gas Competitive Lease Sale comports with the guidance that the BLM provided in the Instruction Memoranda released on November 21, 2022.**

The IRA included several important provisions related to the federal onshore oil and gas program, such as long-overdue updates to the fiscal rates and terms for leasing and drilling on public lands and the elimination of noncompetitive leasing. We thank the BLM for issuing IMs to ensure that all onshore oil and gas lease sales are held in accordance with the IRA and other applicable laws. Any leasing decisions made before new regulations for the federal oil and gas program are in place must adhere to these guidance documents so as not to perpetuate program deficiencies.

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<sup>2</sup> *Id.*

<sup>3</sup> See Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. §§ 50262–50263 (2022).

The BLM should ensure that it reviews any remaining parcels – and conducts the lease sale process – in alignment with all updated policy provisions outlined in the IMs released on November 21, 2022.

**II. The BLM should immediately issue additional guidance, including on other important reforms, to steer all leasing decisions before a final rule is in place.**

We appreciate that the BLM issued guidance addressing not only the leasing reforms included in the IRA, but also additional updates to onshore leasing and permitting policies. However, there are many other reforms that the agency has yet to address and that DOI should prioritize in its fossil fuel leasing and permitting rulemaking. In the interim, we ask that the BLM immediately issue additional guidance on the following to steer all leasing decisions and processes for any lease sales held before regulations are in place:

- **Renewables development.** The IRA did not enact a leasing mandate but rather made at least some oil and gas leasing a requirement for issuing wind or solar development ROWs.<sup>4</sup> While DOI has stated that it is proceeding with new lease sales “to comply with congressional direction on oil and gas leasing through the [IRA],” it has not established how the proposed oil and gas lease sales align with plans to issue ROWs for wind and solar development. IM 2023-006 does detail how the BLM will determine the acreage it must offer for oil and gas leasing in order to issue wind or solar ROWs pursuant to the IRA and defines the period for calculating the acreage requirement as the “year before the wind or solar energy right-of-way is issued.” However, if DOI is going to conduct lease sales to comply with the IRA’s tethering provisions, it should do so as part of a clearly articulated and concerted national strategy rather than holding lease sales piecemeal, state office by state office. Any leases offered as part of this lease sale or related lease sales in the one-year period should indeed be part of a plan to issue wind or solar permits. We urge the BLM to offer for lease the minimum amount of acreage necessary under the IRA to enable it to issue renewables ROWs.
- **Bonding.** The BLM should issue guidance eliminating or minimizing the use of blanket bonds and require that bonds be based on the full costs of plugging, abandonment, and reclamation. The Mineral Leasing Act (MLA) requires adequate bonding. 30 U.S.C. § 226(g). In the environmental review for this lease sale, please disclose how many idle and orphan wells are currently present within the designated lease parcels and at a cumulative level in nearby areas; explain how additional leasing in areas with idle and orphan wells will protect the interests of the BLM, the state, and citizens in the area; and consider alternatives and mitigation measures, such as lease stipulations, that require plugging old wells before drilling new wells within a lease parcel.
- **Responsible bidders.** The BLM should issue guidance to prevent actors with a history of violating the terms of federal oil and gas leases from purchasing or

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<sup>4</sup> See *id.* § 50165(a)(3), (b)(1).

otherwise acquiring new leases. We appreciate that in IM 2023-008 the BLM states that it will no longer accept anonymous EOI submissions. Additionally, we urge the BLM to establish criteria for identifying “responsible qualified bidders.”

**III. Before holding the proposed lease sales, the Interior Department should release a proposed rule to revise fossil fuel leasing and permitting regulations and implement leasing reform provisions in the Inflation Reduction Act to ensure the rulemaking moves forward expeditiously.**

Even with agency guidance regarding implementation of the IRA’s leasing provisions in place, new regulations for the federal onshore oil and gas program remain paramount for ensuring durable, holistic reform. **We call on the Interior Department to issue its proposed rule to reform fossil fuel leasing and permitting regulations and implement the IRA’s leasing-related provisions modernizing the MLA before holding this lease sale or any other oil and gas lease sale.** Releasing a proposed rule before holding new lease sales is critical to ensuring that the rulemaking moves forward expeditiously.

Interior has already acknowledged that its oil and gas program “falls short of serving the public interest in a number of important respects.”<sup>5</sup> It follows, then, that in the absence of reform, leasing would not serve the public interest, as it should. *See, e.g., Boesche v. Udall*, 373 U.S. 472, 484 (1963).

Reforming the onshore leasing system will address some of the notable flaws recognized by independent and non-partisan entities fundamental to ensuring the federal leasing program works for everyone, not just the oil and gas industry.<sup>6</sup> Thus, we urge Interior to implement needed reforms before leasing more of our shared public lands. Fortunately, the Department has the authority to address several programmatic deficiencies through rulemaking.

The rulemaking should address the IRA’s increases to the federal onshore royalty rate, rental rates, and minimum lease bid, establishment of a \$5/acre EOI fee, elimination of noncompetitive leasing, and the requirement of a methane royalty on federal leases, including from vented and flared gas. Regulation must also reform the currently inadequate bonding regime, left out of the IRA but for which Interior has ample authority to address, as well as many other programmatic reforms.

Program deficiencies with direct impacts for this lease sale that need to be addressed in the rulemaking include but are not limited to:

- **Irresponsible leasing of public lands that adversely impacts the public, including degrading clean air, clean water, and the climate, and communities’ access to**

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<sup>5</sup> DOI REPORT, *supra* note 1, at 14.

<sup>6</sup> *E.g.*, GAO, BLM SHOULD UPDATE ITS GUIDANCE AND REVIEW ITS FEES (Nov. 2021), <https://www.gao.gov/assets/720/717469.pdf>; CBO, OPTIONS FOR INCREASING FEDERAL INCOME FROM CRUDE OIL AND NATURAL GAS ON FEDERAL LANDS (Apr. 2016), [https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51421-oil\\_and\\_gas\\_options-OneCol-3.pdf](https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51421-oil_and_gas_options-OneCol-3.pdf).

**outdoor recreation.** Leasing leads to degradation of air and water quality,<sup>7</sup> release of greenhouse gases that disrupt the climate,<sup>8</sup> and limitations on opportunities to enhance recreation, including discouraging investments in recreation assets.<sup>9</sup>

**Recommendation:** Under the MLA, Interior may choose to lease “where eligible lands are available.” 30 U.S.C. § 226(b)(1)(A). The BLM retains discretion to determine what lands qualify as eligible and available. *E.g., W. Energy All. V. Biden*, No. 21-cv-13-SWS, at \*18 (D. Wyo. Sept. 9, 2022) (“‘Eligible’ and ‘available’ are not defined by Congress in the MLA, which necessarily delegates the matter to the agency.” (citation omitted)). The MLA does not define or discuss a nomination process for leasing those lands, and, likewise, the IRA leaves to Interior the discretion to determine a process (if any) for soliciting EOIs.<sup>10</sup> As such, the agency may determine the process for nominating lands to be leased, including by EOIs, which Interior itself created in its regulations. *See* 43 C.F.R. § 3120.3-1. Given the Interior Department’s considerable authority and discretion over if and when to hold oil and gas lease sales, the agency should establish in regulation – and in additional guidance in the interim – that EOIs may be submitted and accepted only if there is an announced lease sale and only for lands eligible and available for leasing based on various screens, including conservation and climate priorities, community impacts, multiple use, and taxpayer fairness. The BLM should also establish a new lease nomination process in line with the “formal” nomination process set forth in 43 C.F.R. § Part 3120 (Competitive Leases), where the BLM would similarly develop a selection of lands that may be nominated for leasing in a particular sale based on various screens.

- **Mounting cleanup and remediation costs of orphan wells.** According to the Government Accountability Office (GAO), BLM holds an average of \$2,122 per well in bonding (as of 2018), while average reclamation costs on federal lands range from around \$20,000 to \$145,000 per well.<sup>11</sup> As of 2021, there were 27,383 producible federal wells in Wyoming,<sup>12</sup> which means the bonding shortfall – the amount of the oil and gas industry’s reclamation costs that could fall to taxpayers – may range from approximately

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<sup>7</sup> *E.g.*, CLEAN AIR TASK FORCE, FOSSIL FUMES: A PUBLIC HEALTH ANALYSIS OF TOXIC AIR POLLUTION FROM THE OIL AND GAS INDUSTRY (June 2016), <https://cdn.catf.us/wp-content/uploads/2016/06/14175846/fossil-fumes-report-2022.pdf>.

<sup>8</sup> *E.g.*, DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, 2021 BLM SPECIALIST REPORT ON ANNUAL GREENHOUSE GAS EMISSIONS AND CLIMATE TRENDS (2021) (hereinafter 2021 BLM SPECIALIST REPORT), <https://www.blm.gov/content/ghg/2021/>.

<sup>9</sup> PUBLIC LAND SOLUTIONS, HOW SPECULATIVE OIL & GAS LEASING IS THREATENING ECONOMIC GROWTH IN THE AMERICAN WEST (Feb. 2020), <https://publiclandsolutions.org/wp-content/uploads/2020/01/PLS-LPL-Report91.pdf>.

<sup>10</sup> *See* Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. § 50262(d) (“The Secretary shall assess a nonrefundable fee against any person that, *in accordance with procedures established by the Secretary* to carry out this subsection, submits an expression of interest in leasing land available for disposition under this section for exploration for, and development of, oil or gas.” (emphasis added)).

<sup>11</sup> GAO, BLM SHOULD ADDRESS RISKS FROM INSUFFICIENT BONDS TO RECLAIM WELLS 11, 15 (2019), <https://www.gao.gov/assets/gao-19-615.pdf>.

<sup>12</sup> BLM, OIL AND GAS STATISTICS – PRODUCIBLE WELL BORES, <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.

\$550 million to just under \$4 billion. Offering additional leases without adequate bonding will only increase the burden on the public and leave numerous orphaned wells to degrade our public lands.

**Recommendation:** The existing regulatory framework for inactive and orphaned wells is completely inadequate, as it lets industry shift millions in clean-up costs to taxpayers and fails to protect public lands, waters, and nearby communities from the impacts of aging and abandoned infrastructure. GAO and Interior’s Inspector General have both repeatedly advised the BLM to strengthen its oversight of inactive and orphaned wells, including by increasing bond amounts to reflect the actual costs of reclamation.<sup>13</sup> The BLM should issue additional guidance in the interim as it works to amend its oil and gas regulations to eliminate or minimize the use of blanket bonds and require that bonds be based on the full costs of plugging, abandonment, and reclamation. The agency should issue new policies that increase oversight of inactive wells and limit the ability of operators to indefinitely delay final reclamation.

- **Leasing that fosters speculation by oil and gas companies and other individuals.** Speculative leasing has long hindered the federal oil and gas program, not only as a result of oil and gas speculators formerly being able to purchase leases noncompetitively, but also because BLM has opened up 90 percent of western public lands to oil and gas leasing. Speculation on lands with little drilling potential wastes BLM’s time and resources and locks up public land that should be devoted to uses in the greater public interest. For this Wyoming lease sale, 43 parcels covering about 40,030 acres of lands with low development potential<sup>14</sup> have been nominated, which, if sold, would perpetuate this long-standing and redressable problem. Current leasing procedures also insufficiently screen out unqualified applicants or so-called bad actors, who have a history of abandoning and orphaning wells, missing payments, and other poor practices.

**Recommendation:** In looking to avoid allowing public lands to become held up in nonproducing oil and gas leases that prevent management of other resource values and provide little benefit to taxpayers, the BLM should not offer leases on lands determined to have low or no development potential for oil or gas. Recently released IM 2023-007 begins to address this problematic issue by detailing criteria the BLM offices will use to evaluate nominated parcels, which the BLM

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<sup>13</sup> GAO, Bonding Requirements and BLM Expenditures to Reclaim Orphaned Wells (Jan. 2010), <https://www.gao.gov/assets/gao-10-245.pdf>; GAO, BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability (Feb. 2011), <https://www.gao.gov/assets/gao-11-292.pdf>; DOI Office of the Inspector General, BLM Oil and Gas Bonding Procedures (Sept. 2012), <https://www.doioig.gov/sites/default/files/2021-migration/BLM%2520Oil%2520and%2520Gas%2520Bonding%2520Procedures.pdf>; DOI Office of the Inspector General, Bureau of Land Management’s Idle Well Program (Jan. 2018), [https://www.doioig.gov/sites/default/files/2021-migration/FinalEvaluation\\_BLMIdleWells\\_011718.pdf](https://www.doioig.gov/sites/default/files/2021-migration/FinalEvaluation_BLMIdleWells_011718.pdf); GAO, Bureau of Land Management Needs to Improve Its Data and Oversight of Potential Liabilities (May 2018), <https://www.gao.gov/assets/gao-18-250.pdf>; GAO, Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells, *supra* note 11.

<sup>14</sup> Oil and natural gas development potential from BLM Reasonably Foreseeable Development Scenarios created for each Field Office.

should apply to the parcels in this lease sale. DOI should go further by embedding these criteria in its rulemaking and establishing a robust framework that employs these leasing availability screens *before* scoping to determine which lands are eligible and available for nomination via EOIs. The BLM should establish in regulation that any lands with low or no development potential, lands that are covered by a reasonably foreseeable development (RFD) scenario that does not assess and specifically identify development potential, and lands that are covered by an outdated RFD scenario should not be available for nomination.

**Recommendation:** The BLM has broad authority to limit participation in the leasing process to “responsible qualified” bidders and cannot issue leases to companies that are violating “reclamation requirements and other standards . . . for any prior lease.” 30 U.S.C. § 226(b)(1)(A), (g). But the BLM has historically failed to adequately scrutinize the compliance records or development intentions and resource capabilities of participants in the oil and gas leasing process, which allows speculators and bad actors to freely obtain new leases. The BLM should prevent actors with a history of violating the terms of federal oil and gas leases from purchasing or otherwise acquiring new leases. It should eliminate the ability to nominate parcels anonymously and establish criteria for identifying “responsible qualified bidders.” These criteria could be used to limit or prevent participation in the leasing process by companies/individuals:

- With a history of failing to make timely rental payments;
- That operate a significant number of inactive wells;
- That are violating federal or state reclamation requirements on other leases;
- Whose operations are violating federal or state air or water quality standards; and
- That lack the technical or economic resources to responsibly develop oil and gas resources.

BLM should also regularly update and make publicly available the list of “Entities in Noncompliance with Reclamation Requirements of Section 17(g) of MLA.”<sup>15</sup>

**Recommendation:** The IRA’s elimination of noncompetitive leasing was an important step towards addressing the widespread issue of speculation in the federal onshore oil and gas program. In its rulemaking, the Department of the Interior must affirm the end of noncompetitive leasing and direct BLM to no longer accept offers on public land parcels that are submitted for oil and gas leasing outside of competitive auction. Because a final rule is not yet in place, Interior must immediately issue interim guidance prohibiting noncompetitive oil and gas leasing and instructing BLM Field Offices not to issue leases noncompetitively.

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<sup>15</sup> BLM, Manual H-3120-1 – Competitive Leases (P), App. 4, Page 1 (Feb. 18, 2013).

- **Reckless leasing of public lands that carves up important wildlife habitat.** During the prior administration, 20 percent of the leases offered by BLM in Wyoming (between Jan. 2017 and Apr. 2019) were located in big game habitat areas and migration corridors identified as “priorities” by the state.<sup>16</sup> This lease sale could further degrade critical wildlife habitats in Wyoming, as over 4,500 acres are located in big game crucial ranges or migrations corridors, and over 45,500 acres are located in Greater Sage-Grouse habitat.

**Recommendation:** The BLM should not offer leases on lands determined to be important habitat value for wildlife or fish species. As noted above, IM 2023-007 begins to address this issue by detailing criteria the BLM offices will use to evaluate nominated parcels, which the BLM should apply to the parcels in this lease sale. DOI should go further by embedding these criteria in its rulemaking and establishing a robust framework that employs these leasing availability screens *before* scoping to determine which lands are eligible and available for nomination via EOIs. DOI should establish a robust framework that uses leasing availability screens that include wildlife and fish habitat (based on the most current and accurate data layers available from the relevant State BLM Office(s) and the appropriate state fish and wildlife agencies, as well as input received via Tribal consultation and public participation) to determine which lands are eligible and available for nomination. The BLM should establish in regulation that any lands where impacts to fish and wildlife could not be avoided or mitigated if development activities were to occur would not be available for nomination.

To move forward with more leasing without an updated regulatory framework that a formal rule will provide would continue an antiquated and flawed system that for decades has short-changed our public lands, wildlife, and the public, while perpetuating harm to the health of communities and the environment. We urge the Interior Department to move expeditiously to publish its proposed rule reforming the leasing and permitting programs before holding another oil and gas lease sale. This would take a critical step toward disallowing these and other structural issues in the leasing program to continue unabated.

#### **IV. The BLM continues to hold substantial discretion over public land management and the onshore leasing program with ample authority to defer leases proposed for this sale.**

The BLM enjoys substantial discretion over the lands it manages, including whether to lease those lands for oil and gas development and production. Under the MLA, lands “known or believed to contain oil or gas deposits *may* be leased” by the Interior Department. 30 U.S.C. § 226(a) (emphasis added). If DOI so chooses to lease lands, sales are held only “where *eligible* lands are *available*.” *Id.* § 226(b)(1)(A) (emphases added). For nearly a century, the U.S.

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<sup>16</sup> CENTER FOR AMERICAN PROGRESS, EXPOSING SECRETARY BERNHARDT’S SABOTAGE OF BIG GAME WILDLIFE CORRIDORS (Apr. 2019), <https://www.americanprogress.org/issues/green/news/2019/04/18/468830/exposing-secretary-bernhards-sabotage-big-game-wildlife-corridors/>.



Supreme Court and federal circuit courts have consistently recognized this “broad” and “considerable” discretion over the federal onshore leasing program.<sup>17</sup>

Thus, the BLM is not obligated to lease *any* specific parcel of public land for oil and gas development. The agency retains the authority to defer all lease sale parcels, even after bidding has concluded. *See McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (holding that the “fact that land has been offered for lease does not bind the Secretary to actually lease the land, nor is the Secretary bound to lease the land when a qualified applicant has been selected”).<sup>18</sup> The IRA does nothing to alter this level of discretion and authority over whether to lease lands, particularly where oil and gas leasing would be in conflict with other uses of public lands, stand contrary to the public interest, or otherwise limit the BLM's ability to manage for multiple use.

We acknowledge that the IRA arbitrarily handcuffs DOI's ability to issue rights-of-way for onshore wind or solar development to holding an “onshore lease sale.”<sup>19</sup> However, as explained above, the BLM has significant discretion to determine which EOIs have been properly submitted and, ultimately, to determine whether and how much acreage to lease at all. As discussed in this comment letter, the BLM should exercise its discretion to substantially limit the scope and scale of this lease sale to fulfill its conservation obligations and adhere to its multiple use and sustained yield mandates. The BLM should offer no more acreage than necessary to comply with the IRA's requirements for allowing issuance of rights-of-way for

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<sup>17</sup> *Udall v. Tallman*, 380 U.S. 1, 4 (1965) (“The Mineral Leasing Act [MLA] of 1920 . . . left the Secretary discretion to refuse to issue any lease at all on a given tract.”); *United States ex rel. McLennan v. Wilbur*, 283 U.S. 414, 419 (1931) (ruling that the Interior Secretary possesses “general powers over the public lands as guardian of the people,” which include the authority to deny oil and gas lease applications); *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. . . .”); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988) (“[T]he Mineral Leasing Act gives the Interior Secretary discretion to determine which lands are to be leased under the statute. . . . Thus refusing to issue the . . . leases . . . would constitute a legitimate exercise of the discretion granted to the Interior Secretary under that statute.”); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (“It is clear that the Secretary has broad discretion in this area. While the statute gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory.”); *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975) (“The permissive word ‘may’ in Section 226(a) allows the Secretary to lease such lands, but does not require him to do so. Although Section 226(c) requires the Secretary to issue the lease to the first qualified applicant if the land is leased, the Secretary has discretion to refuse to issue any lease at all on a given tract.”).

<sup>18</sup> *See also Justheim Petroleum v. Dep't of Interior*, 769 F.2d 668, 671 (10th Cir. 1985) (language in 30 U.S.C. § 226 mandating that “lands to be leased . . . shall be leased to the highest responsible qualified bidder” did not require issuing a lease, but only required awarding lease to that bidder “if [the Secretary] is going to lease at all”); *Western Energy All. v. Salazar*, No. 10–cv–0226, 2011 WL 3737520, \*3–6 (D. Wyo. June 29, 2011) (holding that BLM is not required to issue leases after offering them at auction; it only needs to make a decision within 60 days on *whether* to issue the leases). The permanent injunction on the leasing “Stop” issued by the District Court for the Western District of Louisiana does not alter this vast discretion. The scope of the injunction does not cover “Lease Sales cancelled or postponed after March 24, 2021, and as to any lease sales involving non-plaintiff states,” which precludes Wyoming, New Mexico, Colorado, and Nevada, among others. *See Louisiana v. Biden*, No. 2:21-CV-00778, 2022 U.S. Dist. LEXIS 148570, at \*42 (W.D. La. Aug. 18, 2022). Further, the order enjoins the Administration only from implementing “a Stop . . . as set forth in Section 208 of Executive Order 14008.” *Id.* The injunction thus poses no obstacle to Interior deferring parcels or completely canceling a lease sale for other reasons.

<sup>19</sup> *See* Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. § 50165(a)(3), (b)(1).

responsible and appropriately sited wind and solar development on public lands following these oil and gas lease sales. Moreover, the avoided emissions from planned wind and solar development projects associated with the pending rights-of-way should be greater than the projected greenhouse gas emissions from these oil and gas lease sales.

**V. The BLM should exercise its authority to defer many of the parcels in this lease sale, including by using the criteria in IM 2023-007.**

We appreciate the BLM implementing a policy of using leasing criteria detailed in IM 2023-007 to consider parcel deferrals. The BLM should employ these criteria for this lease sale. The IM directs deferral of parcels that receive a “low” value leasing preference. Only if there are “no high preference parcels available for the sale” is the office guided to select “one or more low preference parcels that present the least conflicts based on the criteria.” The presence of a single high value leasing preference parcel urges deferral of all parcels with a low value leasing preference designation.

While the IM preferences leasing parcels with “[p]roximity to existing oil and gas development,” these areas risk further concentrating and expanding development, exacerbating ongoing and historical degradation to the affected area and the public health of nearby communities. We urge the BLM to prioritize community health and environmental justice, values the Administration has committed to upholding. As such, so long as there is one high leasing preference parcel available for the sale, the BLM should defer all remaining parcels with any low leasing preference designation.

Filtering through these leasing criteria, this lease sale’s nominated parcels reveal at least the following conflicts:

- All parcels in the Rock Springs Field Office region:
  - WY-2023-12-1451
  - WY-2023-12-1515
  - WY-2023-12-7243
  - WY-2023-12-1350
  - WY-2023-12-1404
  - WY-2023-12-1407

Leasing determinations and stipulations for these parcels were made over 25 years ago (in 1997). The outdated Resource Management Plan (RMP), currently being revised, should not be used to determine the parameters in 10-year leasing contracts.

- All parcels in the Buffalo Springs Office region:
  - WY-2023-12-1364
  - WY-2023-12-1438
  - WY-2023-12-1443
  - WY-2023-12-1475
  - WY-2023-12-1477

Leasing determinations and stipulations for these parcels are being made in accordance with an invalidated plan from 2015. For reasons discussed in more detail below, the BLM should

defer all parcels in this field office to retain its decisional authority in its process of revising the RMP.

- Parcels or those portions of parcels in Greater Sage-Grouse Priority Habitat Management Area (PHMA; 5 parcels/4,620.48 acres overlap priority habitat):
  - WY-2023-12-1499
  - WY-2023-12-1530
  - WY-2023-12-7243
  - WY-2023-12-1346
  - WY-2023-12-1451
  
- Parcels or those portions of parcels in Greater Sage-Grouse General Habitat Management Area (GHMA; 41 parcels overlap general habitat/42,344.12 acres overlap general habitat):
  - WY-2023-12-1364
  - WY-2023-12-1438
  - WY-2023-12-1443
  - WY-2023-12-1475
  - WY-2023-12-1477
  - WY-2023-12-7274
  - WY-2023-12-7278
  - WY-2023-12-7279
  - WY-2023-12-1573
  - WY-2023-12-1575
  - WY-2023-12-1576
  - WY-2023-12-1577
  - WY-2023-12-1578
  - WY-2023-12-1579
  - WY-2023-12-1580
  - WY-2023-12-7258
  - WY-2023-12-1327
  - WY-2023-12-1329
  - WY-2023-12-1331
  - WY-2023-12-1332
  - WY-2023-12-1333
  - WY-2023-12-1334
  - WY-2023-12-1337
  - WY-2023-12-1338
  - WY-2023-12-1340
  - WY-2023-12-1342
  - WY-2023-12-1343
  - WY-2023-12-1344
  - WY-2023-12-1345
  - WY-2023-12-1346
  - WY-2023-12-1347
  - WY-2023-12-1348
  - WY-2023-12-1355
  - WY-2023-12-1363
  - WY-2023-12-1565
  - WY-2023-12-1497
  - WY-2023-12-1571
  - WY-2023-12-1350
  - WY-2023-12-1404
  - WY-2023-12-1407
  - WY-2023-12-2015
  
- Parcels with some or all acreage in other important wildlife habitat and overlapping with connectivity areas:
  - Mule Deer Crucial (Winter) Range WGFD 2018:
    - WY-2023-12-1571
    - WY-2023-12-1451
    - WY-2023-12-7243
  - Pronghorn Antelope Crucial (Winter) Range WGFD 2016:
    - WY-2023-12-1350

- WY-2023-12-1404
- WY-2023-12-1515
- WY-2023-12-1407

- Parcels with some or all acreage on lands with known low development potential for oil and gas:

WY-2023-12-1327	WY-2023-12-1451
WY-2023-12-1329	WY-2023-12-1475
WY-2023-12-1331	WY-2023-12-1477
WY-2023-12-1332	WY-2023-12-1493
WY-2023-12-1333	WY-2023-12-1494
WY-2023-12-1334	WY-2023-12-1497
WY-2023-12-1337	WY-2023-12-1499
WY-2023-12-1338	WY-2023-12-1565
WY-2023-12-1340	WY-2023-12-1571
WY-2023-12-1342	WY-2023-12-1573
WY-2023-12-1343	WY-2023-12-1575
WY-2023-12-1344	WY-2023-12-1576
WY-2023-12-1345	WY-2023-12-1577
WY-2023-12-1346	WY-2023-12-1578
WY-2023-12-1347	WY-2023-12-1579
WY-2023-12-1348	WY-2023-12-1580
WY-2023-12-1350	WY-2023-12-7243
WY-2023-12-1355	WY-2023-12-7258
WY-2023-12-1363	WY-2023-12-7274
WY-2023-12-1364	WY-2023-12-7278
WY-2023-12-1438	WY-2023-12-7279
WY-2023-12-1443	

- Parcels with important recreation and other important uses or resources:
  - Salt Creek Drainage ACEC:
    - WY-2023-12-1475
    - WY-2023-12-1477
    - WY-2023-12-7274
  - SSP Species ACEC Nomination:
    - WY-2023-12-1451
    - WY-2023-12-7243

For the reasons discussed below, the BLM should defer each of the parcels associated with these conflicts.

**a. BLM should defer all parcels in the Rock Springs Field Office.**

Leasing decisions in the Rock Springs Field Office are being made in accordance with an outdated plan from 1997 or, for one area, the Jack Morrow Hills, an amendment to the 1997 plan that was finalized in 2008. BLM is currently revising the RMP for this field office. Scoping began in 2011, but a draft has yet to be released for public review. The agency is severely restricting decision space for the updated RMP by leasing parcels in the field office now. As such, BLM should defer all leasing parcels in the Rock Springs Field Office.

Leasing during an RMP revision undermines public involvement in the RMP process. The agency has previously deferred leasing during RMP revisions, and must do so again now, so that leases are offered in areas identified by an up-to-date RMP informed by the most current, best available science and latest public input.

**b. BLM should defer all parcels in the Buffalo City Field Office.**

Leasing decisions in the Buffalo City Field Office are, similar to Rock Springs, being made in accordance with an invalidated plan from 2015.<sup>20</sup> BLM is currently revising the RMP for this field office and is still in the scoping phase.<sup>21</sup> The agency is severely restricting decision space by leasing parcels in the field office now. As such, BLM should defer all leasing parcels in the Buffalo City Field Office.

Leasing during an RMP amendment – particularly under an invalidated RMP – severely undermines public involvement in the RMP process. The agency has previously deferred leasing during RMP revisions, and must do so again now, so that leases are offered in areas identified by an up-to-date RMP informed by the most current, best available science and latest public input.

**c. BLM Should Defer All Parcels in Priority Habitat Management Areas and General Habitat Management Areas for Greater Sage-Grouse.**

BLM should defer all parcels that contain some or all acreage designated as a PHMA and GHMA under the 2015 Greater Sage-Grouse Resource Management Plan Amendments (the 2015 Plans). Deferral is required for at least two reasons.

First, a key component of the 2015 Plans requires BLM to prioritize new oil and gas leasing outside of PHMA and GHMA to protect that habitat from future disturbance. In May 2020, BLM's national policy addressing prioritization, Instruction Memorandum 2018-026, was struck down by a court. *Montana Wildlife Federation v. Bernhardt*, No. 18-cv-69-GF-BMM, 2020 WL 2615631 (D. Mont. May 22, 2020). BLM has not adopted new national guidance on the prioritization requirement and has represented to the Montana court that the agency's previous prioritization guidance (adopted in 2016) also is not in effect. As a result, there is currently no national guidance providing direction on how prioritization is to be applied. Complying with the prioritization requirement of the 2015 Plans must be a central consideration for any lease parcels in PHMA or GHMA. BLM should defer all parcels containing PHMA or GHMA at least until new national guidance is issued. The *Montana Wildlife Federation* ruling demonstrates the need for a well-reasoned national directive that fully

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<sup>20</sup> See *supra* note 33 and accompanying text.

<sup>21</sup> *Id.*

complies with the purpose and language of the 2015 Plans’ prioritization objective. If BLM state offices proceed with leasing in sage-grouse habitat using an ad hoc or state-by-state approach to prioritization, those decisions will inevitably fall short of what the 2015 Plans require, which were the cornerstone of the U.S. Fish and Wildlife Service’s 2015 “not-warranted” finding.

Second, all parcels in sage-grouse habitat should be deferred in light of BLM’s ongoing consideration of revisions to the 2015 Plans. Instruction Memorandum 2021-027 directs that “affected lease parcels must be withdrawn or deferred from leasing until a plan amendment or revision can be completed at a later date.” BLM’s pending RMP revision process requires deferral of parcels in sage-grouse habitat because the terms and conditions of the 2015 Plans must be strengthened to ensure protection of the grouse and avoid the need for an Endangered Species Act listing. Sage-grouse populations have continued to decline under the 2015 Plans.<sup>22</sup> In addition, implementation and enforcement of the prioritization objective and other key components of the 2015 Plans have proven very challenging.

In particular, parcels WY-2023-12-1451 and WY-2023-12-7243. These are all located in PHMA in the Rock Springs Field Office. These areas see some of the highest concentrations of grouse density and must be protected from oil and gas development, thus should all be deferred.<sup>23</sup>

Ensuring healthy sage-grouse populations across their range will require amending the 2015 Plans to address the variety of threats faced by this species and include considering how best to manage the various habitat designations, which we are encouraged to see the BLM has begun. In the meantime, leasing in GHMA must be deferred to ensure future conservation opportunities, especially given the breadth of undeveloped leased lands in Wyoming, while RMP plans are being reviewed.

The above recommendations, urging extreme care in development in sage-grouse habitat, become extremely important given recent scientific findings. In March 2021, U.S. Geological Survey researchers released a report that provides one of the most comprehensive population trend modeling efforts ever undertaken for sage-grouse.<sup>24</sup> The report describes an overall decline in the number of sage-grouse across the majority of their range, which previous studies have shown as well. Since 1965, sage-grouse populations have declined 80% range-wide, including in areas where the decline has not been as severe. Since 2002, range-wide populations have declined 37%. Further, 78% of leks have a greater than 50% probability of extirpation in the next 56 years. In September 2022, the U.S. Geological Survey and other federal agencies released the

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<sup>22</sup> See, e.g., Angus Thuermer, Jr, *Wyo sage grouse counts fall again, marking a 5-year trend*, Wyo File (Sept. 14, 2021) (noting that “Wyoming’s 2021 count of male greater sage grouse declined 13% compared to 2020”), <https://www.wyofile.com/wyo-sage-grouse-counts-fall-again-marking-a-5-year-trend/>.

<sup>23</sup> Angus M. Thuermer, Jr., *Emergency letter: Save ‘highest grouse density areas on Earth’*, WyoFile (Feb. 26, 2019), <https://wyofile.com/emergency-letter-save-highest-grouse-density-areas-on-earth/>.

<sup>24</sup> Peter S. Coates et al., *Range-wide Greater Sage-Grouse Hierarchical Monitoring Framework: Implications for Defining Population Boundaries, Trend Estimation, and a Targeted Annual Warning System* (March 2021), <https://doi.org/10.3133/ofr20201154>.

that found that 1.3 million acres of habitat are transitioning each year from largely intact sagebrush sites to less functioning sagebrush habitat.<sup>25</sup>

**d. BLM Should Defer Parcels in Crucial Wildlife Habitats and Documented Big Game Migration Corridors.**

This sale includes several parcels in crucial wildlife habitats. The BLM is required to manage public lands “in a manner that will provide food and habitat” for all wildlife. 43 U.S.C. § 1701(a)(8). Of notable concern are the parcels that impact crucial winter range of mule deer, elk, and pronghorn used to access seasonal habitats. Peer-reviewed research has been clear: mule deer respond unfavorably to oil and gas development in migratory habitats, often missing out on high-quality forage during the spring migration.<sup>26</sup> Offering parcels for lease in these habitats could lead to expanded development in areas already excessively impacted by oil and gas fields.

BLM must address the best available science on mule deer and other ungulate species and thoroughly consider the implications of that research. New studies are shaping understanding of how ungulates adapt, or don’t, to oil and gas development and other anthropogenic disturbance. For example, recent peer-reviewed studies indicate that migratory behavior is not the same across ungulate species, and that mule deer differ from other herbivores because they have very high fidelity to their migration routes with little to no adaptability as to where they migrate.<sup>27</sup> Mule deer alter their rate and timing of movement through stopovers in response to development, diminishing the benefits of migratory foraging.<sup>28</sup> Disturbance from energy development causes not only direct habitat loss but has a multiplicative effect through avoidance behavior resulting in indirect habitat loss 4.6 times greater than direct habitat loss from roads, well pads, and other infrastructure.<sup>29</sup> Before moving forward with leasing, the agency must acknowledge and assess the increased risk to Wyoming’s herds that these studies document.

The BLM should not be leasing in crucial big game winter range. Extensive leasing in crucial winter range would have significant adverse impacts on Wyoming’s elk, pronghorn, and mule deer herds. By avoiding leasing in crucial winter range, BLM can uphold its duty to provide food and habitat for these critically important big game species.

**e. BLM should defer parcels on low potential lands.**

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<sup>25</sup> Doherty, K., Theobald, D.M., Bradford, J.B., Wiechman, L.A., Bedrosian, G., Boyd, C.S., Cahill, M., Coates, P.S., Creutzburg, M.K., Crist, M.R., Finn, S.P., Kumar, A.V., Littlefield, C.E., Maestas, J.D., Prentice, K.L., Prochazka, B.G., Remington, T.E., Sparklin, W.D., Tull, J.C., Wurtzebach, Z., and Zeller, K.A., 2022, A sagebrush conservation design to proactively restore America’s sagebrush biome: U.S. Geological Survey Open-File Report 2022–1081, 38 p.

<sup>26</sup> Aikens, E.O., Wyckoff, T.B., Sawyer, H. et al. Industrial energy development decouples ungulate migration from the green wave. *Nat Ecol Evol* (2022). <https://doi.org/10.1038/s41559-022-01887-9>.

<sup>27</sup> Sawyer et al., *Migratory plasticity is not ubiquitous among large herbivores*, *Journal of Animal Ecology* 88(3) (Nov 17, 2018).

<sup>28</sup> Teal Wyckoff et al., *Evaluating the influence of energy and residential development on the migratory behavior of mule deer*, *Ecosphere* 9(2) (Feb 23, 2018).

<sup>29</sup> Samantha Dwinnell et al., *Where to forage when afraid: Does perceived risk impair use of the foodscape?*, *Ecological Applications* 29(7) (June 2019).

Leasing lands with low potential for oil and gas development violates FLPMA's multiple use mandate. The MLA directs BLM to hold periodic oil and gas lease sales for "lands . . . which are known or believed to contain oil or gas deposits." 30 U.S.C. § 226(a). DOI has, through its internal administrative review body, recognized this mandate. *See Vessels Coal Gas, Inc.*, 175 IBLA 8, 25 (2008) ("It is well-settled under the MLA that competitive leasing is to be based upon reasonable assurance of an existing mineral deposit.").

For this proposed sale, 43 proposed parcels contain low development potential according to data from BLM's RFD scenarios created for each Field Office. Leasing these parcels would therefore violate the multiple use mandate, because the purpose of leasing lands for oil and gas development is to provide for production of oil and gas – low potential lands are unlikely to actually produce these resources. Leases in low potential areas generate minimal to no revenue but can carry significant cost in terms of resource use conflicts. Leases in low potential areas are most likely to be sold at or near the minimum bid and are least likely to produce oil or gas and generate royalties. Worse, those lands will stand encumbered by leases, limiting BLM's ability to manage for other uses and resources.

In offering the parcels involved in this sale that are in low potential lands, BLM risks precluding management decisions for other resources and uses, such as wilderness, recreation, and renewable energy development. Prioritizing leasing of low potential land would violate FLPMA's multiple use mandate and improperly elevate oil and gas leasing above other uses.

**f. BLM should defer parcels that overlap areas with special designations such as Wilderness Study Areas, ACECs, and LWC.**

The BLM must preserve its ability to decide whether and how to protectively manage wilderness resources, or areas that may qualify for special designations, through a public planning process. Such decisions could be foreclosed by leasing those lands to the oil and gas industry at this time. In particular, the BLM should defer parcels 1451, 7243, and 1573 because they overlap with the SSC Species Proposed ACEC, and parcels 1475, 1477, and 7274 because they overlap the Salt Creek Drainage ACEC.

The BLM should defer all lease parcels that overlap with current or proposed Wilderness Study Areas, Areas of Critical Environmental Concern, or Lands with Wilderness Characteristics until the agency has the opportunity to make management decisions for those areas through a public planning process.

**g. The BLM should implement a climate screen.**

It is beyond doubt that oil and gas lease sales result in greenhouse gas (GHG) emissions from fossil fuel production that contribute to climate change impacts. While climate change from GHG emissions is clearly causing global disruption, it is also undisputed that climate change is causing detrimental impacts to the public lands that the BLM manages. To adhere to its mandates under FLPMA to ensure multiple use and sustained yield and to prevent permanent impairment and unnecessary and undue degradation of the lands it manages, the BLM has an obligation to



address climate disruption from oil and gas development adversely impacting public land resources.

We therefore urge the BLM to exercise its broad discretion over the leasing program pursuant to the MLA, authority over public lands management pursuant to FLPMA, and review requirements pursuant to NEPA to consider several options for a climate screen. Such a screen would determine whether to defer parcels or mitigate the resulting GHG emissions and attendant climate impacts that result from the BLM's oil and gas leasing decisions.

#### **i. Climate impacts screen.**

A climate screen could be grounded, first, in a qualitative analysis of (a) the present severity and intensity of climate change impacts occurring to the BLM resource area under consideration and (b) projected impacts to that resource over the next 10 years (primary lease term), rooted in the best available science and information to assess whether impacts are causing unnecessary or undue degradation or inhibiting achievement and maintenance of sustained yield of renewable resources. To establish the proper baseline and projections for the region and the resource area impacted, the BLM would need to reference sources such as the National Climate Assessment<sup>30</sup> and high-quality regional and local scientific research and studies on the resource, including species threats, wildlife migration and habitat, air and water quality and quantity, public health impacts, viewsheds, and other conservation values. Second, the screen could involve a quantitative assessment of consistency of the projected GHG emissions from the lease sale (the aggregated emissions from all related lease sales for that period) with climate imperatives, which could take several forms: the global 1.5°C target; the goal to achieve net zero emissions by 2050; or the United States' commitment to reduce net greenhouse gas emissions by 50% from 2005 levels by 2030. Alternatively, the quantitative component could be the climate test discussed below. Based on a reasoned evaluation of both the qualitative and quantitative factors indicating climate impacts to the resource, the BLM would determine whether to defer lease parcels or otherwise mitigate the GHG emissions, just as it would under a reasoned evaluation of conflict with, for example, a wildlife corridor or cultural resource values.

#### **ii. Climate test methodology.**

One method that the BLM could use to implement a climate screen is the climate test developed by scientists and attorneys at the Natural Resources Defense Council (NRDC).<sup>31</sup> Their approach offers a novel and scalable tool to evaluate the significance of GHG emissions from new fossil fuel development and achieves something that the BLM's simpler, static comparison of project emissions to total U.S. or global levels cannot: objectively determining a project's significance in terms of its contribution to driving warming over time, in the context of the entire energy system with consideration to the project's relative role therein, and all relative to the constraints necessary for limiting warming to 1.5°C. The result is a quantitative measure of a

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<sup>30</sup> See U.S. Global Change Research Program, *Impacts, Risks, and Adaptation in the United States, Fourth National Climate Assessment, Vol. II* 42, 44 (2018), <https://nca2018.globalchange.gov/>.

<sup>31</sup> See Earthjustice, Natural Resources Defense Council, and The Wilderness Society, Comment Letter Re: Assessment of Greenhouse Gas Emissions Significance in the Willow Master Development Plan Draft Supplemental Environmental Impact Statement 6 (Aug. 29, 2022).

project’s consistency with climate goals, where the numerical value of the climate test’s decision metric communicates an increasing degree of climate impact significance. Although originally designed to solve for the more elusive problem of evaluating individual projects for their respective climate impact significance, NRDC notes that the climate test methodology can just as easily be applied to aggregated emissions to test, for example, all or multiple of a period’s lease sales as a collective “project” for consistency with pathways to limited warming. Again, based on the outcome of individual-scale or aggregate lease area’s climate test screening, the BLM would either defer parcels to minimize GHG emissions or otherwise mitigate the emissions. More discussion and demonstration of the climate test tool can be found in the comment letter submitted on the Willow Master Development Plan Draft Supplemental Environmental Impact Statement.<sup>32</sup>

### iii. Avoided emissions screen.

The IRA arbitrarily tethers issuance of wind and solar development ROWs to oil and gas leasing. Given the Interior Department’s aforementioned considerable authority and discretion over if and when to hold oil and gas lease sales, it should establish in regulation – and in guidance in the interim – that, over the next ten years during the term of the IRA’s tethering provisions, oil and gas lease sales are to be held only when there are wind or solar development ROWs needing to be issued. Additionally, projected GHG emissions from any onshore oil and gas lease sales and, more specifically, any oil and gas leases issued, must not be greater than the projected emissions that would be avoided by planned onshore wind and solar development projects whose ROWs would be issued contingent upon the oil and gas lease sale. This screen should be *in addition* to one of the climate screens discussed above. For more information on recommendations for tools to use to calculate avoided emissions from planned renewables development and run the comparison to projected GHG emissions from oil and gas leasing, please contact us, and we would be pleased to discuss further.

Whichever climate screen is deployed, the BLM would determine whether to defer lease parcels or otherwise mitigate GHG emissions from leases issued.

## VI. **The BLM should adhere to recently released Instruction Memorandum 2023-010 and exercise its discretion to limit leasing because the respective Resource Management Plans are outdated and inadequately account for or address climate change impacts.**

IM 2023-010, released on November 21, 2022, explains that “state and field offices will examine resource management decisions to determine whether the RMPs adequately protect important resource values in light of changing circumstances, updated policies, and new information.” When an RMP is deemed in need of updating, “the BLM will exercise its discretion regarding whether to defer any oil and gas leasing parcels from lease sales.” The BLM should adhere to this approach for this sale and carefully examine associated land use plans to determine whether it should defer parcels based on the need to update the respective plans.

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<sup>32</sup> *Id.* at 6–9.

Indeed, the RMPs covering many of the nominated lease parcels are in desperate need of revision to account for climate and other environmental impacts. None of the RMPs covering the parcels under consideration for this lease sale adequately accounts for or addresses the environmental impacts on resources and land uses due to climate change:

- BLM Buffalo Field Office, Approved RMP (Sept. 2015): never discusses climate change; only mentions reducing local GHG emissions.<sup>33</sup>
- BLM Newcastle Field Office, Approved RMP (Sept. 2000): no discussion of climate change or GHG emissions.<sup>34</sup>
- BLM Casper Field Office, Approved RMP (Dec. 2007): no discussion of climate change or GHG emissions.<sup>35</sup>
- BLM Rawlins Field Office, Approved RMP (Nov. 2019): defers consideration of and management for climate change until a later date:  
 Currently BLM does not have an established mechanism to accurately predict the effect of resource management-level decisions from this planning effort on global climate change. However, potential impacts to air quality due to climate change are likely to be varied. In the future, as tools for predicting climate changes in a management area improve and/or changes in climate affect resources and necessitate changes in how resources are managed, BLM may be able to reevaluate decisions made as part of this planning process and adjust management accordingly.<sup>36</sup>
- BLM Rock Springs Field Office, Approved RMP (1997): no discussion of climate change or GHG emissions; additionally, this RMP is currently being revised and release of the draft EIS/RMP is pending.
- BLM Worland and Cody Field Offices, Approved RMP (Sept. 2015): no mention of modern anthropogenic climate change; only mentions reducing local GHG emissions.<sup>37</sup>

Given the paucity of climate change analysis and lack of substantive measures to address climate impacts in the RMPs covering parcels listed for this lease sale, the BLM should exercise its discretion to substantially limit oil and gas leasing in these resource areas.

## **VII. The BLM should provide robust public participation and Tribal consultation as part of the lease sale process.**

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<sup>33</sup> BLM BUFFALO FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN 83 table 3.1, 548 (Sept. 2015). This 2015 RMP was invalidated in court, in part on climate grounds, and BLM issued an approved RMP amendment (RMPA). *W. Organization of Res. Councils v. BLM*, No. CV 16-21-GF-BMM, 2018 U.S. Dist. LEXIS 49635, at \*6 (D. Mont. Mar. 26, 2018), *appeal dismissed*, No. 18-35836, 2019 U.S. App. LEXIS 39122, (9th Cir. Jan. 2, 2019). That RMPA was challenged and again it was invalidated. *W. Org. of Res. Councils v. United States BLM*, No. 4:20-cv-00076-GF-BMM, 2022 U.S. Dist. LEXIS 138980, at \*21 (D. Mont. Aug. 3, 2022). On October 3, 2022, BLM initiated scoping to amend the RMP. 87 Fed. Reg. 59818, 591818 (Oct. 3, 2022).

<sup>34</sup> BLM NEWCASTLE FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN (Sept. 2000).

<sup>35</sup> BLM CASPER FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN (Dec. 2007).

<sup>36</sup> BLM RAWLINS FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN 1-7 (Nov. 2019).

<sup>37</sup> BLM WORLAND FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN 553 (Sept. 2015); BLM CODY FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN (2015).

Public participation and Tribal consultation are critical to an informed NEPA process. DOI has rightfully committed to providing robust and “enhance[d] opportunities for Tribal and environmental justice community engagement in the NEPA and decision-making process.” Secretarial Order 3399, at \*3 (Apr. 16, 2021). We strongly urge BLM to abide by these commitments.

The public needs ample time to engage in the decision-making process for this lease sale, particularly because DOI has proposed concurrent sales with overlapping comment periods. This places an immense burden on members of the public – especially environmental justice communities already deeply affected by adverse impacts from oil and gas development – who should be able to engage in the NEPA review and decision-making process.

To honor its commitment to enhanced public participation and Tribal consultation, BLM should consider providing, in addition to this scoping comment period, one or more listening sessions before issuing any draft NEPA document. These sessions could be timed and located to allow fence-line, frontline, and other affected communities the opportunity to participate. Then, BLM should give the public at least 60 days to review and comment on any draft NEPA document. Doing so would help ensure that the public has an adequate “opportunity to comment upon . . . and participate in, the preparation and execution of” this lease sale, as required by FLPMA and NEPA. 43 U.S.C. § 1738(e); 42 U.S.C. § 4332(C).

The Department must also fully consult and engage Tribal nations, both those recognized by the United States as sovereign nations as well as those not recognized. Tribes must be able to protect and preserve their own lands and resources. The United States must recognize the right of Indigenous Peoples to give or withhold “free, prior and informed consent” to projects and policies affecting their lands and people, as stated in the United Nations Declaration on the Rights of Indigenous Peoples, which the United States has supported for more than a decade. The incorporation of these bottom-up principles in this federal process is an important and needed step as we address the history of public lands in the United States.

### **VIII. The BLM must take a hard look under NEPA and FLPMA at the environmental and cultural effects of this lease sale and the combined environmental impacts of the related 2023 lease sales announced as part of this national decision.**

Pursuant to NEPA, the BLM must properly analyze and quantify the direct, indirect, and cumulative impacts that would result from all aspects of leasing, along with other past, present, and reasonably foreseeable federal and non-federal oil and gas development and production decisions. 40 C.F.R. § 1508.1 (2022). This includes but is not limited to analyzing the impacts to BLM resources and to global warming due to associated greenhouse gas emissions, the human environment, cultural resources, environmental justice, and wildlife. Court decisions clearly

establish that NEPA<sup>38</sup> mandates consideration and analysis of the indirect and cumulative climate impacts of BLM fossil fuel production decisions, including at the leasing stage.<sup>39</sup>

In conducting its NEPA analysis, the BLM must adhere to its obligations under FLPMA to 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). BLM must “take any action necessary to prevent unnecessary and undue degradation of the lands.” *Id.* § 1732(b).

NEPA requires an agency to prepare an environmental impacts statement (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 environmental assessment (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).

To date, DOI has announced prospective leasing already covering hundreds of thousands of acres. Oil and gas leasing on this scale will have significant environmental impacts. The BLM should, therefore, prepare an EIS covering all the lease sales in these collective federal action. Under NEPA, an EIS is required for any major federal action that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).

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<sup>38</sup> On April 16, 2021, the Department of the Interior Secretary Deb Haaland issued Secretarial Order 3399, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process*, directing all Interior bureaus and offices “not [to] apply the 2020 [NEPA] Rule in a manner that would change the application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect . . . . Bureaus/Offices will continue to follow the Department’s NEPA regulations at 43 C.F.R. Part 46, Department Manual procedures (516 DM Ch. 1-15), and guidance and instruction from the Office of Environmental Policy and Compliance.” SO 3399 at \*3–4.

<sup>39</sup> See *Sierra Club v. Fed. Energy Regulatory Comm’n*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (requiring quantification of indirect greenhouse gas emissions); *Ctr. for Biological Diversity v. Nat’l Highway Transp. Safety Admin.*, 538 F.3d 1172, 1215–16 (9th Cir 2008) (requiring assessment of the cumulative impacts of climate change); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77 (D.D.C. 2019) (invalidating nine BLM NEPA analyses in support of oil and gas lease sales because “BLM did not take a hard look at drilling-related and downstream [greenhouse gas] emissions from the leased parcels and, it failed to sufficiently compare those emissions to regional and national emissions”); 40 C.F.R. § 1508.1 (2022).

It appears, however, that the BLM intends to prepare individual EAs for each of the lease sales in respective BLM state offices. As such, we urge the BLM to analyze the collective GHG emissions and resulting cumulative climate impacts from all the prospective lease sales in each of the respective EAs. Then, the BLM should issue a mitigated finding of no significant impact (mitigated FONSI) based on the significant climate impacts it must address to avoid preparation of an EIS. Regardless, BLM must properly analyze and contextualize the cumulative climate change impacts associated with this lease sale on BLM resource areas, the broader environment, and affected communities.

**a. BLM must take a hard look at the impacts of the lease sale on climate change and the impacts of climate change on the lease sale.**

It is well established that federal agencies must analyze climate change when conducting NEPA analysis. Federal courts have repeatedly affirmed that NEPA requires thorough analysis of climate change impacts. *See, e.g., WildEarth Guardians*, 368 F. Supp. 3d at 67–77. Climate change has been intensively studied and acknowledged at the global, national, and regional scales. In its Specialist Report, the BLM itself clearly recognizes that GHG emissions, including from oil and gas development and production on federal public lands, are fueling climate disruption.<sup>40</sup> There is a near-linear relationship between cumulative anthropogenic carbon dioxide emissions and the global warming they cause, where each 1,000 gigatonnes (GtCO<sub>2</sub>) of emissions causes a 0.45°C increase in global surface temperature.<sup>41</sup> Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are recognized as the key GHG contributing to climate change. In 2009, EPA found that these “six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations.”<sup>42</sup> This decision has been upheld as supported by the vast body of scientific evidence on the subject.<sup>43</sup>

On January 9, 2023, the Council on Environmental Quality (CEQ) released updated guidance on how agencies should consider and analyze GHG emissions and climate change in NEPA reviews.<sup>44</sup> The CEQ climate guidance is effective immediately and directs agencies to “use this guidance to inform the NEPA review for all new proposed actions.”<sup>45</sup> Application of this climate guidance to this lease sale will inform the BLM’s analysis of the impacts related to climate change and consideration of alternatives.

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<sup>40</sup> *See* 2021 BLM SPECIALIST REPORT, *supra* note 8.

<sup>41</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS, CONTRIBUTION OF WORKING GROUP I TO THE SIXTH ASSESSMENT REPORT OF THE IPCC, SUMMARY FOR POLICYMAKERS SPM-36 (V. Masson-Delmotte et al. eds, 2021) [hereinafter IPCC AR6], [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf).

<sup>42</sup> EPA, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496 (Dec. 15, 2009), [https://www.epa.gov/sites/production/files/2016-08/documents/federal\\_register-epa-hq-oar-2009-0171-dec.15-09.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/federal_register-epa-hq-oar-2009-0171-dec.15-09.pdf).

<sup>43</sup> *See, e.g., Coal. for Responsible Regulation, Inc. v. EPA.*, 684 F.3d 102, 120–22 (D.C. Cir. 2012).

<sup>44</sup> *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 88 Fed. Reg. 1196 (Jan. 9, 2023).

<sup>45</sup> *Id.* at 1212.

Properly analyzing GHG emissions and climate impacts requires a stepwise process. First, the BLM must quantify the reasonably foreseeable GHG emissions – both direct and indirect – of the lease sale, including each alternative.<sup>46</sup> Second, the BLM must “[d]isclose and provide context for the GHG emissions and climate impacts associated with the lease sale and alternatives.”<sup>47</sup> This includes “monetizing climate damages” using the social cost of greenhouse gas estimates, “placing emissions in the context of relevant climate action goals and commitments, and providing common equivalents . . . to help decision makers and the public understand proposed actions’ potential GHG emissions and climate change effects.”<sup>48</sup> As part of its analysis, the BLM must also consider the effects of climate change on the lease sale. This requires evaluating how climate disruption will affect the resources, ecosystem, communities, and oil and gas infrastructure, making it more vulnerable to adverse impacts.<sup>49</sup> Finally, the BLM must analyze reasonable alternatives, “including those that would reduce GHG emissions relative to baseline conditions, and identify available mitigation measures to avoid, minimize, or compensate for climate effects.”<sup>50</sup>

The climate guidance instructs the BLM not to fractionalize GHG emissions from this lease sale so as to appear insignificant compared to global or national emissions. The BLM’s climate 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).<sup>51</sup>

NEPA requires more than a statement that emissions from a proposed Federal action or its alternatives represent only a small fraction of global or domestic emissions. Such a statement merely notes the nature of the climate change challenge, and is not a useful basis for deciding whether or to what extent to consider climate change effects under NEPA. Moreover, such comparisons and fractions also are not an appropriate method for characterizing the extent of a proposed action’s and its alternatives’ contributions to climate change because this approach does not reveal anything beyond the nature of the climate change challenge itself—the fact that diverse individual sources of emissions each make a

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<sup>46</sup> *Id.* at 1200.

<sup>47</sup> *Id.* at 1201.

<sup>48</sup> *Id.* at 1201–02.

<sup>49</sup> *Id.* at 1208.

<sup>50</sup> *Id.* at 1200–02.

<sup>51</sup> See also *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); *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); *San Juan Citizens All. v. United States BLM*, 326 F. Supp. 3d 1227, 1248 (D.N.M. 2018) (holding that BLM failed to take an hard look at the cumulative impact of GHG emissions (citing *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008) (concluding that an agency “must provide the necessary contextual information about the cumulative and incremental environmental impacts” because even though the impact might be “individually minor,” its impact together with the impacts of other actions would be “collectively significant”))).

relatively small addition to global atmospheric GHG concentrations that collectively have a large effect.<sup>52</sup>

Climate change is precisely the type of thorny problem that the cumulative impacts analysis is meant to address.<sup>53</sup> The “incremental” addition of GHG emissions that will result from a particular lease sale cannot be dismissed as insignificant merely because it constitutes a small percentage increase compared to state, regional, or national emissions. *See* 40 C.F.R. § 1508.1. This flips on its head the entire point of NEPA’s cumulative impacts analysis. “Cumulative effects . . . result from the incremental effects of the action *when added to the effects of other past, present, and reasonably foreseeable actions . . .* [and] can result from *individually minor but collectively significant* actions taking place over a period of time.” *Id.* (emphases added).

GHG emissions that cause climate change are just such an “individually minor but collectively significant” problem. No source of GHG emissions by itself constitutes a *sufficient* cause of overall climate change. But those sources collectively are *necessary* causes of climate change. An incremental increase in GHG emissions, such as from this lease sale, must be considered in the context of the proper environmental baseline of cumulative GHG emissions and climate change impacts. The BLM must place emissions and climate damages “in the context of relevant climate action goals and commitments, . . . summarizing and citing to available scientific literature to help explain real world effects.”<sup>54</sup>

In that proper context, what crystalizes is that the emissions and resulting impacts from this lease sale are likely significant. Recent analysis finds that for developed nations, including the United States, in order to maintain a 67% chance of avoiding 1.5°C of warming, the United States must end oil and gas production by 2031.<sup>55</sup> Leases and resulting application for permits to drill (APDs) covering hundreds of thousands of acres that would extend well beyond 2031, including in terms of production, quite clearly have an impact that must not be disregarded.

However, in the June 2022 lease sales, the BLM claimed that it could not determine whether GHG emissions and resulting climate impacts were significant (and thus found they were insignificant).<sup>56</sup> This finding was concerning given the Specialist Report’s conclusion that “[s]taying within the 1.5°C carbon budget implies that CO<sub>2</sub> emissions need to start declining this decade to maintain reasonable progress to reach net zero by about 2050.”<sup>57</sup> Rather than fulfill its legal obligations under NEPA and grapple with the imminent threat posed by locking in future GHG emissions through leasing, the BLM asserted that it was not required to “create metrics, thresholds, or significance levels where

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<sup>52</sup> *Id.* at 1201.

<sup>53</sup> *See id.* at 1206.

<sup>54</sup> *Id.*

<sup>55</sup> D. Calverley and K. Anderson, *Phaseout pathways for fossil fuel production within Paris-compliant carbon budgets*, Tyndall Centre, University of Manchester (2022).

<sup>56</sup> *See, e.g.*, BLM, DRAFT FINDING OF NO SIGNIFICANT IMPACT, JUNE 2022 COMPETITIVE LEASE SALE, DOI-BLM-WY-0000-2021-0003-EA (Apr. 18, 2022).

<sup>57</sup> *See* 2021 BLM SPECIALIST REPORT, *supra* note 8.



none exist,” “[d]id not have the authority to *arbitrarily* set a comparison, limit, threshold, or standard for GHG emissions,” and could not “correlate any specific amount of GHG emissions to any specific level of climate effect at any specific location.”<sup>58</sup> But the BLM does have the responsibility to make a *non-arbitrary* significance determination. Otherwise, no matter the size of the project or the amount of GHG emissions, the BLM would *always* find them to be insignificant, which is obviously contrary to the best available climate science and the BLM’s mandate “to prevent unnecessary or undue degradation of the lands” under FLPMA. *See* 43 U.S.C. § 1732(b).

The BLM asserted that it could wait “to determine appropriate mitigation measures to reduce/offset GHG emissions” until the APD stage.<sup>59</sup> But the further down the chain the BLM waits to address GHG emissions, the smaller the emissions become. Thus, the agency ends up in a place where it continues to slice an oil and gas project until any amount of emissions appears *de minimis*. This is contrary to its obligations under NEPA and FLPMA.

We appreciate the difficulty the BLM faces in attributing significance to GHG emissions for a lease sale and, moreover, determining how to meaningfully address those emissions. But merely quantifying the emissions, discussing them generally, and then failing to make decisions to address them and their climate impacts, is neither the solution, nor consistent with the BLM’s statutory and regulatory obligations.

Instead, the BLM should start from the scientifically sound and accepted premise that the addition of GHG emissions resulting from this (and related) lease sales must be addressed. These climate change impacts are clearly adversely impacting the specific resource areas at issue, which the BLM must still thoroughly analyze in its NEPA analysis. As a result, the BLM can and has the legal authority to take measures to address and mitigate those emissions. We suggest several ways the BLM can do so: (1) through a climate screen (with various options for what the screen might consist of); and (2) through a conservation and climate alternative and mitigation measures.

**b. The BLM’s NEPA analysis must address whether any proposed leasing is consistent with U.S. climate commitments and address its full costs and benefits.**

The BLM must consider and address whether the proposed leasing is consistent with U.S. climate commitments and national policy. The United States has committed to the climate change target of holding the long-term global average temperature “to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels” under the Paris Agreement.<sup>60</sup> The Paris Agreement established the 1.5°C climate target based on evidence that 2°C of warming would lead to catastrophic climate

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<sup>58</sup> *See* BLM, June 2022 Competitive Lease Sale, Wyoming Response to Public Comments \*137, \*140, \*144 (emphasis added).

<sup>59</sup> *Id.* at \*186–87.

<sup>60</sup> 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/109.pdf> (“Paris Agreement”).

harms.<sup>61</sup> Scientific research estimated the global carbon budget for maintaining a likely chance of meeting the Paris climate targets, providing clear benchmarks for United States and global climate action.<sup>62</sup>

In 2021, the United States committed to reduce the nation’s greenhouse gas emissions 50–52% by 2030.<sup>63</sup> President Biden also has recognized the need for action, stating that the “United States and the world face a profound climate crisis. We have a narrow moment to pursue action . . . in order to avoid the most catastrophic impacts of that crisis.” Exec. Order No. 14008, *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg. 7,619, 7,619 (Jan. 27, 2021).

Similarly, the Interior Department has acknowledged the need to address climate change when making management decisions on federal lands. Interior Secretarial Order 3289, *Addressing the Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources* (Sept. 14, 2009), stated that “the realities of climate change require us to change how we manage the land, water, fish and wildlife, and cultural heritage and Tribal lands and resources we oversee”; and acknowledged that the Department of the Interior is “responsible for helping protect the nation from the impacts of climate change.” And in 2021, the Secretary recognized that the “Nation faces a profound climate crisis,” ordering the Interior Department to “prioritize[ ] action on climate change.” Interior Secretarial Order 3399, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process* (April 16, 2021).

A fundamental disconnect exists, however, between the federal government’s commitment to address climate change, and how public lands are managed for energy production. A recent paper calculates that lifecycle emissions from federal fossil fuel development resulted in an average of 1,408 million metric tons (MMT) of Carbon Dioxide-equivalent (CO<sub>2</sub>e) per year since 2005 – the equivalent of 377 coal-fired power plants, or the emissions from 303 million cars – and are projected to be around 1,130 MMT CO<sub>2</sub>e by 2030.<sup>64</sup> These emissions will amount to around 20% of total U.S. emissions each year.<sup>65</sup>

The BLM cannot ignore national climate policy in making decisions over the proposed lease sale or in the NEPA analysis for any such sale. The CEQ climate guidance directs agencies

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<sup>61</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, GLOBAL WARMING OF 1.5°C, AN IPCC SPECIAL REPORT ON THE IMPACTS OF GLOBAL WARMING OF 1.5°C ABOVE PRE-INDUSTRIAL LEVELS AND RELATED GLOBAL GREENHOUSE GAS EMISSION PATHWAYS, IN THE CONTEXT OF STRENGTHENING THE GLOBAL RESPONSE TO THE THREAT OF CLIMATE CHANGE, SUSTAINABLE DEVELOPMENT, AND EFFORTS TO ERADICATE POVERTY (Oct. 6, 2018), <http://www.ipcc.ch/report/sr15/>.

<sup>62</sup> IPCC AR6 estimates the remaining carbon budget starting in 2020 for a 67% probability of limiting warming to 1.5°C at 400 GtCO<sub>2</sub>, depending on variations in reductions of non-CO<sub>2</sub> emissions (such as methane). At the current emissions rate of 42 GtCO<sub>2</sub> per year, this carbon budget would be expended in less than ten years. See IPCC AR6 at SPM-38 table SPM.2.

<sup>63</sup> U.S. Dep’t of State & U.S. Exec. Office of the President, *The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050*, at 1 (Nov. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf>.

<sup>64</sup> N. Ratledge et al., *Emissions from Fossil Fuels Produced on US Federal Lands and Waters Present Opportunities for Climate Mitigation*, 171 *Climatic Change*, no. 11, Mar. 14, 2022, at 2–5, <https://link.springer.com/content/pdf/10.1007/s10584-021-03302-x.pdf>.

<sup>65</sup> *Id.* at 6 fig. 2.

“to discuss whether and to what extent the proposal’s reasonably foreseeable GHG emissions are consistent with GHG reduction goals, such as those reflected in the U.S. nationally determined contribution under the Paris Agreement.”<sup>66</sup> The BLM should conduct this consistency evaluation with U.S. climate commitments and targets.

Relatedly, BLM’s NEPA analysis must address the social and economic costs resulting from development of any leases it offers and explain what benefits warrant incurring those costs. The CEQ climate guidance instructs agencies to use social cost of greenhouse gases (SC-GHG) estimates, which can “assist in assessing the significance of climate impacts.”<sup>67</sup> The BLM should focus on SC-GHG estimates consistent with the best available science, employing low discount rates that properly consider the considerable harm to future generations.<sup>68</sup>

For its June 2022 Wyoming lease sale, BLM used SC-GHG estimates to project that foreseeable development would cause billions of dollars in social and environmental harms. But BLM never explained why it chose to incur such enormous societal costs, or how its cost analysis informed the agency’s decision making. For example, the environmental assessment for that sale did not discuss whether there might be any benefits from the lease sale that warrant incurring those enormous costs.

BLM should not repeat this omission for its proposed second quarter 2023 sale and ignore the central question of whether any economic benefits and revenues compare to the enormous social and environmental costs of those sales. Offering numerous leases that will impose billions of dollars in social and environmental harms without addressing what (if any) countervailing benefits might warrant such a decision would be inconsistent with its obligations under FLPMA.

**c. The BLM must take a hard look at impacts to groundwater from well construction practices and hydraulic fracturing.**

NEPA requires the BLM to assess all the potential environmental impacts from oil and gas leases before it offers those leases to operators. That responsibility 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. May 1, 2020).

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 due to climate change alter water use, quality, and availability. The U.S. Environmental Protection Agency (EPA) has noted that existing drinking water resources “may not be sufficient in some locations to meet future demand” and that future

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<sup>66</sup> 88 Fed. Reg. at 1203.

<sup>67</sup> *Id.* at 1202–03.

<sup>68</sup> *See id.*

sources of fresh drinking “will likely be affected by changes in climate and water use.”<sup>69</sup> As a result, the BLM must protect 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.<sup>70</sup> However, federal rules and regulations do not provide specific direction for the 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.<sup>71</sup>

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 the 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.<sup>72</sup> For example, a report studying a sample of existing oil and gas well records in Montana confirms industry admissions that well casing and cementing practices do not always protect underground sources of drinking water.<sup>73</sup> 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.<sup>74</sup>

Given these risks to a critical resource, the BLM must evaluate potential groundwater impairment. As a threshold matter, the 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

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<sup>69</sup> 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) [hereinafter EPA 2016 Report], [www.epa.gov/hfstudy](http://www.epa.gov/hfstudy).

<sup>70</sup> 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.

<sup>71</sup> See BLM, *Regulatory Impact Analysis for the Final Rule to Rescind the 2015 Hydraulic Fracturing Rule*, at 44–45 (Dec. 2017), <https://beta.regulations.gov/document/BLM-2017-0001-0464>.

<sup>72</sup> 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) (2017 WEA comments), at 59, <https://www.regulations.gov/document?D=BLM-2017-0001-0412>.

<sup>73</sup> Rebecca Tisherman, et al., *Examination of Groundwater Resources in Areas of Wyoming Proposed for the June 2022 BLM Lease Sale* (May 12, 2022); Dominic DiGiulio, *Examination of Selected Production Files in Southcentral Montana to Support Assessment of the March 2018 BLM Lease Sale* (December 22, 2017), [https://eplanning.blm.gov/public\\_projects/nepa/87551/136880/167234/Earthjustice\\_Protest\\_1-12-2018.pdf](https://eplanning.blm.gov/public_projects/nepa/87551/136880/167234/Earthjustice_Protest_1-12-2018.pdf) (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).

<sup>74</sup> DiGiulio, *supra* note 76, at 4532.

water wells or any other incomplete proxy for a full description of all usable or potentially usable groundwater in the region.

Second, the 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, the BLM cannot presume that state and federal regulations will protect groundwater, because of the shortcomings and industry noncompliance described above.

The 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 would violate NEPA. *See id.*

**d. The BLM should thoroughly analyze the socioeconomic impacts of oil and gas leasing.**

The BLM must analyze the socioeconomic impacts of oil and gas leasing. The best available SC-GHG estimates provide an appropriate measure of the anticipated costs of the BLM’s leasing decisions.<sup>75</sup> While NEPA does not require a straight cost-benefit analysis,<sup>76</sup> the BLM may include the analysis to assist the agency and the public in weighing the choice among different alternatives and “as an aid in evaluating the environmental consequences.”<sup>77</sup>

Generating an estimate of estimated economic benefits from each lease sale is feasible. For example, previous lease sale EAs have forecast the bonus and rental payments resulting from that proposed sale.<sup>78</sup> It is also realistic to forecast potential oil and gas production (and thus royalties and other economic benefits) from the proposed leases. The BLM has prepared reasonably foreseeable development estimates in Colorado and other states,<sup>79</sup> that can be used for a forecast of future production. Moreover, the 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.”<sup>80</sup> A similar methodology could be used to estimate production royalty and related economic benefits from the leases.

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<sup>75</sup> *See* 88 Fed. Reg. at 1202.

<sup>76</sup> *Id.* at 1211.

<sup>77</sup> *Id.*

<sup>78</sup> *See, e.g.*, Bureau of Land Mgmt., First Quarter 2022 Oil and Gas Lease Parcel Sale DOI-BLM-MT-0000-2021-0006-EA 72 & tbl. 28 – 74 & tbl. 29 (Oct. 27, 2021).

<sup>79</sup> Bureau of Land Mgmt., Draft Environmental Assessment for the 2022 First Quarter Competitive Oil & Gas Lease Sale Parcels in the BLM Kremmling, Little Snake, Royal Gorge, and White River Field Offices and Parcels in the USDA Forest Service Pawnee National Grassland Office 22–24 (Nov. 2021).

<sup>80</sup> *See* Bureau of Land Mgmt., Environmental Assessment, DOI-BLM-WY-0000-2021-0003-EA 8 (Oct. 27, 2021).

One recent example illustrates how a comparison of costs and benefits bear on environmental impacts can be vital. In an assessment finalized in January 2021, the BLM declined to apply SC-GHG for a proposed coal mine expansion, deeming the project's emissions insignificant upon limited examination.<sup>81</sup> Annual greenhouse gas emissions for that project totaled approximately 11.4 million metric tons.<sup>82</sup> Using the current central estimate of climate damages of \$51 per metric ton, this quantity of emissions translates to roughly \$581 million in annual climate damages. Yet, according to the BLM's own analysis, the entire project was expected to produce only \$254 million in total revenue<sup>83</sup> – less than half of its *annual* climate cost. Had the BLM monetized key impacts, it should have determined not to proceed with the harmful project because the climate costs alone (not even including other substantial environmental and public-health costs) clearly outweighed the project's economic benefits.

The need to adequately consider the environmental costs and benefits (if any) of its leasing decisions is also part of the BLM's obligation under FLPMA's multiple-use mandate. 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)). The BLM cannot strike that balance without even considering what it is balancing.

**e. The BLM should thoroughly analyze the impacts of oil and gas leasing on public health.**

The Biden Administration has committed to "promot[ing] and protect[ing] public health and the environment" and "advanc[ing] environmental justice."<sup>84</sup> The BLM must acknowledge foreseeable direct, indirect, and cumulative human health impacts resulting from fossil fuel development should these lease sales proceed. Protecting public health is fundamental to the underlying purpose of NEPA, which was enacted in part to "stimulate the health and welfare of man," and mandates that agencies consider the degree to which their proposed actions affect public health or safety. 42 U.S.C § 4321; 40 C.F.R § 1508.27(b)(2). NEPA requires federal agencies "to use all practicable means, consistent with other essential considerations of national policy" to "assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings." 42 U.S.C 4331(b). "Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R § 1508.8. To protect public health and promote informed agency decision-making, transparency, and public participation, NEPA imposes "action-forcing procedures ... requir[ing] that agencies take a hard look at environmental consequences." *Robertson v. Methow Valley*

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<sup>81</sup> Bureau of Land Mgmt., Lila Canyon Mine Lease Modifications Environmental Assessment 38–39 & tbl. 3-12 (DOI-BLM-UT-G020-2018-0039-EA) (2021).

<sup>82</sup> *Id.* at 38 tbl. 3-12.

<sup>83</sup> *Id.* at 54.

<sup>84</sup> Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, sec. 1.

*Citizens Council*, 490 U.S. 332, 350 (1989). Such consequences include all “reasonably foreseeable” direct, indirect, and cumulative effects, including health effects. An effect is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.” *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). An agency’s hard look “must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.” *Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 692, 712 (10th Cir. 2010).

NEPA and its implementing regulations require the BLM to do more than list generalized categories of risks: the agency must analyze and take a hard look at those risks and their effects. *See* 40 C.F.R. § 1508.1. The intent of NEPA is for agencies to study the impact of their actions on the environment before the action is taken. *See Conner v. Burford*, 848 F.2d 1441, 1452 (9th Cir. 1988) (NEPA requires that agencies prepare an EIS before there is “any irreversible and irretrievable commitment of resources”); *see also Upper Pecos Ass’n v. Stans*, 500 F.2d 17 (10th Cir. 1974) (concluding that “consideration of environmental factors should come in the early stages of program and project formulation”).

Oil and gas development poses myriad public health impacts. An extensive and ever-growing body of peer-reviewed research has shown what people living near oil and gas operations already know firsthand – that proximity to drilling and fracking operations and other oil and gas facilities is linked to adverse health risks and impacts. Some of these risks and impacts are discussed in further detail throughout this section, but in general, they include but are not limited to:

- Reproductive harms – including birth defects, low birth weight, preterm births, and miscarriages;
- Respiratory health effects – including asthma, lung disease, breathing difficulty, and, most recently, increased vulnerability to COVID-19;
- Eye, skin, and throat irritation and rashes;
- Cardiovascular effects – including higher blood pressure and other indicators of, or precursors to, heart disease;
- Possible disruption of the endocrine system (a system of glands producing hormones that regulate a variety of functions in the body, including metabolism, growth and development, reproduction, sleep, and mood);
- Cancer (lung cancer and other types of cancer);
- Motor vehicle injuries and fatalities, and other health and safety risks associated with increased vehicle traffic (and the air pollutants it emits) from oil and gas development;
- Injuries and fatalities from explosions, fires, spills, and leaks; and
- Trauma and psychological stress.<sup>85</sup>

An excellent, frequently updated, and easy-to-use resource for keeping up with this growing body of peer-reviewed research is the Physicians, Scientists, and Engineers for Healthy

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<sup>85</sup> *See, e.g.*, Physicians, Scientists, and Engineers for Healthy Energy (“PSE Healthy Energy”), “The ROGER Citation Database,” <https://www.psehealthyenergy.org/our-work/shale-gas-research-library/>.

Energy (“PSE Healthy Energy”) database, the Repository for Oil and Gas Energy Research, or “ROGER.”<sup>86</sup> ROGER is an extensive repository of peer-reviewed literature, “a near-exhaustive collection of bibliographic information, abstracts, and links to many . . . journal articles that pertain to shale and tight gas development.”<sup>87</sup> This database is organized into several categories, and for the “Health” category alone, there are over 250 studies listed, including several recent studies from 2019–21. The BLM should avail itself of this invaluable resource to take NEPA’s requisite hard look at health impacts.

There are several other notable scientific papers the BLM should consider in order to analyze and disclose to the public the health risks and impacts associated with its leasing decisions.<sup>88</sup> Multiple peer-reviewed papers have identified adverse health effects and risks arising from exposure to unconventional oil and gas drilling operations, even within a large radius of residences – potentially up to ten miles.<sup>89</sup> For example, one study found that babies

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *See, e.g.*, R.Z. Witter, et al., Occupational exposures in the oil and gas extraction industry: state of the science and research recommendations, *AMERICAN JOURNAL OF INDUSTRIAL MEDICINE* (2014); Jessica Gilman, et al., Source signature of volatile organic compounds (VOCs) from oil and natural gas operations in northeastern Colorado, *ENVIRONMENTAL SCIENCE & TECHNOLOGY* (2013); Roxana Z. Witter, et al., The Use of Health Impact Assessment for a Community Undergoing Natural Gas Development, *FRAMING HEALTH MATTERS* (2013); Nadia Steinzor, et al., Investigating links between shale gas development and health impacts through a community survey project in Pennsylvania, *NEW SOLUTIONS*, vol. 23 iss. 1. (2013); John L. Adgate, et al., Potential Public Health Hazards, Exposures and Health Effects from Unconventional Natural Gas Development, *ENVIRONMENTAL SCIENCE & TECHNOLOGY* (2014); Christopher W. Moore et al., Air Impacts of Increased Natural Gas Acquisition, Processing, and Use: A Critical Review, *ENVIRONMENTAL SCIENCE & TECHNOLOGY* (2014); Avner Vengosh, et al., The effects of shale gas exploration and hydraulic fracturing on the quality of water resources in the United States, *PROCEDIA EARTH AND PLANETARY SCIENCE* (2014); Christopher D. Kassotis, et al., Estrogen and Androgen Receptor Activities of Hydraulic Fracturing Chemicals and Surface and Ground Water in a Drilling-Dense Region, *ENDOCRINOLOGY* (2014); Brian E. Fontenot, et al., An Evaluation of Water Quality in Private Drinking Water Wells Near Natural Gas Extraction Sites in the Barnett Shale Formation, *ENVIRONMENTAL SCIENCE & TECHNOLOGY* (2013); Sherilyn A. Gross, et al., Analysis of BTEX Groundwater Concentrations from Surface Spills Associated with Hydraulic Fracturing Operations, *JOURNAL OF THE AIR & WASTE MANAGEMENT ASSOCIATION* (2013); K.D. Retzer, et al., Motor vehicle fatalities among oil and gas extraction workers, *ACCIDENT ANALYSIS & PREVENTION* (2013); Gayathri Vaidyanathan, Fracking Can Contaminate Drinking Water, *Climate Wire* (April 4, 2016), <https://www.scientificamerican.com/article/fracking-can-contaminate-drinking-water/>; A. Tustin et al., Associations Between Unconventional Natural Gas Development and Nasal and Sinus, Migraine Headache, and Fatigue Symptoms in Pennsylvania, *ENVIRONMENTAL HEALTH PERSPECTIVES* (July 31, 2016), <http://ehp.niehs.nih.gov/wpcontent/uploads/advpub/2016/8/EHP281.acco.pdf>.

<sup>89</sup> *See, e.g.*, Lisa M. McKenzie et al., Birth Outcomes and Maternal Resident Proximity to Natural Gas Development in Rural Colorado, 122 *ENVIRONMENTAL HEALTH PERSPECTIVES* 412 (April 2014) [Hereinafter McKenzie et al., Birth Outcomes] (Finding an increased risk of congenital heart and neural tube defects in babies born to mothers living within 10 miles of a natural gas well); Janet Currie et al., Hydraulic Fracturing and Infant Health: New Evidence from Pennsylvania, 3 *SCIENCE ADVANCES* e1603021 (Dec. 13, 2017) (Finding evidence of negative health effects of in utero exposure to fracking sites within 3 km, or about 1.86 miles, of a mother’s residence, with the largest health impacts seen within 1 km, or about 0.62 miles); Ellen Webb et al., Potential Hazards of Air Pollutant Emission from Unconventional Oil and Natural Gas Operations on the Respiratory Health of Children and Infants, 31 *REV. ENVIRONMENTAL HEALTH* 225-243 (Jun. 1, 2016), at 236 [hereinafter Webb et al.] (Noting that many unconventional oil and gas setback rules, for setbacks of 1000 feet or less, do not adequately protect health, especially children’s respiratory health, that “the majority of municipal setback ordinances are not supported by empirical data,” and calling for a one-mile minimum for setbacks between drilling facilities and schools, hospitals, and occupied dwellings).



whose mothers lived in close proximity to multiple oil and gas wells were 30% more likely to be born with heart defects than babies born to mothers who did not live close to oil and gas wells.<sup>90</sup> Other adverse health impacts documented among residents living near drilling and fracking operations include increased reproductive harms, asthma attacks, higher rates of hospitalization, ambulance runs, emergency room visits, self-reported respiratory problems and rashes, motor vehicle fatalities, trauma, and drug abuse. Moreover, one recent study found that fracking and drilling near people’s homes “drives stress experiences that go beyond the mere presence of industrial land uses in neighborhoods,” and identified two key institutional barriers driving negative mental health impacts for people living near unconventional oil and gas (UOG) production – namely: (1) uncertainty, due to inaccessible, transparent information about environmental and public health risks; and (2) powerlessness to meaningfully impact regulatory or zoning processes.<sup>91</sup> In turn, “these institutional barriers make UOG production a chronic stressor – which can be more insidious, negative, and, significantly, can generate longer-term mental health impacts such as self-reported depression.”<sup>92</sup> The BLM must take a hard look at the adverse health risks and effects associated with proximity to oil and gas activity and facilities and disclose them to the public. In the EA, the BLM should disclose how many residences are within 1, 5, and 10 miles of the proposed leases.

The BLM must take a hard look not only at direct health impacts and proximity-related health impacts of oil and gas development, but also at cumulative health risks and impacts. *See* 40 C.F.R. § 1508.1(g)(3). Cumulative health risks and impacts can arise not only from multiple pollutant exposures, and cumulative pollution exposures over time, but also from compounding structural, social, and economic factors, many of which are rooted in systemic inequities and injustices. To adequately analyze human health impacts, the BLM should incorporate findings from regionally relevant health impact assessments (HIAs).<sup>93</sup> An HIA is an internationally used preventative health tool that anticipates the human health impacts of new or existing development projects, programs, or policies. The overall goal of this type of assessment is to identify and minimize negative health effects of a particular action, such as oil and gas development and production.

Researchers have begun to apply a growing body of evidence documenting how social and environmental stressors lead to health inequities and cumulative impacts<sup>94</sup> specifically in the

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<sup>90</sup> *See* McKenzie et al., *supra* note 89.

<sup>91</sup> *See* Stephanie A. Malin, Depressed democracy, environmental injustice: Exploring the negative mental health implications of unconventional oil and gas production in the United States, 70 Energy Research & Social Science, 101720 at 2 (2020).

<sup>92</sup> *Id.*

<sup>93</sup> *See* K. Lock, *Health impact assessment*, BRITISH MEDICAL JOURNAL 320 (2000).

<sup>94</sup> *See, e.g.*, Rachel Morello-Frosch et al., Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy, 30 HEALTH AFFAIRS 879 (May 2011) (Identifying four key concepts underlying the emerging knowledge about cumulative impacts of environmental and social stressors: “First, health disparities between groups of different racial or ethnic makeup or socioeconomic status are significant and persistent, and exist for diseases that are linked to social and environmental factors. Second, inequalities in exposures to environmental hazards are also significant and persistent, and are linked to adverse health outcomes. Third, intrinsic biological and physiological factors—for example, age—can modify the effects of environmental factors and contribute to differences in the frequency and severity of environmentally related disease. And fourth, extrinsic social vulnerability factors at the individual and community levels—such as race, sex, and socioeconomic status—may amplify the adverse effects of environmental hazards and can contribute to health disparities.”). In

oil and gas drilling context.<sup>95</sup> For example, the aforementioned 2016 Marcellus Shale study and HIA ranked “social determinants of health,” (in this study, social determinants included crime, injuries, mental health, sexually transmitted infections, and substance abuse) as a fracking-related hazard of the highest concern with respect to public health impacts, along with air quality and health care infrastructure.<sup>96</sup> Cumulative risks, too, were considered their own category of fracking-related public health hazard, and ranked as a “moderately high” concern (along with water quality, noise, and traffic).<sup>97</sup>

**f. The BLM should thoroughly analyze the impacts of oil and gas leasing on environmental justice.**

The BLM must take a hard look at environmental justice – not just in relation to health, but also in its own right. As defined by the U.S. Environmental Protection Agency, “environmental justice” means “the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>98</sup> Executive Order (EO) 12898 requires each Federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”<sup>99</sup> As the court stated in *Standing Rock v. U.S. Army Corps of Engineers*, “NEPA creates, through the Administrative Procedure Act, a right of action deriving from

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addition, the U.S. EPA and numerous states have called for, and developed guidance on, cumulative impact analyses, including cumulative risk assessments and HIAs, that analyze multiple environmental stressors in conjunction with social stressors, environmental justice considerations, and social determinants of health. *See, e.g.*, U.S. ENVIRONMENTAL PROTECTION AGENCY, FRAMEWORK FOR CUMULATIVE RISK ASSESSMENT (May), [https://www.epa.gov/sites/production/files/2014-11/documents/frmwrk\\_cum\\_risk\\_assmnt.pdf](https://www.epa.gov/sites/production/files/2014-11/documents/frmwrk_cum_risk_assmnt.pdf); MINNESOTA POLLUTION CONTROL AGENCY, CUMULATIVE IMPACT ANALYSIS, <https://www.pca.state.mn.us/air/cumulative-impact-analysis> (noting that “[p]eople’s health is affected by many outside factors including multiple sources of pollution and other social conditions and stressors. Some people and communities are burdened by higher levels of pollution and more social stressors than others”); CUMULATIVE IMPACTS SUBCOMMITTEE, ENVIRONMENTAL JUSTICE ADVISORY COUNCIL TO THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, STRATEGIES FOR ADDRESSING CUMULATIVE IMPACTS IN ENVIRONMENTAL JUSTICE COMMUNITIES (March 2009), [https://www.nj.gov/dep/ej/docs/ejac\\_impacts\\_report200903.pdf](https://www.nj.gov/dep/ej/docs/ejac_impacts_report200903.pdf) (identifying adverse cumulative impacts of exposures to multiple environmental burdens in “environmental justice” communities as one of “the most critical and pertinent Environmental Justice issues requiring state action and attention”).

<sup>95</sup> *See, e.g.*, Susan Kinnear et al., The Need to Measure and Manage the Cumulative Impacts of Resource Development on Public Health: An Australian Perspective (May 15, 2013), <https://www.intechopen.com/books/current-topics-in-public-health/the-need-to-measure-and-manage-the-cumulative-impacts-of-resource-development-on-public-health-anau>; Jill Johnston & Lara Cushing, Chemical Exposures, Health, and Environmental Justice in Communities Living on the Fenceline of Industry, 7 *Current Environmental Health Reports*, 48-57 (2020).

<sup>96</sup> Boyle et al., Hazard Ranking Methodology for Assessing Health Impacts of Unconventional Natural Gas Development and Production: The Maryland Case Study, *PLoS ONE* 11(1): e0145368.

<https://doi.org/10.1371/journal.pone.0145368>.

<sup>97</sup> *Id.*

<sup>98</sup> *See* U.S. Environmental Protection Agency, Environmental Justice, [www.epa.gov/environmentaljustice](http://www.epa.gov/environmentaljustice).

<sup>99</sup> Exec. Order No. 12,898, 59 Fed. Reg. 32 (Feb. 11, 1994), <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.

Executive Order 12898.”<sup>100</sup> Even more recently, President Biden’s January 27, 2021, “Executive Order on Tackling the Climate Crisis at Home and Abroad” explicitly recognizes the inexorable links among climate, health, and environmental justice (which includes social and economic justice), and the corresponding need to address all of them in concert, with a whole-of-government approach.<sup>101</sup> Environmental Justice is a “relevant factor” for which federal agencies must take a hard look under NEPA, made reviewable under the APA’s arbitrary and capricious standard.<sup>102</sup> As various executive orders and related agency guidance documents state,<sup>103</sup> and as courts have affirmed specifically, regarding the NEPA process, the BLM must take environmental justice seriously.

According to EPA Guidance on environmental justice in the NEPA process, an environmental justice analysis must also include “the cultural values that the community and/or Indian Tribe may place on a natural resource at risk.”<sup>104</sup> The Guidance also states that it is “essential” for the “NEPA analyst to consider the cumulative impacts from the perspective of these specific resources or ecosystems which are vital to the communities of interest.”<sup>105</sup> Failure to adequately analyze impacts to overburdened communities from additional fossil fuel leasing within the planning area would be arbitrary and capricious, a failure to “articulate a rational connection between the facts found and the choices made.”<sup>106</sup> The BLM must also adhere to the “process” requirements of environmental justice – fair treatment and meaningful involvement. If the BLM ignores or excludes the very people and communities who are most affected by its land allocation decisions, the BLM is not only denying them fair treatment and meaningful involvement in decision-making – and, in the case of indigenous peoples and Tribes, abrogating the right to self-determination and free prior and informed consent<sup>107</sup> – but also depriving itself, and the general public, of invaluable knowledge and expertise that would enable better-informed and more transparent decision-making. “Better decisions” are indeed a fundamental goal of

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<sup>100</sup> 440 F. Supp. 3d 1, 9 (D. D.C. 2020), *vacated by, in part, affirmed by, in part, Standing Rock Sioux Tribe v. United States Army Corp of Eng’rs*, 985 F.3d 1032 (D.C. Cir. 2021).

<sup>101</sup> See Executive Order 14008, 86 Fed. Reg. 7619-7633, Tackling the climate crisis at home and abroad (January 27, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-ontackling-the-climate-crisis-at-home-and-abroad/>.

<sup>102</sup> See *Latin Ams. for Social & Econ. Dev. v. Fed. Highway Admin.*, 756 F.3d 447, 465 (6th Cir. 2014); *Coliseum Square Ass’n, Inc. v. Jackson*, 465 F.3d 215, 232 (5th Cir. 2006); *Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 689 (D.C. Cir. 2004); *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 440 F. Supp. 3d 1, 9 (D. D.C. 2020), *vacated by, in part, affirmed by, in part, Standing Rock Sioux Tribe v. United States Army Corp of Eng’rs*, 985 F.3d 1032 (D.C. Cir. 2021); *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 87 (4th Cir. 2020).

<sup>103</sup> EO12898 (1994), EO 14008 (2021); see U.S. EPA (2016), “Promising Practices for EJ Methodologies in NEPA Review” available at [https://www.epa.gov/sites/default/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf).

<sup>104</sup> 1998 EPA NEPA Final Guidance [https://www.epa.gov/sites/production/files/2015-02/documents/ej\\_guidance\\_nepa\\_epa0498.pdf](https://www.epa.gov/sites/production/files/2015-02/documents/ej_guidance_nepa_epa0498.pdf).

<sup>105</sup> *Id.*

<sup>106</sup> *Motor Vehicle Mfr. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>107</sup> The duty to obtain free prior and informed consent (FPIC) from indigenous peoples is recognized by the International Labour Organization Convention (“ILO”) 169 and the U.N. Declaration on the Rights of Indigenous Peoples (“UNDRIP”), Articles 10, 11, 19, 28, 29, and 32. See UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples. FPIC is embedded in the right to self-determination. “The duty of States to obtain Indigenous Peoples’ FPIC entitles Indigenous people to effectively determine the outcome of decision-making that affects them, not merely a right to be involved.” UN Expert Mechanism on the Rights of Indigenous Peoples, Final report of the study on indigenous peoples and the right to participate in decision-making (August 17, 2011).

NEPA, and they require extensive, meaningful public involvement throughout an agency’s decision-making process – not just “input” on pre-determined agendas.<sup>108</sup> Indeed, environmental justice is not merely a box to be checked.

**g. The BLM must properly analyze methane emissions that would result from the lease sales.**

Methane is a potent climate pollutant that has contributed about half a degree Celsius to observed global warming.<sup>109</sup> There is now more methane in the atmosphere than at any time in the last 800,000 years, with concentrations increasing at an alarming rate since 2007, largely because of fossil fuel production.<sup>110</sup> Recent findings have amplified the urgent need to curtail oil and gas emissions, demonstrating that methane release from such development has been dramatically underestimated.<sup>111</sup> Analysis of pre-industrial ice cores “indicate that anthropogenic fossil [methane] emissions are underestimated by about 38 to 58 teragrams CH<sub>4</sub> per year, or about 25 to 40 percent of recent estimates.”<sup>112</sup> This “highlights the human impact on the atmosphere and climate, [and] provides a firm target for inventories of the global [methane] budget.”<sup>113</sup> The BLM must, in its baseline, properly account for current methane levels and the related climate and resource impacts associated with this and the related lease sales.

The Draft EA fails to take the requisite hard look at the impacts of methane emissions that will result from development of and production on these leases, including the economic, public health, and public welfare impacts of venting and flaring.<sup>114</sup> Venting and flaring of gas account for tremendous economic waste and adverse health impacts. In 2019 alone, venting or flaring accounted for roughly 150 billion cubic feet of methane, resulting in the loss of over \$50 million in federal royalty revenue – enough to meet the needs of over two million households, nearly as many households as the states of New Mexico, North Dakota, Utah, and Wyoming combined. This waste also means lost royalty revenues for taxpayers and Tribes. A recent analysis conducted by Synapse Energy Economics determined the value of lost gas in the form of: lost royalties; (2) lost state revenue from taxes; and (3) lost revenue from wasted natural gas that could be used for other purposes. The study found that \$63.3 million in royalties, \$18.8 million in state revenue from taxes (from the top six states), and \$509 million in gas value was lost due to venting, flaring, and leaks on federal and Tribal lands.<sup>115</sup> The report found that, in

<sup>108</sup> See 40 C.F.R. § 1500.1(c).

<sup>109</sup> Intergovernmental Panel on Climate Change (IPCC), Climate Change 2021: The physical Science Basis, Contribution of Working Group I to the Sixth Assessment Report of the IPCC, Summary for Policymakers SPM-7 (V. Masson-Delmotte et al. eds, 2021) [hereinafter IPCC AR6 WGI], [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf).

<sup>110</sup> IPCC, SIXTH ASSESSMENT REPORT, CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS, TECHNICAL SUMMARY TS-67.

<sup>111</sup> B. Hmiel et al., Preindustrial CH<sub>4</sub> indicates greater anthropogenic fossil CH<sub>4</sub> emissions, 578 NATURE 409, 409–12 (Feb. 19, 2020); S. Pandey et al., Satellite observations reveal extreme methane leakage from a natural gas well blowout, 116 PNAS 52 (2019).

<sup>112</sup> *Id.* at 409.

<sup>113</sup> *Id.*

<sup>114</sup> See, e.g., EDF, Flaring Aerial Survey Results (2021), <https://www.permianmap.org/flaring-emissions/>.

<sup>115</sup> Olivia Griot et al., Onshore Natural Gas Operations on Federal and Tribal Lands in the United States: Analysis of Emissions and Lost Revenue, Synapse Energy Economics Inc., 3 (Jan. 20, 2023), [https://blogs.edf.org/energyexchange/files/2023/01/EMBARGOED\\_EDF-TCS\\_Public\\_Lands\\_Analysis.pdf](https://blogs.edf.org/energyexchange/files/2023/01/EMBARGOED_EDF-TCS_Public_Lands_Analysis.pdf).

2019, leaks accounted for 46% and flaring for 54% of lost gas.<sup>116</sup> Wyoming had among the highest volumes of gas lost from federal and Tribal lands.<sup>117</sup>

Venting and flaring on Tribal and federal public lands also has significant health impacts on frontline and fence line communities.<sup>118</sup> These groups live near flaring wells at much higher rates than other communities across the country. Proximity to oil and gas infrastructure creates disproportionate adverse health risks and impacts on Indigenous communities in particular.<sup>119</sup> According to an Environmental Defense Fund (EDF) analysis, roughly 1,100 adults with asthma, 800 adults with chronic obstructive pulmonary disease, 700 adults with coronary heart disease, and 400 adults who have experienced a stroke live within a half mile of a flaring well.<sup>120</sup> Another study links flaring to shorter gestation and reduced fetal growth.<sup>121</sup> Indigenous communities face some of the worst consequences of excessive flaring. Reducing waste from flaring on federal and Tribal lands would lessen these harms and would be consistent with the Administration’s environmental justice commitments.

The BLM is presently undertaking a rulemaking on methane waste. As such, BLM should not issue additional oil and gas leases until the agency addresses waste on Tribal and federal public lands. At the least, the BLM must properly account for and estimate methane emissions that occur during oil and gas production and transport. This can easily be done using a reasonable leak rate assumption (such as 2.3%) and projected production estimates.<sup>122</sup> The BLM must further discuss and provide for adequate mitigation of methane emissions resulting from this lease sale.

#### **IX. The BLM must consider a range of reasonable alternatives, including a conservation and climate alternative.**

The BLM must evaluate a range of reasonable alternatives in the NEPA document prepared for this lease sale. The range of alternatives is the heart of a NEPA document because “[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of [a NEPA analysis] to inform agency deliberation and facilitate public involvement would be greatly degraded.” *New Mexico ex el. Richardson*, 565 F.3d at 683, 708. NEPA analysis must cover a reasonable range of alternatives so that an agency can make an informed choice from the spectrum of reasonable options. An environmental review offering a choice between leasing every parcel nominated, and leasing nothing at all, fails to present a reasonable range of alternatives.

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<sup>116</sup> *Id.* at 23.

<sup>117</sup> *Id.* at 24.

<sup>118</sup> *E.g.*, Jeremy Proville et al., *The demographic characteristics of populations living near oil and gas wells in the USA*, 44 *Population and Environment* 1 (2022), <https://doi.org/10.1007/s11111-022-00403-2>.

<sup>119</sup> *See, e.g., id.* at 2–5.

<sup>120</sup> Olivia Griot et al., *supra* note 115.

<sup>121</sup> Lara J. Cushing et al., *Flaring from Unconventional Oil and Gas Development and Birth Outcomes in the Eagle Ford Shale in South Texas*, 128 *ENVIRONMENTAL HEALTH PERSPECTIVES*, 077003 (2020).

<sup>122</sup> R. A. Alvarez et al., *Assessment of methane emissions from the U.S. oil and gas supply chain*, 361 *Science* 186 (Jun. 21, 2018).

The BLM should consider at least one conservation and climate alternative. The CEQ climate guidance directs agencies to “evaluate reasonable alternatives that may have lower GHG emissions, which could include technically and economically feasible clean energy alternatives to proposed fossil fuel-related projects.”<sup>123</sup> Importantly,

agencies should explain how the proposed action and alternatives would help meet or detract from achieving relevant climate action goals and commitments, including Federal goals, international agreements, state or regional goals, Tribal goals, agency-specific goals, or others as appropriate. . . . [A]gencies should identify the alternative with the lowest net GHG emissions or the greatest net climate benefits among the alternatives they assess. And . . . they should use the NEPA process to make informed decisions grounded in science that are transparent with respect to how Federal actions will help meet climate change goals and commitments, or alternately, detract from them.<sup>124</sup>

NEPA analysis must compare “relevant GHG emissions, GHG emission reductions, and carbon sequestration potential across reasonable alternatives, assessing trade-offs with other environmental values, and evaluating the risks from or resilience to climate change inherent in a proposed action and its design.”<sup>125</sup> Because of the “urgency of the climate crisis,” the BLM “should use the information provided through the NEPA process to help inform decisions that align with climate change commitments and goals.” Therefore, for this lease sale, the BLM should consider a protective alternative in line with U.S. climate commitments.

We strongly urge this conservation and climate alternative to entail substantial deferrals based on the conservation and climate leasing screens discussed in this comment letter. This reasonable alternative would defer parcels based on a climate screen and the criteria in IM 2023-007.

A conservation and climate alternative could rely on option value, which considers the value of avoiding leasing or delaying leasing or development.<sup>126</sup> Leasing lands for oil and gas development gives preference to oil and gas development at the expense of other uses while handcuffing the BLM’s ability to make other management decisions down the road. The presence of oil and gas leases or development can limit the BLM’s willingness to manage for other resources in the future.

Option value would allow realizing the economic benefits that could arise from delaying leasing or exploration and development based on improvements in technology, additional benefits that could come from managing these lands for other uses, and additional information on the impacts of climate change and ways to avoid or mitigate impacts on the environment. The BLM has the ability and obligation to undertake an analysis of the benefits of delaying leasing or permitting, which can be both qualitative and quantitative, considering both economic and environmental needs. Failing to account for the informational value of waiting puts the American

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<sup>123</sup> 88 Fed. Reg. at 1204.

<sup>124</sup> *Id.* at 1203–04.

<sup>125</sup> *Id.* at 1203.

<sup>126</sup> New York University School of Law, Institute for Policy Integrity, *Look Before You Lease: Reducing Fossil Fuel Dominance on Public Lands by Accounting for Option Value* at 4 (2020).

people at economic and financial disadvantages. The consideration of option value before offering leases would result in greater consideration of climate risks and reduced costs.<sup>127</sup>

#### **X. The BLM must properly evaluate mitigation measures.**

NEPA requires BLM to include a discussion of possible mitigation measures in an environmental assessment. *See 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”). If BLM is to rely on an EA instead of an EIS to evaluate an action with likely significant environmental effects, it must impose mitigation of those impacts in a mitigated FONSI. *See, e.g., Environmental Prot. Info. Ctr. v. United States Forest Serv.*, 451 F.3d 1005, 1011–12 (9th Cir. 2006); *Nat’l Audubon Soc’y v. Hoffman*, 132 F.3d 7, 11, 17 (2d Cir. 1997). NEPA requires BLM to consider ways to avoid, minimize, and mitigate impacts in accordance with the mitigation hierarchy. 40 C.F.R. §§ 1508.1(s). BLM must, in order, seek to avoid impacts, minimize impacts, and, only if those approaches are insufficient to fully mitigate the impacts, appropriately and sufficiently offset any remaining impacts.

Even were BLM to determine that GHG emissions from the lease sales are not significant, which they likely are, it is still obligated to mitigate those impacts pursuant to FLPMA. Climate mitigation measures are required to satisfy BLM’s obligation to prevent unnecessary or undue degradation under FLPMA. *See* 43 U.S.C. § 1732(b); *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, unnecessary or undue degradation 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)

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<sup>127</sup> *Id.* at 24.

(describing how appellants challenging conditions of approval bear the burden of establishing that they are “unreasonable or not supported by the data”).

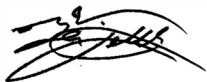
CEQ’s climate guidance explains that mitigation “plays a particularly important role in how agencies should assess the potential climate change effects of proposed actions and reasonable alternatives.”<sup>128</sup> The guidance emphasizes that “[a]gencies should consider mitigation measures that will avoid or reduce GHG emissions.”<sup>129</sup> Because of the “urgency of the climate crisis, CEQ encourages agencies to mitigate GHG emissions *to the greatest extent possible*,” including in terms of the alternatives analyzed.<sup>130</sup>

The BLM could mitigate projected GHG emissions and resulting climate impacts that would result from lease issuance by deferring actual lease issuance or including a new stipulation or lease term condition as part of a mitigated FONSI. The lease would not issue – or if issued, the stipulation or lease term could provide that no oil and gas exploration, development, or production may occur – unless and until: (a) DOI implements a programmatic climate conservation plan and projected GHG emissions from leasing were determined compatible with U.S. climate commitments; or (b) such GHG emissions could be adequately avoided, sequestered, or offset to avoid unnecessary or undue degradation and achieve and maintain sustained yield.

## XI. Conclusion.

We appreciate your consideration of the information, recommendations, and concerns in this scoping comment letter, including the appendix and attached references. Should you have any questions, please do not hesitate to contact us.

Respectfully submitted,



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<sup>128</sup> *Id.* at 1206 (emphasis added).

<sup>129</sup> *Id.* at 1204, 1206.

<sup>130</sup> *Id.* at 1206 (emphasis added); *id.* at 1204.



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