

**THE WILDERNESS SOCIETY  
THE COALITION TO PROTECT AMERICA'S NATIONAL PARKS \* POWDER  
RIVER BASIN RESOURCE COUNCIL \* ROCKY MOUNTAIN WILD \* WYOMING  
OUTDOOR COUNCIL**

May 10, 2024

*SUBMITTED VIA E-PLANNING*

Andrew Archuleta  
State Director  
Wyoming Bureau of Land Management  
5353 Yellowstone Road  
Cheyenne, WY 82009

Project Contacts:

Erik Norelius  
enoreliu@blm.gov  
(307) 775-6284

Allen Stegeman  
astegeman@blm.gov  
(307) 775-6259

Lindsay Abercrombie  
labercrombie@blm.gov  
(307) 332-8429

**Re: Scoping Comments on Parcels for the Wyoming Bureau of Land Management  
2024 Fourth Quarter Competitive Oil & Gas Lease Sale (DOI-BLM-WY-0000-2024-  
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) Wyoming 2024 Fourth Quarter Oil and Gas Lease Sale. Our organizations and members are deeply invested in sound stewardship of public lands and committed to ensuring that public land management prioritizes the health and resilience of ecosystems, equitably benefits the public, addresses environmental justice, protects biodiversity, and mitigates the impacts of climate change.

We are grateful for both the recently released final Fluid Mineral Leases and Leasing Process Rule (Leasing Rule) and the earlier release of several Instruction Memoranda (IMs)

implementing program reforms and provisions in the Inflation Reduction Act (IRA).<sup>1</sup> We appreciate the BLM’s attention to properly applying the Leasing Rule’s provisions and the IMs for this lease sale.

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

The BLM has substantial discretion over whether to lease agency managed lands for oil and gas development and production. Under the Mineral Leasing Act (MLA), lands “known or believed to contain oil or gas deposits *may* be leased” by the Interior Department.<sup>2</sup> If DOI chooses to lease lands, sales are held only “where *eligible* lands are *available*.”<sup>3</sup> For nearly a century, the U.S. Supreme Court and federal circuit courts have consistently recognized this “broad” and “considerable” discretion over the federal onshore leasing program.<sup>4</sup> The BLM recently affirmed this plain reading of the MLA in the final Leasing Rule, clearly stating that “[a]ll lands eligible and available for leasing *may* be offered for competitive auction.”<sup>5</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.<sup>6</sup>

---

<sup>1</sup> See Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. §§ 50262–50263 (2022).

<sup>2</sup> 30 U.S.C. § 226(a) (emphasis added).

<sup>3</sup> *Id.* § 226(b)(1)(A) (emphases added).

<sup>4</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>5</sup> 89 Fed. Reg. 30,916, 30,985 (Apr. 23, 2024).

<sup>6</sup> 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”); 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); 89 Fed. Reg. at 30,945 (“[T]he Secretary retains the

## II. The BLM should exercise its authority to defer several parcels in this lease sale under the leasing preference criteria.

The BLM must apply the leasing preference criteria, now codified in regulation,<sup>7</sup> to scoping parcels. Doing so clearly and consistently is important. A helpful example of clear application of the criteria is in the Environmental Assessment for the Wyoming Quarter Four 2023 Lease Sale.<sup>8</sup> There, the BLM included an explanation of each criterion being used, followed by a table designating the preference (low or high).<sup>9</sup> Each parcel that received a “low” designation was deferred, with a brief parenthetical explanation in the chart as to why it was being deferred.<sup>10</sup> We urge the BLM to follow a similar approach for this lease sale.

The final Leasing Rule states that the agency will continue to apply the preference criteria consistent with IM 2023-007.<sup>11</sup> The IM states that the BLM “will defer lease parcels with a low preference value.”<sup>12</sup> An exception to such deferral occurs “[i]f there are no high preference parcels available for the sale,” in which case “the office will select one or more low preference parcels that present the least conflicts based on the criteria.”<sup>13</sup> So long as there is one high leasing preference parcel available for the sale, the BLM should defer all parcels with any low leasing preference designation. If the BLM does forward any parcels that receive a low preference designation, we ask that the agency explain the specific reason for doing so.

While the IM preferences leasing parcels with “[p]roximity to existing oil and gas development,”<sup>14</sup> some of 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 therefore urge the BLM to document and prioritize community health and environmental justice, values the Administration has committed to upholding<sup>15</sup>. The agency

---

discretion to decide, even after lands have been determined to be eligible and available, what lands will ultimately be offered for lease.”). 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>7</sup> 43 C.F.R. § 3120.32

<sup>8</sup> *See* Bureau of Land Mgmt., Environmental Assessment, DOI-BLM-WY-0000-2023-0004-EA, 2023 Fourth Quarter Competitive Lease Sale, at 18 –21 & Table 2.3 (Nov. 2023).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 89 Fed. Reg. at 30,921.

<sup>12</sup> Bureau of Land Mgmt., Evaluating Competitive Oil and Gas Lease Sale Parcels for Future Lease Sales, IM 2023-007 (Nov. 21, 2022).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *See, e.g.*, Executive Order 14096, Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 Fed. Reg. 25,251 (Apr. 26, 2023).

has documented proximity to residences and communities in other lease sales.<sup>16</sup> The BLM should do so for this sale as well.

The regulations contemplate and allow for additional criteria to be applied to lease sale parcels.<sup>17</sup> We recommend that the BLM apply an environmental justice and community impacts criterion to this sale, designating as low preference those parcels within 1.25 miles of a residence.

Determining leasing preference also requires the BLM to evaluate the obligation “to take any action required to prevent unnecessary or undue degradation of the lands and their resources.”<sup>18</sup> The Conservation and Landscape Health rule defines “unnecessary or undue degradation” as:

harm to resources or values that is not necessary to accomplish a use’s stated goals or is excessive or disproportionate to the proposed action or an existing disturbance. Unnecessary or undue degradation includes two distinct elements: “Unnecessary degradation” means harm to land resources or values that is not needed to accomplish a use’s stated goals. For example, approving a proposed access road causing damage to critical habitat for a plant listed as endangered under the Endangered Species Act that could be located without any such impacts and still provide the needed access may result in unnecessary degradation. “Undue degradation” means harm to land resources or values that is excessive or disproportionate to the proposed action or an existing disturbance. For example, approving a proposed access road causing damage to the only remaining critical habitat for a plant listed as endangered under the Endangered Species Act, even if there is not another location for the road, may result in undue degradation. The statutory obligation to prevent “unnecessary or undue degradation” applies when either unnecessary degradation or undue degradation, and not necessarily both, is implicated.<sup>19</sup>

The BLM should explain how it is meeting this obligation with the parcels it moves forward in a lease sale and how application of the preference criteria do or do not fulfill this obligation to prevent unnecessary or undue degradation.

For the reasons discussed below, we recommend designating as low preference for leasing—and deferring—each of the parcels associated with the following conflicts.

**a. Designate as low preference for leasing and defer parcels not in close proximity to existing oil and gas development.**

---

<sup>16</sup> *E.g.*, Bureau of Land Mgmt., Pecos District Office Oil and Gas Lease Sale, Environmental Assessment, Quarter 2 2024, DOI-BLM-NM-P000-2023-0002-EA, at 68 (Mar. 2024).

<sup>17</sup> 43 C.F.R. § 3120.32 (“In evaluating the lands to be offered, as part of the scoping process, the BLM will consider, *at minimum*” the following criteria (emphasis added)).

<sup>18</sup> *Id.*

<sup>19</sup> 43 C.F.R. § 6101.2(aa).

Under 43 C.F.R. § 3120.32(a), the BLM will preference lands in proximity to oil and gas development where a “prudent operator would seek to expand existing operations.” Parcels 1885, 1886, 1895, 1899, and 1902 are not within close proximity to any existing oil and gas development (more than two miles from any producing wells).<sup>20</sup> We recommend that the BLM designate these parcels as having a low leasing preference related to proximity to existing oil and gas development and defer them from this lease sale.

**b. Designate as low preference for leasing and defer parcels in Priority Habitat Management Areas and General Habitat Management Areas for greater sage-grouse.**

The BLM will preference “lands that would not impair the proper functioning of [fish and wildlife] habitats or corridors.”<sup>21</sup> Several parcels conflict with these areas, should be designated as having a low preference for leasing, and should be deferred.

**i. Greater sage-grouse.**

This lease sale includes four parcels that overlap with Primary Habitat Management Area (PHMA) for the greater sage-grouse: 1885; 1886; 1895; and 1901. It also includes ten parcels that overlap with General Habitat Management Areas (GHMA): 1888; 1889; 1890; 1891; 1893; 1894; 1899; 1900; 1902; and 1908. We urge BLM to designate these parcels as having low preference for leasing and defer them from the lease sale 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 the 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, IM 2018-026, was struck down by a court.<sup>22</sup> The 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. Further, the approach the BLM has taken in Wyoming since the 2020 ruling fails to comply with the 2015 Plans: it may prioritize leasing away from PHMA but does nothing to guide leasing away from GHMA lands.

Second, all parcels in sage-grouse habitat should be deferred in light of the BLM’s ongoing consideration of revisions to the 2015 Plans.<sup>23</sup> The BLM’s pending plan 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

---

<sup>20</sup> See Rocky Mountain Wild, Wyoming Upcoming Oil and Gas Lease Sales, [https://rockymountainwild.org/oil\\_and\\_gas/wyoming](https://rockymountainwild.org/oil_and_gas/wyoming) (last visited May 10, 2024).

<sup>21</sup> 43 C.F.R. § 3120.32(b)

<sup>22</sup> *Montana Wildlife Federation v. Bernhardt*, No. 18-cv-69-GF-BMM, 2020 WL 2615631 (D. Mont. May 22, 2020).

<sup>23</sup> See IM 2023-010 (allowing BLM to “defer any oil and gas leasing parcels from lease sales” pending plan amendments or revisions).

Endangered Species Act listing. Sage-grouse populations have continued to decline under the 2015 Plans.<sup>24</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. In the meantime, leasing in PHMAs and GHMAs must be deferred to safeguard future conservation opportunities, especially given the breadth of undeveloped leased lands in Wyoming.

In March 2021, U.S. Geological Survey (USGS) researchers released a report that provides one of the most comprehensive population trend modeling efforts ever undertaken for sage-grouse.<sup>25</sup> The report reveals that 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%. Also, 78% of leks have a greater than 50% probability of extirpation in the next 56 years. In September 2022, the USGS and other federal agencies released a report that found 1.3 million acres of habitat are transitioning each year from largely intact sagebrush sites to less functioning sagebrush habitat.<sup>26</sup>

This science makes clear that the BLM’s focus should be to “stop the bleeding” on sage-grouse population losses.<sup>27</sup> The first step in doing so would be to defer all new leasing in the bird’s habitat while the agency develops an effective plan for saving this species.

To the extent the BLM does press ahead with leasing in PHMA or GHMA while it reconsiders the 2015 Plans, it must provide a full analysis of the reasonably foreseeable impacts to sage-grouse from development on those particular leases. Earlier this year, a court found that BLM’s lease sale analysis of sage-grouse impacts violated the National Environmental Policy Act (NEPA).<sup>28</sup> The court recognized that BLM’s practice of simply claiming that impacts from leases will be “similar” to those discussed in the NEPA documents for the 2015 Plans falls short of what the law requires.<sup>29</sup> Instead, the NEPA analysis must address the *specific* lands being offered and develop a “prediction of how this lease sale will likely impact sage grouse populations in light of all available evidence, including the more recent science that has motivated [BLM] to redraft the existing [2015 Plans].”<sup>30</sup> Thus, if the BLM chooses to offer sage-grouse habitat in this lease sale, it must revise its approach to sage-grouse analysis in order to comply with NEPA.

## ii. Big game habitat and routes.

---

<sup>24</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”) [Ex. 1, App. A], <https://www.wyofile.com/wyo-sage-grouse-counts-fall-again-marking-a-5-year-trend/>.

<sup>25</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, U.S. GEOLOGICAL SURVEY, OPEN-FILE REPORT 2020-1154 (2021) [Ex. 2 at App. A], <https://pubs.usgs.gov/of/2020/1154/ofr20201154.pdf>.

<sup>26</sup> THEOBALD K. DOHERTY ET AL., A SAGEBRUSH CONSERVATION DESIGN TO PROACTIVELY RESTORE AMERICA’S SAGEBRUSH BIOME, U.S. GEOLOGICAL SURVEY, OPEN-FILE REPORT 2022-1081 (2022) [Ex. 3 at App. A], <https://pubs.usgs.gov/of/2022/1081/ofr20221081.pdf>.

<sup>27</sup> *Wilderness Society v. U.S. Dep’t of [the] Interior*, No. 22-cv-1871 (CRC), 2024 WL 1241906, \*15 (D.D.C. Mar. 22, 2024).

<sup>28</sup> *Id.* at \*16.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at \*17; see *Western Watersheds Project v. Bernhardt*, 543 F. Supp. 3d 958, 991-93 (D. Idaho 2021).

This lease sale has one parcel that overlaps with a migration route for mule deer and pronghorn: 1888. It also contains one parcel that overlaps with mule deer critical winter range: 1902. These parcels should be designated as low preference and deferred.

The BLM is required to manage public lands “in a manner that will provide food and habitat” for all wildlife.<sup>31</sup> The research is clear that big game suffer considerable losses from leasing and development on their critical winter range.<sup>32</sup> The BLM should not be leasing these lands. Extensive leasing in crucial winter range has significant adverse impacts on Wyoming’s big game herds. By avoiding leasing lands on which these species depend, the BLM can uphold its duty under the Federal Land Policy and Management Act (FLPMA) to ensure food and habitat essential for mule deer and pronghorn.

If the BLM does offer leases in this habitat, it must provide a full analysis of the reasonably foreseeable impacts to big game populations from development on those particular leases. As with sage-grouse, a court’s decision earlier this year recognized that the BLM’s approach to analyzing big game violates NEPA because it relies on the analysis prepared for agency’s resource management plans (RMPs) and lacks “anything resembling an estimate of how the lease sale here will impact these species.”<sup>33</sup> This approach is especially inadequate because many of BLM’s Wyoming RMPs are decades old, and new research has shown that big game are suffering substantial population losses in areas of intensive oil and gas development.<sup>34</sup>

We urge BLM to refrain from leasing important big game habitat. But to the extent any leasing does occur, BLM cannot just rely on its RMP-level NEPA analysis. It “must use available evidence to reasonably forecast how these lease sales will affect mule deer or other big game” on the specific lands being leased.<sup>35</sup>

**c. Designate as low preference for leasing and defer parcels in areas with low oil and gas development potential.**

The BLM will preference lands with “high potential” for oil and gas development.<sup>36</sup> Five parcels are on lands with low oil and gas development potential: 1885; 1886; 1895; 1899; and 1902. These parcels should be designated as having a low preference for leasing and deferred.

---

<sup>31</sup> 43 U.S.C. § 1701(a)(8).

<sup>32</sup> See, e.g., A.K. Reinking et al., *Across Scales, Pronghorn Select Sagebrush, Avoid fences, and Show Negative Responses to Anthropogenic Features in Winter*, 10(5) ECOSPHERE 1, 1–14 (May 2019) [Ex. 4 at App. A], <https://esajournals.onlinelibrary.wiley.com/doi/epdf/10.1002/ecs2.2722>; BLM, Environmental Assessment for Wyoming First Quarter 2024 Competitive Lease Sale at 82–90, [https://eplanning.blm.gov/public\\_projects/2025221/200555584/20105111/251005111/2024-03.20240304.0804.WSO.921.2024-03%20EA.pdf](https://eplanning.blm.gov/public_projects/2025221/200555584/20105111/251005111/2024-03.20240304.0804.WSO.921.2024-03%20EA.pdf).

<sup>33</sup> *Wilderness Society*, 2024 WL 1241906, at \*19.

<sup>34</sup> *Id.* at \*18.

<sup>35</sup> *Id.* at \*19.

<sup>36</sup> 43 C.F.R. § 3120.32(e).

The MLA directs the BLM to hold periodic oil and gas lease sales for “lands . . . which are known or believed to contain oil or gas deposits.”<sup>37</sup> Offering parcels in low potential lands precludes management for other uses. The BLM itself recently reiterated this point, explaining that the preference criteria are meant to “ensure that oil and gas leasing on public lands focuses development where there is the most potential for recovery and allows the agency to manage public lands for other uses.”<sup>38</sup> Accordingly, we recommend deferring the five parcels on lands with low development potential.

**d. Consistently track EOIs and acreage pursuant to IM 2023-006.**

IM 2023-006, released on November 21, 2022, explains that the BLM “will create and periodically update a report to track the acreage of submitted EOIs.” Further, the IM requires the BLM to “place the [EOI acreage] report on the NFLSS Dashboard from the National-Apps Reporting System.” Therefore, the BLM should consistently track EOIs and acreage pursuant to IM 2023-006, make that information available to the public, and offer no more acreage than necessary to comply with the IRA’s requirements for allowing issuance of right-of-way permits for wind or solar development on public lands.

**III. The BLM must analyze greenhouse gas (GHG) emissions and factor GHG emissions into its leasing decisions.**

The BLM must not only properly analyze and quantify, under NEPA, the direct, indirect, and cumulative GHG emissions and climate impacts that may result from leasing, but it must also factor GHG emissions into its leasing decisions.

In terms of analyzing GHG emissions pursuant to NEPA, 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>39</sup> To that end, the BLM should follow this guidance, including quantifying the reasonably foreseeable GHG emissions—both direct and indirect—of the lease sale under each alternative.<sup>40</sup> The BLM must “[d]isclose and provide context for the GHG emissions and climate impacts associated with the lease sale and alternatives.”<sup>41</sup> As part of its analysis, the BLM must also consider the effects of climate change on reasonably foreseeable oil and gas activities that will result from the sale. This requires evaluating how climate impacts will affect the resources, ecosystem, communities, and oil and gas infrastructure, making it more vulnerable to adverse effects and stranded assets.<sup>42</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>43</sup>

---

<sup>37</sup> 30 U.S.C. § 226(a); *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.”).

<sup>38</sup> 89 Fed. Reg. at 30,956.

<sup>39</sup> *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 88 Fed. Reg. 1196 (Jan. 9, 2023).

<sup>40</sup> *Id.* at 1200.

<sup>41</sup> *Id.* at 1201.

<sup>42</sup> *Id.* at 1208.

<sup>43</sup> *Id.* at 1200–02.



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.”<sup>44</sup> Further, 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>45</sup>

CEQ guidance also includes accounting for national climate policy in the analysis for the sale. The CEQ climate guidance directs agencies “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>46</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 gas (SC-GHG) estimates, which can “assist in assessing the significance of climate impacts.”<sup>47</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>48</sup>

The BLM must, however, do more than simply analyze GHG emissions. It must also address GHG emissions in its leasing decisions. Earlier this year, a court held that “the complexity of the task does not give the [BLM] a free pass to avoid making these tough decisions by asserting that GHG emissions did not factor into its decision-making.”<sup>49</sup> The BLM “must . . . explain how its GHG analysis inform[s] the decision to select” its preferred alternative.<sup>50</sup>

---

<sup>44</sup> *Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 342 (D.C. Cir. 2002); 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”))).

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

<sup>46</sup> 88 Fed. Reg. at 1203.

<sup>47</sup> *Id.* at 1202–03.

<sup>48</sup> See *id.*

<sup>49</sup> *Wilderness Society*, 2024 WL 1241906, at \*91.

<sup>50</sup> *Id.*

#### IV. 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 development on those leases could impact groundwater.<sup>51</sup>

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 sources of fresh drinking “will likely be affected by changes in climate and water use.”<sup>52</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 producing formations, oil and gas development can contaminate underground sources of water.<sup>53</sup> However, federal rules and regulations do not provide specific directions for the BLM and operators on how to protect all usable water. As a result, agency regulations, like the 43 C.F.R. § 3172.7 (formerly Onshore Order No. 2) requirement to “protect and/or isolate all usable water zones” are inconsistently applied and often disregarded in practice.<sup>54</sup>

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 all usable water would be protected during drilling.<sup>55</sup> Multiple reports studying samples of existing federal

---

<sup>51</sup> *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 457 F. Supp. 3d 880, 886–89 (D. Mont. May 1, 2020).

<sup>52</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] [Ex. 5 at App. B], [www.epa.gov/hfstudy](http://www.epa.gov/hfstudy).

<sup>53</sup> See, e.g., Gayathri Vaidyanathan, *Fracking Can Contaminate Drinking Water*, at 8, *Sci. Am.* (Apr. 4, 2016) [Ex. 6 at App. C], <https://www.scientificamerican.com/article/fracking-can-contaminate-drinking-water/>; 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) [hereinafter DiGiulio 2016] [Ex. 7 at App. C]; EPA 2016 Report.

<sup>54</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>55</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>.

oil and gas wells in Wyoming and Montana confirm industry admissions that well casing and cementing practices do not always protect underground sources of drinking water.<sup>56</sup> Indeed, multiple courts have invalidated BLM lease sales in recent years due to the agency's failure to grapple with this evidence.<sup>57</sup>

Similarly, a study of hydraulic fracturing in Pavillion, Wyoming, indicated 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>58</sup>

Given these risks to a critical resource, the BLM must evaluate potential groundwater impairment from any leases it proposes to offer.

First, as a threshold matter, the BLM must provide a detailed account of all groundwater resources that could be impacted in the areas considered for leasing, 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 (the standard for usable water and underground sources of drinking water). This data is readily available from the USGS and other resources,<sup>59</sup> and the BLM cannot substitute existing drinking water wells or other inadequate proxies for a full description of all potentially usable groundwater resources in the area.

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.

Third, the BLM may not defer its analysis until the APD stage because information is readily available at the lease sale stage to evaluate groundwater risks.<sup>60</sup> As noted above, data is available to identify the depth and quality of aquifers in the area of proposed leasing. And the BLM can look to nearby existing oil and gas wells for a forecast of the likely depth of new wells and whether those wells present concerns over adequate casing and cementing. A failure to conduct such an analysis would violate NEPA.<sup>61</sup>

---

<sup>56</sup> See, e.g., Rebecca Tisherman, et al., *Examination of Groundwater Resources in Areas of Wyoming Proposed for the June 2022 BLM Lease Sale* (May 12, 2022) [Ex. 8 at App. C]; 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>57</sup> See *Wilderness Society*, 2024 WL 1241906 at \*8–11; *WildEarth Guardians*, 457 F. Supp. 3d at 886–89.

<sup>58</sup> DiGiulio 2016, *supra* note 53, at 4532 [Ex. 7 at App. C].

<sup>59</sup> See Tisherman report [Ex. 8] and DiGiulio report, *supra* note 56.

<sup>60</sup> *WildEarth Guardians*, 457 F. Supp. 3d at 888.

<sup>61</sup> See *id.*

**V. The BLM must properly analyze methane emissions that would result from the lease sale.**

The BLM must 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>62</sup> 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. 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: (1) 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>63</sup> The report found that, in 2019, leaks accounted for 46% and flaring for 54% of lost gas.<sup>64</sup> Wyoming had among the highest volumes of gas lost from federal and Tribal lands.<sup>65</sup>

Venting and flaring on Tribal and federal public lands has significant health impacts on frontline and fence line communities.<sup>66</sup> Proximity to oil and gas infrastructure creates disproportionate adverse health risks and impacts on Indigenous communities in particular.<sup>67</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>68</sup> Another study links flaring to shorter gestation and reduced fetal growth.<sup>69</sup> Reducing waste from flaring on federal and Tribal lands would lessen these harms and would be consistent with the Administration’s environmental justice commitments. Therefore, the BLM should not issue additional oil and gas leases until the agency addresses waste on Tribal and federal public lands.

**VI. 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

---

<sup>62</sup> See, e.g., EDF, Flaring Aerial Survey Results (2021), <https://www.permianmap.org/flaring-emissions/>.

<sup>63</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) [Ex. 9 at App. C], [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).

<sup>64</sup> *Id.* at 23.

<sup>65</sup> *Id.* at 24.

<sup>66</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>67</sup> See, e.g., *id.* at 2–5.

<sup>68</sup> Olivia Griot et al., *supra* note 63 [Ex. 9].

<sup>69</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).

public involvement would be greatly degraded.”<sup>70</sup> 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.

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>71</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>72</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>73</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.

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

NEPA requires BLM to include a discussion of possible mitigation measures in an environmental assessment.<sup>74</sup> 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>75</sup> The guidance emphasizes that “[a]gencies should consider mitigation measures that will avoid or reduce GHG emissions.”<sup>76</sup> CEQ encourages agencies to mitigate GHG emissions *to the greatest extent possible*,” including in

---

<sup>70</sup> *New Mexico ex rel. Richardson*, 565 F.3d at 683, 708.

<sup>71</sup> 88 Fed. Reg. at 1204.

<sup>72</sup> *Id.* at 1203–04.

<sup>73</sup> *Id.* at 1203.

<sup>74</sup> 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”).

<sup>75</sup> *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 88 Fed. Reg. 1196, 1206 (emphasis added) (Jan. 9, 2023).

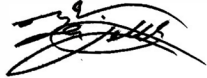
<sup>76</sup> *Id.* at 1204, 1206.

terms of the alternatives analyzed.<sup>77</sup> The BLM should evaluate and require mitigation measures in line with this guidance.

### **VIII. Conclusion.**

We appreciate your consideration of these comments. Should you have any questions, please do not hesitate to contact us.

Respectfully submitted,



Ben Tettlebaum (on behalf of the below-listed parties)  
Director & Senior Staff Attorney  
**The Wilderness Society**  
1801 Pennsylvania Ave NW, 2nd Floor  
Washington, D.C. 20006  
[ben\\_tettlebaum@tws.org](mailto:ben_tettlebaum@tws.org)  
(720) 647-9568

Emily Thompson  
Deputy Director  
**The Coalition to Protect America's National Parks**

Katherine Stahl  
Community Organizer  
**Powder River Basin Resource Council**

Alison Gallensky  
Conservation Geographer, Leadership Team  
**Rocky Mountain Wild**

Meghan Riley  
Public Lands and Wildlife Advocate  
**Wyoming Outdoor Council**

Enclosed: Appendices A, B, and C.

---

<sup>77</sup> *Id.* (emphasis added).

**Exhibit Index to Comments of TWS et al. on Scoping Comments on Parcels for the Wyoming Bureau of Land Management 2024 Fourth Quarter Competitive Oil & Gas Lease Sale (DOI-BLM-WY-0000-2024-0004-EA)**

<b><u>App.</u></b>	<b><u>Exhibit No.</u></b>	<b><u>Bates No. Range</u></b>	<b><u>Title/Description</u></b>
A	1.	0001-0013	Angus Thuermer, Jr, <i>Wyo sage grouse counts fall again, marking a 5-year trend</i> , Wyo File (Sept. 14, 2021)
A	2.	0014-0273	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, U.S. GEOLOGICAL SURVEY, OPEN-FILE REPORT 2020-1154 (2021)
A	3.	0274-0323	THEOBALD K. DOHERTY ET AL., A SAGEBRUSH CONSERVATION DESIGN TO PROACTIVELY RESTORE AMERICA'S SAGEBRUSH BIOME, U.S. GEOLOGICAL SURVEY, OPEN-FILE REPORT 2022-1081 (2022)
A	4.	0324-0340	A.K. Reinking et al., <i>Across Scales, Pronghorn Select Sagebrush, Avoid fences, and Show Negative Responses to Anthropogenic Features in Winter</i> , 10(5) Ecosphere 1, 1-14 (May 2019)
B	5.	0341-1007	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)
C	6.	1008-1016	Gayathri Vaidyanathan, <i>Fracking Can Contaminate Drinking Water</i> , at 8, Sci. Am. (Apr. 4, 2016)
C	7.	1017-1029	Dominic C. DiGiulio & Robert A. Jackson, <i>Impact to Underground Sources of Drinking Water and Domestic Wells from Production Well Stimulation and Completion Practices in the Pavillion, Wyoming Field</i> , 50 AM. CHEM. SOCIETY, ENVTL. SCI. & TECH. 4524, 4532 (Mar. 29, 2016)
C	8.	1030-1050	Rebecca Tisherman, et al., <i>Examination of Groundwater Resources in Areas of Wyoming Proposed for the June 2022 BLM Lease Sale</i> (May 12, 2022)
C	9.	1051-1082	Olivia Griot et al., <i>Onshore Natural Gas Operations on Federal and Tribal Lands in the United States: Analysis of Emissions and Lost Revenue</i> , Synapse Energy Economics Inc., 3 (Jan. 20, 2023)