

**NATURAL RESOURCES DEFENSE COUNCIL * COALITION TO PROTECT AMERICA'S
NATIONAL PARKS * ROCKY MOUNTAIN WILD * NATIONAL PARKS CONSERVATION
ASSOCIATION**

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SUBMITTED VIA E-PLANNING

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**Re: Comments on the Draft Environmental Assessment for the Bureau of Land Management Utah
2025 Fourth Quarter Competitive Oil & Gas Lease Sale (DOI-BLM-UT-0000-2025-0003-EA)**

To Whom It May Concern:

Thank you for the opportunity to submit these comments on the Draft Environmental Assessment (Draft EA) analyzing the 46 parcels covering 68,263.38 acres under consideration for potential oil and gas exploration and development for the Bureau of Land Management's (BLM's) Utah 2025 Fourth Quarter Oil and Gas Lease Sale.¹ 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, benefits the public and local communities, protects biodiversity, and mitigates the impacts of climate change.

As the BLM prepares for this lease sale and evaluates which parcels to offer for lease, the agency must continue to abide by its obligations under the law and existing policy, including the Fluid Mineral Leases and Leasing Process Rule (Leasing Rule), which implements program reforms and provisions in the Inflation Reduction Act. In carrying out this lease sale, the BLM must comply with all applicable federal, state, and local laws and regulations.

¹ See Bureau of Land Mgmt., BLM Utah 2025 Fourth Quarter Competitive Oil and Gas Lease Sale Environmental Assessment: DOI-BLM-UT-0000-2025-00003-EA (July 2025) [hereinafter Draft EA], https://eplanning.blm.gov/public_projects/2037591/200648264/20138025/251038005/2025%20Quarter%204%20Lease%20Sale%20DOI-BLM-UT-0000-2025-00003-EA.pdf.

We appreciate that the BLM has evaluated an alternative for this lease sale, Alternative B – Greater Sage-Grouse Alternative, which would defer 39 parcels from this lease sale. Under this alternative, the BLM would offer 7 parcels containing 11,103 acres. 39 parcels would be deferred based on greater sage-grouse prioritization because they are located within General Habitat Management Areas (GHMAs): UT-2025-12-1602, -1603, -1617, -1618, -1620, -1622, -1625, -1626, -1627, -1634, -1640, -1641, -1643, -1644, -1645, -1650, -1655, -1657, -1658, -1660, -7723, -7727, -7728, -7733, -7731, -7734, -7735, -7738, -7739, -7740, -7746, -7753, -7758, -7759, -7760, -7762, -7763, -7764, and -7771. We agree with these parcel deferrals.

We further urge the BLM to defer the following parcels due to the conflicts discussed in depth below:

- UT-2025-12-1630 (overlap with mule deer crucial winter habitat)
- UT-2025-12-1636 (overlap with mule deer crucial winter habitat, lands with wilderness characteristics)
- UT-2025-12-1638 (overlap with mule deer crucial winter habitat, elk crucial winter habitat)
- UT-2025-12-1656 (overlap with mule deer crucial winter habitat, elk crucial winter habitat)
- UT-2025-12-7765 (overlap with mule deer crucial winter habitat, elk crucial winter habitat)
- UT-2025-12-7768 (overlap with mule deer crucial winter habitat, elk crucial winter habitat)

I. The BLM cannot justify leasing under the so-called “national energy emergency” and must follow the required National Environmental Policy Act (NEPA) procedures.

The so-called “national energy emergency” declared in Executive Order 14156, 90 Fed. Reg. 8,433 (Jan. 29, 2025), and the associated emergency procedures set forth in the “Alternative Arrangements for NEPA Compliance”² (Emergency Procedures), are a transparent pretext to exempt fossil fuel leasing and development from environmental laws rather than a response to an actual energy emergency. The BLM cannot justify leasing based on the alleged national energy emergency, as it is attempting to do for this lease sale. *See* Draft EA at 15 (“[R]emoval of parcels from lease consideration would not contribute to the fulfillment of EO 14154, Unleashing American Energy.”). Nor can the agency, here or at any point in the oil and gas leasing process, utilize the Emergency Procedures to circumvent its obligations under NEPA.

The Emergency Procedures are unlawful for numerous reasons: (1) they are premised on the baseless and unsupported declaration of a “national energy emergency”; (2) they conflict with the Department of the Interior’s NEPA regulation on emergency responses, including the Department’s recent updates to its NEPA regulations; (3) they violate the Department’s public participation obligations; (4) they fail to conform to the requirements for Administrative Procedure Act (APA) notice and comment rulemaking; and (5) they are inconsistent with the timeframes and participation periods mandated by the BLM’s oil and gas leasing regulations. The Department must clarify that the Emergency Procedures cannot be used to approve onshore oil and gas leasing because, among other reasons, they are inconsistent with the

² *See* Dep’t of the Interior, Alternative Arrangements for NEPA Compliance (Apr. 2025), https://www.doi.gov/sites/default/files/documents/2025-04/alternative-arrangements-nepa-during-national-energy-emergency-2025-04-23-signed_1.pdf; Dep’t of the Interior, Department of the Interior Implements Emergency Permitting Procedures to Strengthen Domestic Energy Supply (Apr. 23, 2025), <https://www.doi.gov/pressreleases/department-interior-implements-emergency-permitting-procedures-strengthen-domestic>.

timeframes and participation periods mandated by 43 C.F.R. § 3120.42(b). This BLM regulation contains no exceptions and requires the BLM to provide a 30-day scoping period, 30-day comment period, a Notice of Competitive Lease Sale at least 60 calendar days prior to the lease auction, and a 30-day protest period following the posting of the Notice of Competitive Lease Sale. The Emergency Procedures are inconsistent with these requirements and thus cannot be used to approve onshore oil and gas leasing.

The BLM's recently issued Instruction Memorandum (IM) 2025-028 commands the agency to offer for lease "all eligible parcels"—regardless of leasing preference designation—based on the national energy emergency declaration. *See* BUREAU OF LAND MGMT., INSTRUCTION MEMORANDUM 2025-028: OIL AND GAS LEASING – LAND USE PLANNING AND LEASE PARCEL REVIEWS 5 (May 8, 2025). The IM is unlawfully directing BLM offices to offer parcels for lease irrespective of conflicts—such as with wildlife habitat, cultural resources, or the other issues identified in the agency's leasing preference criteria, *see* 43 C.F.R. § 3120.32—premised on a fictional national energy emergency. As discussed in more depth below, to comply with the agency's obligations pursuant to its own leasing regulations and the statutory requirements of the Federal Land Policy and Management Act (FLPMA) and NEPA, the BLM must rescind this IM and disregard its invalid directives for this lease sale.

For detailed discussion as to why the so-called national energy emergency cannot justify oil and gas leasing and why the BLM cannot use the Emergency Procedures for leasing, please refer to the May 16, 2025, letter submitted to the Secretary of the Interior, which this comment letter incorporates by reference. *See* EARTHJUSTICE ET AL., DEPARTMENT OF THE INTERIOR EMERGENCY NEPA PROCEDURES (May 16, 2025) [Ex. 1].

In addition, the results of the most recent lease sale that the BLM held in Utah on June 3, 2025, indicate that oil and gas companies are not responsive to leasing offers that ignore market forces, the development potential of offered lands, and are arbitrarily based on the alleged national energy emergency. In April, the BLM announced that it would be adding 11 parcels totalling 20,045 acres to the June lease sale that were originally offered for lease in September, 2023, and were not purchased at that time. No company had renominated the lands for leasing in the June, 2025 lease sale, yet in the Decision Record issued for the sale it was stated that the decision to lease the lands was "consistent with Executive Order 14154, *Unleashing American Energy*."³ On the day of the sale, no bids were received for any of the 11 parcels added to the sale and the only two parcels that sold were those that had been nominated and initially scoped for the June sale. This outcome shows how the decision to lease any public lands based on adherence to Executive Order 14156 is wasteful, inefficient, and offers no benefit to American taxpayers – only costs.

³ *See* Bureau of Land Mgmt., BLM Utah 2025 Second Quarter Competitive Oil and Gas Lease Sale Environmental Assessment: DOI-BLM-UT-0000-2024-00001-EA (May 2025) at 10, https://eplanning.blm.gov/public_projects/2037591/200648264/20138025/251038005/2025%20Quarter%204%20Lease%20Sale%20DOI-BLM-UT-0000-2025-00003-EA.pdf.

II. The BLM has authority to defer—and should defer—lease parcels proposed for this sale.

The BLM is not mandated to offer for lease, or to issue leases for, any *particular* parcel for oil and gas development and production.⁴ Where conflicts with other uses exist, the BLM must analyze the deferral of lease parcels. The MLA does not contravene the Federal Land Policy and Management Act's (FLPMA's) resource conservation requirements. Under FLPMA, the BLM must manage public lands according to “multiple use” and “sustained yield” and “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archeological values.” 43 U.S.C. §§ 1701(a)(7) & (8), 1712(c)(1), 1732(a). Multiple use obligates the agency to make the “most judicious use” of public lands and their resources to “best meet the present and future needs of the American people.” *Id.* § 1702(c). This requires taking “into account the long-term needs of future generations,” ensuring “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment.” *Id.* Sustained yield mandates “achiev[ing] and maint[aining] in perpetuity . . . a high-level annual or regular periodic output of the various *renewable* resources of the public lands consistent with multiple use.” *Id.* § 1702(h) (emphasis added). The BLM must “take any action necessary to prevent unnecessary and undue degradation of the lands.” *Id.* § 1732(b). “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. . . .” *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009) (emphasis added).

The BLM is therefore not obligated to lease any *specific* parcel of public land for oil and gas development. The agency retains the authority to defer lease sale parcels, even after bidding has concluded.⁵ Moreover, where conflicts with other uses exist, the agency must affirmatively evaluate deferral of parcels in its alternatives analysis under the National Environmental Policy Act (NEPA), as discussed below.

⁴ See *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); *Mont. Wildlife Fed’n v. Haaland*, 127 F.4th 1, 44–45 (9th Cir. 2025) (“We note that there is no doubt that the government has the authority affirmatively to determine which parcels shall be offered for oil and gas leasing”); *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.”).

⁵ 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 *W. Energy All. v. Salazar*, No. 10-cv-0226, 2011 U.S. Dist. LEXIS 98380, at *9–23 (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).

III. The BLM has not ensured that leasing is compliant with FLPMA.

FLPMA creates a framework governing the BLM's management of public lands. *See* 43 U.S.C. §§ 1701–1772. It provides for management of public lands under principles of multiple use and sustained yield. *See id.* § 1732(a).

Land use plans or Resource Management Plans (RMPs) project both the present and future use of the land. The BLM uses RMPs to identify which areas will be open to oil and gas leasing and development. *See* 43 C.F.R. § 1601.0-5(n). RMPs establish, among other things, “[l]and areas for limited, restricted or exclusive use,” “[a]llowable resource uses . . . and related levels of production or use to be maintained,” “[r]esource condition goals and objectives to be attained,” and “[p]rogram constraints and general management practices.” *Id.*; *see* 43 U.S.C. § 1712(a). FLPMA prohibits the BLM from taking actions inconsistent with the provisions of RMPs. *See* 43 U.S.C. § 1732(a); 43 C.F.R. § 1610.5-3(a) (“All future resource management authorizations and actions . . . shall conform to the approved plan.”). RMPs may grant the BLM authority to lease in certain areas. *See* 30 U.S.C. § 226(b)(1)(A); 43 C.F.R. § 3120.1-2(a). Before issuing leases, however, the agency must confirm that the applicable RMP is up to date and that the underlying environmental analysis will support a contemporary leasing decision. If an RMP is more than five years old, the BLM must reevaluate and confirm that the analysis and any underlying assumptions remain valid. *See* 42 U.S.C. § 4336b. An RMP would no longer support a new leasing decision if important new data, policies, or changed circumstances exist that were not considered when it was approved. *See* H-1601-1 — LAND USE PLANNING HANDBOOK, SECTION VII.C, DETERMINING WHEN IT IS NECESSARY TO REVISE AN RMP; 43 C.F.R. § 1610.5-6. If an RMP is too old or stale to support a new leasing decision, the BLM must revise the RMP or undertake a new, thorough environmental analysis, such as an Environmental Impact Statement (EIS), to support new leasing.

The plan governing lands subject to this lease sale is nearly 17 years old and inadequately analyzes impacts. The Approved RMP for the BLM Vernal Field Office does not adequately account for or address the environmental impacts on resources and land uses due to climate change or greenhouse gas emissions.⁶ Consequently, the BLM should defer leasing in these areas until the agency can consider new inventories and analyze how best to protect the resources. At the very least, the agency must undertake a thorough analysis that analyzes the potential impacts (direct, indirect, and cumulative⁷) that new leasing and development would have on sensitive resources.

⁶ *See* BUREAU OF LAND MGMT., *BLM VERNAL FIELD OFFICE RECORD OF DECISION & APPROVED RESOURCE MANAGEMENT PLAN* (Oct. 2008),

https://eplanning.blm.gov/public_projects/lup/68145/86218/103392/VernalFinalPlan.pdf.

⁷ Courts have consistently held that NEPA's mandate includes considering cumulative effects. *See, e.g., Swain v. Brinegar*, 542 F.2d 364, 369–70 (7th Cir. 1976); *Henry v. Federal Power Commission*, 513 F.2d 395, 406 (D.C. Cir. 1975); *Sierra Club v. Morton*, 510 F.2d 813, 824 (5th Cir. 1975); *Hanly v. Kleindienst*, 471 F.2d 823 (2d Cir. 1972).

IV. The BLM cannot defer to the application of lease stipulations and lease notices or the additional use of best management practices (BMPs), standard operating procedures (SOPs), or site-specific mitigation measures that *may* be applied at the permitting stage, in place of thoroughly analyzing at the leasing stage the potential impacts that new leasing and development would have on sensitive resources.

With the exception of eight site-specific resource concerns (concerning air quality; greenhouse gas emissions and climate change; greater sage-grouse; reed mustards; and penstemon species), the Draft EA eliminates all other issues from detailed analysis and provides only a basic outline of each issue and a brief discussion regarding the degree of impact from development on the affected parcels. *See* Draft EA at 23. In place of conducting adequate analysis of reasonably foreseeable impacts to other resources from oil and gas leasing and reasonably foreseeable development on leased parcels, the Draft EA simply applies the leasing stipulations identified under the relevant RMP and defers more thorough, site-specific analysis to the permitting stage, at which point the use of BMPs, SOPs, or site-specific mitigation measures *may* be applied:

Applying these protective measures (stipulations and lease notices) at the time of leasing would inform the lessee of the resource...The BLM needs no further analysis at this stage; however, the BLM may apply additional mitigation measures and buffers at the APD stage, as necessary to protect these areas. The BLM would conduct additional site-specific NEPA analysis at that time. *See* Draft EA at 41.

Given the BLM's ability to mitigate resource impacts through the attachment of stipulations and lease notices at the leasing stage and coupled with site-specific analysis and pre-disturbance biological surveys at the lease development stage, impacts to resources are expected to be avoided, minimized, and reduced, such that any reasonably foreseeable impacts can be effectively addressed. *See* Draft EA at 100.

The Draft EA has also automatically eliminated the Low Preference Parcel Avoidance Alternative from detailed analysis, based solely on the availability of lease stipulations:

Resource conflicts identified for the nominated parcels have been addressed in this EA. The lease stipulations and notices presented in chapter 3 provide adequate protections for the resources from potential conflicts, therefore this alternative is not needed. *See* Draft EA at 15.

As we'll discuss in Section V of this letter, in relying on the application of lease stipulations and notices and the presumed future application of BMPs, SOPs, and other site-specific mitigation measures, the Draft EA has failed to adequately analyze reasonably foreseeable impacts to other resources from oil and gas leasing and from reasonably foreseeable development on leased parcels. Deferring protection of these resources to mitigative action that *may* be taken at a future date is not only imprudent, but also duplicitous considering action that the Interior Department has recently taken with respect to permitting. This type of shell-game is frequently used in agency decision making, and the additional analysis ultimately never occurs. There is currently insufficient information, including agency resources and scientifically backed

data, to ensure the resulting potential effects of oil and gas development on other public land resources will be adequately analyzed and considered at the permitting stage.

In addition, the Draft EA's reliance on lease stipulations and notices to "provide adequate protections for the resources [identified for the nominated parcels] from potential conflicts" is unwarranted considering the frequency with which the BLM grants industry applications for exemptions from protective stipulations. For example, between January 1, 2018 and February 1, 2023, BLM field offices in Wyoming granted approximately 90% of the 127 waivers that oil and gas companies applied for in order to conduct industry activities in areas that have been set aside to protect sage grouse and migratory raptors. *See* Public Employees for Environmental Responsibility (PEER), "BLM Oil Exemptions Threaten Sage Grouse in Wyoming" (Mar. 8, 2023), <https://peer.org/blm-oil-exemptions-threaten-sage-grouse-wyoming/>; *see also* PEER, GREATER SAGE GROUSE - PROTECTION EXEMPTION REQUESTS: BUREAU OF LAND MANAGEMENT, WYOMING 1/1/18 - 2/1/23 (Feb. 17, 2023) [Ex. 2], https://peer.org/wp-content/uploads/2023/03/3_7_23_Spreadsheet-Wyoming-Sage-Grouse-Consultations-2.17.23.pdf. With how routinely the BLM grants these exceptions with no public process and no analysis of cumulative effects, the BLM cannot claim that the attachment of stipulations and lease notices at the leasing stage sufficiently addresses reasonably foreseeable impacts to all resources or negates the need to consider all reasonable alternatives.

V. The Draft EA furthers the BLM's recent unlawful and inadequate practices of failing to analyze the conservation and multiple use conflicts and environmental impacts associated with the proposed lease parcels as required under NEPA and FLPMA, and does not adequately evaluate the deferral of parcels based on such conflicts, including through the use of the leasing preference criteria.

The BLM must evaluate the environmental impacts of this proposed lease sale under NEPA. *See, e.g.*, 42 U.S.C. §§ 4331–4347. NEPA fosters informed decision making by federal agencies and promotes informed public participation in government decisions. *See Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983). To meet those goals, NEPA requires that the BLM "consider every significant aspect of the environmental impact of a proposed action" and inform the public of those impacts. *Id.* (internal citation omitted); *accord Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553 (1978).⁸ The BLM must take a "hard look" at the environmental effects before making any leasing decisions, ensuring "that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–50 (1989). Environmental "[e]ffects are reasonably foreseeable if they are sufficiently likely to occur that a person of ordinary prudence would take [them]

⁸ *See Kleppe v. Sierra Club*, 427 U.S. 390, 410, 413 (1976); *City of Rochester v. U.S. Postal Serv.*, 541 F.2d 967, 973–74 (2d Cir. 1976); *Concerned About Trident v. Rumsfeld*, 555 F.2d 817, 825 (D.C. Cir. 1976); *City of Davis v. Coleman*, 521 F.2d 661, 666–677 (9th Cir. 1975); *Brooks v. Coleman*, 518 F.2d 17, 18 (9th Cir. 1975); *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 89 (2d Cir. 1975); *Env'tl. Def. Fund, Inc. v. Corps of Eng'rs of U.S. Army*, 492 F.2d 1123, 1135 (5th Cir. 1974); *Swain v. Brinegar*, 517 F.2d 766 (7th Cir. 1975); *Minnesota Public Interest Research Group v. Butz*, 498 F.2d 1314, 1322 (8th Cir. 1974); *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 834–36 (D.C. Cir. 1972); *Hanly v. Kleindienst*, 471 F.2d 823, 830–31 (2d Cir. 1972); *Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n.*, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

into account in reaching a decision.” *Sierra Club v. Fed. Energy Regulatory Comm’n*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (internal quotation omitted).

Indeed, the BLM has recognized the importance of retaining the ability to defer parcels after conducting its environmental review. Pursuant to the Leasing Rule, “[w]hen determining *whether* the BLM should offer lands specified in an expression of interest at lease sales, the BLM *will evaluate*” the agency’s “*obligations* to manage public lands for multiple use and sustained yield and to take any action required to prevent unnecessary or undue degradation of the lands and their resources.” 43 C.F.R. § 3120.32 (emphases added). During the scoping process, the BLM must evaluate what lands to offer based on the preference criteria. *See id.* This means the BLM’s own regulations require the agency to retain discretion after scoping to determine whether to offer—or defer—certain lands. Otherwise, the BLM cannot fulfill its multiple use and sustained yield obligations under FLPMA or account for resource conflicts with industry-nominated parcels. The BLM discussed this need in the final Leasing Rule, explaining that it “changed the ‘shall’ to ‘may’” in 43 C.F.R. § 3120.11, which now states, “All lands eligible and available for leasing may be offered for competitive auction.” The agency did so “to clarify that the Secretary retains the discretion to decide, *even after lands have been determined to be eligible and available*, what lands will ultimately be offered for lease.” 89 Fed. Reg. at 30,945 (emphasis added). BLM offices need the ability to defer lease parcels to avoid resource conflicts. For example, as discussed below, sage-grouse prioritization requires the agency to prioritize new oil and gas leasing outside of habitat management areas. BLM offices must retain the discretion to defer nominated parcels in that habitat, along with other areas where resource and other conflicts exist.

The BLM’s recently released IM 2025-028, which, as noted above, mandates that the agency move forward all “eligible” parcels for leasing regardless of their preference designation or resource conflicts, thus deviates from long-standing BLM policy and practice that allows the agency to fulfill its legal requirements. For years and across multiple lease sales and administrations, the agency has regularly deferred parcels based on resource and other conflicts. *See, e.g.*, BUREAU OF LAND MGMT., DECISION RECORD: BLM WYOMING 2024 SECOND QUARTER COMPETITIVE OIL AND GAS LEASE SALE 1 (June 27, 2024) (deferring a parcel based on its location in sage-grouse habitat). In fact, the BLM is still considering modified leasing alternatives that analyze parcel deferrals in upcoming quarterly lease sales. *See, e.g.*, BUREAU OF LAND MGMT., BLM UTAH 2025 THIRD QUARTER COMPETITIVE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT: DOI-BLM-UT-0000-2025-00001-EA at 16 (May 2025) (analyzing deferral of four parcels due to conflicts with sage-grouse habitat). To meet its legal mandates under FLPMA, the BLM must maintain the ability to defer lease parcels that involve resource conflicts.

By encouraging use of Determinations of NEPA Adequacy (DNAs), IM 2025-028 at 4, the IM also undercuts the BLM’s mandate under NEPA to take a “hard look” at environmental impacts. The IM encourages using a DNA where the “proposed leasing action is adequately analyzed in an existing NEPA document and is in conformance with the approved RMP.” *Id.* But the BLM is often tiering to severely outdated RMPs in its current EAs. *See, e.g.*, BUREAU OF LAND MGMT., PECOS DISTRICT OFFICE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT, EDDY AND ROOSEVELT COUNTIES, NEW MEXICO, QUARTER 4 2025, DOI-BLM-NM-P000-2025-0001-EA at 2 (Apr. 2025) [hereinafter NM Q4 2025 EA]. In the NM Q4 2025 EA, the BLM relies on RMPs from as far back as

1997 and 1988. *See id.* Relying on such outdated RMPs to justify a DNA in this EA would violate the BLM’s hard-look requirement under NEPA, along with its requirement not to rely on old or stale RMPs under FLPMA.

Our concerns are well grounded because we have already seen the BLM substantially curtailing its environmental reviews of other lease sales. Rather than analyzing issues in depth for specific resource conflicts based on the scoping parcels, the agency has instead been merely analyzing most of the issues “in brief.” The IM’s directive will compound issues with the already abbreviated NEPA analyses, which are failing to meet the BLM’s NEPA obligations, especially in combination with the agency’s practice of punting analysis to the permitting stage. The agency’s pattern and practice has been to defer various analysis to the permitting stage. For example, in the recent Colorado Quarter Three Lease Sale Draft EA, the BLM failed to conduct any analysis of site-specific big game impacts, deferring review to the Application for Permit to Drill (APD) stage. BUREAU OF LAND MGMT., DRAFT ENVIRONMENTAL ASSESSMENT QUARTER 3 2025: DOI-BLM-CO-0000-2025-0001-EA at E-12 (Feb. 2025) (“[I]n-depth analyses will be conducted as necessary once an action is proposed . . .”). The BLM also deferred detailed analysis on vegetation issues. *See id.* at E-5 to E-6. In other lease sale EAs, the BLM has punted analysis of recreation impacts, BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT DOI-BLM-WY-000-2025-0001-EA: 2025 THIRD QUARTER COMPETITIVE LEASE SALE at 12 (Apr. 2025), socioeconomic impacts, *id.* at 76, and groundwater impacts, *see, e.g.*, BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT DOI-BLM-WY-000-2021-0003-EA: 2022 FIRST QUARTER COMPETITIVE LEASE SALE at 209 (Apr. 2022). The BLM “cannot escape” proper analysis at the leasing stage “by claiming that a more precise analysis is not feasible and promising a more probing review of the site-specific effects at the APD stage.” *Wilderness Soc’y v. U.S. Dep’t of the Interior*, No. 22-cv-1871 (CRC), 2024 U.S. Dist. LEXIS 51011, at *61 (D.D.C. Mar. 22, 2024) (quotation marks omitted).

Moreover, during the APD process itself, the BLM regularly fails to conduct the analysis it claims must wait for the permitting stage. The BLM has a practice of issuing drilling permits without any opportunity for public comment on the underlying EA and without providing any environmental analysis on the drilling project. In fact, the BLM routinely issues APDs without first providing the EAs, decision records, or any notice that the APDs have already been approved until well after the approval date, leaving the public completely in the dark on the decision-making process. In one example from March 2022, the BLM posted basic well information on its National NEPA Register website for four APDs. In early August 2022, the website reported after the fact that three of the four APDs were *previously approved* as of August 8, 2022, otherwise providing only basic well information with no EA or decision record. *Nearly two years later*, in April 2024, BLM posted the EA and decision record on the National NEPA register website. *See* BLM National NEPA Register, DOI-BLM-CA-C060-2022-0065-EA, “Documents” page (showing EA and decision record are dated for August 2, 2022, but the release date is nearly two years later, on April 11, 2024). There have been other examples in New Mexico and Wyoming. These practices give the public no opportunity to comment on the environmental analysis before the BLM renders a decision.⁹

⁹ The Carlsbad Field Office in New Mexico posted the EA, a FONSI, and Decision Record on February 21, 2025, for APDs for 39 horizontal oil and gas wells from the operator EOG Resources, Inc. *See* BLM National NEPA Register, DOI-BLM-NM-P020-2024- 1325-EA, “Documents” page, <https://eplanning.blm.gov/eplanning->

Beyond failing to provide notice of the EAs and decision records until well after an APD is approved, the BLM sometimes issues approvals without *ever* providing the EAs or decisions to the public. For example, the BLM approved an APD package of 50 wells without releasing the environmental review documents at any point. *See* BLM National NEPA Register, *DOI-BLM-CA-C060-2021-0074-DNA*, “Home” page (Feb. 27, 2023); BLM National NEPA Register, *DOI-BLM-CA-C060-2021-0074-DNA*, “Documents” page (Feb. 27, 2023). The agency has also approved APDs a day to a week after posting notice of the application, leaving no time for the public to learn about the application, let alone review and comment on it. *See, e.g.*, BLM National NEPA Register, *DOI-BLM-CA-C060-2022-0046-EA*, “Documents” page (June 7, 2022).

The BLM’s failures to review environmental impacts, not to mention its failures to even allow the public to comment on or release environmental documents, mean that the analyses the BLM punts from the leasing stage to the APD stage are woefully inadequate or never take place at all. As such, the BLM cannot use a DNA for this lease sale or defer environmental analysis to the APD stage.

For this lease sale, the BLM must disregard the IM’s unlawful directives when analyzing parcels. Rather, the agency must account for conservation conflicts based on the leasing preference criteria and the agency’s other statutory and regulatory obligations.

The BLM must address the failure of the Draft EA and Draft FONSI to properly analyze site-specific resource conflicts and the environmental effects discussed below.

a. The Draft EA fails to comply with the leasing preference criteria.

In considering environmental effects, the BLM must address whether to defer lease parcels based on conservation or other use conflicts, including by applying the leasing preference criteria to scoping parcels. *See* 43 C.F.R. § 3120.32. As explained in the Leasing Rule’s preamble: “The preference criteria . . . were proposed consistent with the MLA to direct the BLM’s administrative resources to leasing tracts most likely to be developed, to reduce conflicts between oil and gas development and other public land uses that were not resolved in the resource management plans, and to ‘take[] into account the long-term

[ui/project/2034305/510](https://eplanning.blm.gov/eplanning-ui/project/2034305/510) (last visited June 20, 2025). In this instance, the BLM released the EAs and decision records for these APDs on its National NEPA Register Site the same day as the decision date. This is a prevalent issue in Wyoming as well. For example, in the Casper Field Office, on February 23, 2024, the BLM released the EA, FONSI, and Decision Record in one document for seven horizontal oil and gas wells from one multi-well pad from the operator, 1876 Resources, LLC. The decision date posted on the National NEPA Register is also February 23, 2024. *See* BLM National NEPA Register, *DOI-BLM-WY-P060-2024-0034-EA*, “Documents” page, <https://eplanning.blm.gov/eplanning-ui/project/2030779/570> (last visited June 20, 2025). In another instance, the BLM released the EA and Decision Records for the APDs on its National NEPA Register site months after they were apparently approved. There, the Carlsbad Field Office, published EA, FONSI, and Decision Record Documents on the National NEPA Register on February 8, 2024, despite the documents being dated December 20, 2023, these would be posted two months *after* their approval date. The documents posted have no dates or signatures authorizing the Decision Records or FONSI to verify if the opportunity to comment period took place. These nine APDs from operator COG Operating LLC are labelled as “Completed” for the Environmental Assessment, even with no published decision date. *See* BLM National NEPA Register, *DOI-BLM-NM-P020-2024-0438-EA*, “Documents” page, <https://eplanning.blm.gov/eplanning-ui/project/2030996/570> (last visited June 20, 2025).

needs of future generations for renewable and nonrenewable resources.” 89 Fed. Reg. 30,916, 30,919 (Apr. 23, 2024) (quoting 43 U.S.C. §1702). Moreover, the agency explained that it “will apply the criteria . . . consistent with the BLM’s existing policy and implementation of IM 2023–007, *Evaluating Competitive Oil and Gas Lease Sale Parcels for Future Lease Sales*.” Although that IM has been rescinded, the Leasing Rule’s requirement that BLM will apply the preference criteria consistent with the principles in the IM remains. Those principles demand deferral of parcels with identified conflicts with the criteria.

Applying the leasing preference criteria 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. *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). There, the BLM included an explanation of each criterion being used, followed by a table designating the preference (low or high). *See id.* Each parcel that received a “low” designation was deferred, with a brief parenthetical explanation in the chart as to why it was being deferred. *See id.* We urge the BLM to follow a similar, consistent approach for this lease sale.

The BLM should defer lease parcels with a low preference value. If the BLM does move forward any parcels that receive a low preference designation, the agency must explain the specific reasons for doing so. The Draft EA currently fails to provide sufficient reasoning for moving forward with leasing in parcels that received low preference designation for high priority habitat. As noted above, the Draft EA states that surface use stipulations, derived from the relevant land use plans, are sufficient to account for and avoid, minimize, or mitigate impacts. *See* Draft EA at 15. However, stipulations serve a different purpose from the preference criteria, and most of the surface use stipulations are subject to broad waivers, exceptions, and modifications.

While the regulations preference leasing parcels with “[p]roximity to existing oil and gas development,” 43 C.F.R. § 3120.32(a), some of these areas risk further concentrating and expanding development, which would exacerbate ongoing and historical degradation to the affected area and the public health of nearby communities. We urge the BLM to not assign a “high” preference value to proposed lease parcels that are in proximity to existing oil and gas development or that are on lands with high development potential if the proposed parcels are on lands where other sensitive resources are present. In addition, we urge the BLM to document and prioritize community health and environmental justice impacts. The agency has documented proximity to residences and communities in other lease sales. *See, 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). The BLM should do so for this sale as well.

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.” 43 U.S.C. § 1732(b). The BLM has defined “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.

43 C.F.R. § 6101.2(aa). The BLM must 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.

a. The Draft EA fails to adequately analyze leasing parcels in greater sage-grouse habitat.

This lease sale includes parcels that overlap GHMA for the greater sage-grouse. We do appreciate that the Draft EA considers an alternative for this lease sale whereby the BLM would not offer the entirety of 39 parcels (UT-2025-12-1602, -1603, -1617, -1618, -1620, -1622, -1625, -1626, -1627, -1634, -1640, -1641, -1643, -1644, -1645, -1650, -1655, -1657, -1658, -1660, -7723, -7727, -7728, -7733, -7731, -7734, -7735, -7738, -7739, -7740, -7746, -7753, -7758, -7759, -7760, -7762, -7763, -7764, and -7771) that overlap GHMA. As stated earlier, we agree with these parcel deferrals.

The Proposed Action for this lease sale does not defer parcels overlapping GHMA for the greater sage-grouse, choosing instead to simply apply the leasing stipulations identified under the relevant RMPs. The Draft EA fails to adequately analyze the adverse effects of leasing these parcels in sage-grouse habitat.

Pursuant to its regulations, the agency must preference “lands that would not impair the proper functioning of [fish and wildlife] habitats or corridors.” 43 C.F.R. § 3120.32(b). Additionally, a key component of the 2015 GRSG Plans requires the BLM to prioritize new oil and gas leasing outside of PHMA and GHMA to protect that habitat from future disturbance. The Ninth Circuit recently affirmed that “the government must take an affirmative role in encouraging oil and gas leasing in non-sage-grouse habitat.” *Mont. Wildlife Fed’n*, 127 F.4th at 45. The BLM’s national policy addressing prioritization, IM 2018-026, has been struck down. *See Mont. Wildlife Fed’n v. Bernhardt*, No. 18-cv-69-GF-BMM, 2020 WL 2615631 (D. Mont. May 22, 2020), *aff’d*, 127 F.4th 1 (9th Cir. 2025). The agency has not adopted new national guidance on the prioritization requirement and has represented to the U.S. Montana District 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. What is clear is that the BLM cannot merely “respond to industry expressions of interest . . . in leasing specific land parcels,” but rather it must undertake “independent agency determinations of which parcels to offer for oil and gas leases.” *Wilderness Soc’y*, U.S. App. LEXIS 1106, at 69.

The Draft EA identifies parcels 1622, 1626, 1627, 1634, 1655, 1657, 1658, 1660, 7723, 7733, 7734, 7735, 7738, 7740, 7746, and 7771 as having low preference for leasing, based on the presence of greater biological components and fewer fluid mineral components. *See* Draft EA at Appendix H, 136. The remaining twenty-three parcels, UT-2025-12-1602, 1603, 1617, 1618, 1620, 1625, 1640, 1641, 1643, 1644, 1645, 1650, 7727, 7728, 7731, 7739, 7753, 7758, 7759, 7760, 7762, 7763, and 7764, are identified as having higher priority for leasing “because they are generally where fewer biological component(s) are present, and more than one fluid mineral component is also present.” *See id.* at 137. This latter determination is arbitrary, based only on a very brief analysis of each parcel’s biological and fluid mineral components without adequate consideration having been given to the reasonably foreseeable individual and cumulative impacts of leasing within the East Bench/Book Cliffs GHMA. It is apparent that the Draft EA has foregone this analysis in favor of identifying these twenty-three parcels as having high priority for leasing based on the surrounding areas having a relatively high percentage of lands already under lease and held by production as well as having high oil and gas potential. *See id.*

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. *See* 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) [Ex. 3], <https://doi.org/10.3133/ofr20201154>. The report reveals that since 1965, sage-grouse populations have declined 80% range-wide. *See id.* at 36. Since 2002, range-wide populations have declined 37%. *See id.* at 3. Also, 78% of leks have a greater than 50% probability of extirpation in the next 56 years. *See id.* at 52, 90. 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. *See* Kevin Doherty et al., A SAGEBRUSH CONSERVATION DESIGN TO PROACTIVELY RESTORE AMERICA’S SAGEBRUSH BIOME: U.S. GEOLOGICAL SURVEY OPEN-FILE REPORT 2022–1081, 28 (Sept. 22, 2022) [Ex. 4], <https://pubs.usgs.gov/of/2022/1081/ofr20221081.pdf>.

The BLM must provide an analysis of the reasonably foreseeable impacts to sage-grouse from development on the proposed lease parcels. The agency has “specifically identified ‘oil and gas development’ as a ‘major threat’ to sage-grouse habitat.” *Mont. Wildlife Fed’n*, 127 4th at 43. Previous lease sale analysis of sage-grouse impacts has been found to violate NEPA. *See Wilderness Soc’y*, No. 22-cv-1871 (CRC), 2024 U.S. Dist. LEXIS 51011, at *62. In *Wilderness Soc’y*, the district court recognized that the BLM’s practice of simply claiming that impacts from leases will be “similar” to those discussed in planning-level NEPA documents falls short of what the law requires. *See id.* at *54–62. 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.” *Id.* at *17; *see Mont. Wildlife Fed’n*, 127 F.4th at 45. (“[T]he government must take an affirmative role in encouraging oil and gas leasing in non-sage-grouse habitat, rather than just passively processing expressions of interest, all of which may target, and pretty much have targeted, sage-grouse territory.”); *Western Watersheds Project v. Bernhardt*, 543 F. Supp. 3d 958, 991–93 (D. Idaho 2021).

The science makes clear that the BLM’s focus must be to “stop the bleeding” on sage-grouse population losses. *See Wilderness Soc’y*, No. 22-cv-1871 (CRC), 2024 U.S. Dist. LEXIS 51011, at *59. The BLM

must conduct a proper analysis of effects to the sage-grouse for this lease sale and defer parcels in all GHMA, consistent with the Greater Sage-Grouse Alternative.

b. The Draft EA fails to properly analyze leasing parcels in big game habitat.

The Draft EA recognizes that all of the proposed lease parcels have crucial and substantial winter range for mule deer, year-long habitat for bison, crucial year-long habitat for Rocky Mountain bighorn sheep, year-long substantial habitat for pronghorn, and winter substantial habitat for elk. *See* Draft EA at 70. Pursuant to its regulations, the agency must preference “lands that would not impair the proper functioning of [fish and wildlife] habitats or corridors.” 43 C.F.R. § 3120.32(b). The Draft EA identifies every single parcel as having low preference for leasing based on overlap with crucial winter mule deer habitat. *See id.* at Appendix D, 100-110. Yet, the Draft EA’s discussion of impacts to big game from development of the proposed lease parcels is limited to a half-page discussion in which it is made clear that, despite it being well-known that energy production has adverse effects on big game species, the BLM has completely ignored the need for detailed analysis of such effects in favor of simply applying the relevant lease stipulations. The Draft EA’s concludes AIB-22 by stating that “[i]mpacts that may harm individual animals and their populations would be localized to the immediately disturbed locations, but they are unlikely to have larger, herd management unit level impacts.” *See* Draft EA at 70-71. With the EA having failed to provide even perfunctory discussion of reasonably foreseeable impacts to big game populations from oil and gas leasing and reasonably foreseeable development on leased parcels, this statement is completely unfounded.

FLPMA requires the BLM to manage public lands “in a manner that will provide food and habitat” for all wildlife. 43 U.S.C. § 1701(a)(8). Research makes clear that big game suffer considerable losses from leasing and development on their critical winter range. *See, e.g.,* Adele 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. 5],

<https://esajournals.onlinelibrary.wiley.com/doi/epdf/10.1002/ecs2.2722>. Peer-reviewed research has demonstrated that mule deer respond unfavorably to oil and gas development in migratory habitats, often missing out on high-quality forage during the spring migration. *See* Ellen O. Aikens et al., *Industrial energy development decouples ungulate migration from the green wave*, 6 NATURE ECOLOGY & EVOLUTION 1733, 1733–1741 (Oct. 2022) [Ex. 6], <https://doi.org/10.1038/s41559-022-01887-9>.

Extensive leasing in crucial winter range or migration corridors have significant adverse impacts on Utah’s big game herds. *See* Utah Division of Wildlife Resources, Department of Natural Resources, Utah Mule Deer Statewide Management Plan 2025-30, 10 (November 2024) [Ex. 7], https://wildlife.utah.gov/public_meetings/rac_minutes/2024-11-mule-deer-statewide-management-plan-2025-30.pdf.

Anthropogenic impacts have cumulatively resulted in significant direct loss of habitat available to big game in Utah. This direct loss of wildlife habitat has been amplified by the significant losses that have recently occurred in recent years due to both intensive drought and severe winter weather, as well as losses due to noise pollution, disturbance, and the overall fragmentation of remaining habitat from encroaching development. Habitat fragmentation and reduced connectivity is of increasing concern as big game species attempt to navigate through their annual life cycles between seasonal ranges. Ultimately,

these impacts and ongoing habitat loss reduce Utah's carrying capacity for the renowned big game populations the state has historically supported. Federal lands in Utah are especially important in providing high priority habitat for big game, specifically winter ranges and migration habitats on BLM lands, which tend to be lower-lying areas with less severe winter conditions compared to higher-elevation summer ranges.

For this lease sale, the BLM has provided virtually no meaningful information in the Draft EA about the presence and condition of big game habitat and connectivity corridors on the proposed lease parcels. Federal courts have repeatedly struck down this "cart-before-the-horse" approach. In fact, it appears that BLM conducted a less rigorous analysis here than it did in *Western Watersheds Project v. Bernhardt*, where the court remanded four BLM lease sales that involved dozens of parcels in Greater sage-grouse habitat. *See Western Watersheds Project v. Bernhardt*, 543 F. Supp. 3d 958 (D. Idaho 2021). There, BLM's EA included little more than "generic" information about the potential impacts of leasing on Greater sage-grouse. *Id.* at 989, 992. The court ruled that this approach violated NEPA because it failed to account for "the existence of additional information and data that could have informed a more site-specific impacts analysis than what BLM actually performed. *Id.* at 990. Moreover, the court specifically rejected the idea that the BLM could entirely defer site-specific analyses to the drilling stage by applying protective lease stipulations. *Id.* at 990 n.19; *see also N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 718 (10th Cir. 2009) ("Because BLM could not prevent the impacts resulting from surface use after a lease issued, it was required to analyze any foreseeable impacts of such use before committing the resources.").

The Draft EA does not disclose the extent to which crucial winter range will be affected when avoidance and displacement are taken into consideration. The BLM needs to take a hard look at the full scope of these impacts on the proposed parcels specifically, and explain whether they are consistent with the claim that threats to big game populations from the proposed action do not warrant more detailed analysis of both short-term and long-term effects from leasing and development, including beyond the time that final reclamation occurs.

c. The Draft EA fails to properly analyze leasing parcels that overlap inventoried Lands with Wilderness Characteristics (LWC) or are in proximity to Wilderness Study Areas.

The Draft EA states that the BLM has chosen to manage the LWCs that three proposed parcels (UT-2025-12-1636, -1655, and -7758) overlap "for multiple use and not specifically prioritize protection of wilderness characteristics in the applicable VFO 2008 RMP." *See* Draft EA at 31. While it is true that LWC inventory findings are a resource determination and do not compel protection, the BLM must preserve its ability to decide whether and how to protectively manage wilderness resources in a public planning process. In the 2008 Approved RMP for the Vernal Field Office, the Lower Bitter Creek LWC was one of ten LWC units that the BLM declined to manage for wilderness characteristics, based on the significant presence of existing oil and gas leases in those areas. *See* BLM-UT-PL-09-003-1610, at 33-34 (Oct. 31, 2008). Continuing to lease in the Lower Bitter Creek area will likely mean that future management decisions will meet the same foregone conclusion.

There is precedent for the BLM to exercise its discretion to defer parcels occurring on LWCs where management direction has not been made or where lands are being managed under such designations. The

Grand Junction Field Office deferred lease parcels from its December 2017 lease sale in areas that the BLM inventoried and found to have wilderness characteristics. The BLM stated: “Portions of the following parcels were deferred due to having lands with wilderness characteristics that require further evaluation.” *See* DOI-BLM-CO-N050-2017-0051-DNA, at 1 (Dec. 6, 2017). The Grand Junction Field Office completed its RMP revision in 2015, but the BLM still determined that it was inappropriate to lease areas that had been inventoried and found to possess wilderness characteristics because the RMP was completed in order to allow the agency to continue to consider management options for those wilderness resources.

The Draft EA provides generalized information regarding the indirect and direct impacts to wilderness characteristics that the issuance of oil and gas leases can cause, ultimately leading to increased levels of noise, altered viewshed, depreciated apparent naturalness, and reduction in opportunities for solitude and primitive recreation. The Draft EA claims that these impacts would be “temporary and localized,” but there is a lack of adequate analysis provided to support that conclusion. The Draft EA’s brief mention of the areas around parcels 1636, 1655, and 7758 possessing “a high degree of topographic and auditory screening due to steep ridges, deep washes, and generally broken terrain” does not provide enough site-specific evidence to support the use of stipulations alone to sufficiently mitigate the impact of “intense” development activity on the wilderness character of the lands. The BLM must provide a full analysis of how the reasonably foreseeable impacts to wilderness character from leasing and development on the proposed parcels that overlap the Lower Bitter Creek LWC unit could affect both the BLM’s ability and the BLM’s proclivity to manage the lands relative to wilderness characteristics in the future.

d. The Draft EA does not adequately analyze greenhouse gas (GHG) emissions and climate effects or factor GHG emissions and climate effects into its leasing decisions.

The BLM must not only properly analyze and quantify 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. *See Wilderness Soc’y*, No. 22-cv-1871 (CRC), 2024 U.S. Dist. LEXIS 51011, at *91. The agency must consider GHG analysis when making its decision on a lease sale. As one court recently explained: “Any claim that the analysis of GHG emissions was informational only and did not inform BLM’s decision-making is hard to square with [NEPA’s] purpose.” *Id.* at *87. The agency must also consider unquantified effects, recognize the worldwide and long-range character of climate change impacts, and incorporate this analysis of ecological information into its environmental analysis. *See* 42 U.S.C. §§ 4332(2)(A), (B), (D), (I) & (K). Indeed, the most recent scientific consensus on the pace of global climate change has found that global average surface temperatures will exceed 1.5 degrees Celsius within the next two years, meaning that any greenhouse gases added to the atmosphere—or permitted via the leasing under consideration here—will only go to prolong and exacerbate the profound local, national, and international effects of climate change.¹⁰ The BLM has the tools to undertake this analysis, but the Draft EA fails to do so.

The MLA requires the Secretary of the Interior to lease lands for oil and gas development only in the public interest. *See* 30 U.S.C. § 192. In its NEPA analysis, the BLM can and must consider adverse

¹⁰ *See*, World Meteorological Society, WMO GLOBAL ANNUAL TO DECADEAL CLIMATE UPDATE, 2025-2029 (2025), https://wmo.int/sites/default/files/2025-05/WMO_GADCU_2025-2029_Final.pdf [Ex. 8].

effects to health and the environment—part of the public interest—when determining whether to lease. See 43 U.S.C. § 1732(b) (requiring the BLM to prevent unnecessary and undue degradation); *cf. Sierra Club v. Fed. Energy Regulatory Comm’n*, 867 F.3d at 1373–74 (explaining that whether an agency must analyze certain environmental effects under NEPA turns on the question, “What factors can [the agency] consider when regulating in its proper sphere,” and holding that the agency consider direct and indirect environmental effects because the statute at issue indeed vested the agency with authority to deny the project based on harm to the environment (internal quotation marks omitted)). Such adverse environmental effects include those caused by GHG emissions and impacts on the climate.

Court decisions clearly establish that NEPA mandates consideration and analysis of the indirect and cumulative climate impacts of BLM fossil fuel production decisions, including at the leasing stage.¹¹ The BLM must ensure it fully considers not only the GHG emissions from prospective wells drilled on the leases sold at this lease sale—and the climate change impacts of those GHG emissions—but also the impacts of other federal lease sales in the state, region, and nation, as well as impacts from GHG emissions from non-Federal sources. The BLM must consider GHG emissions in the aggregate along with other foreseeable emissions. Such analysis is necessary to meet the cumulative impacts demands of NEPA.

The indirect and cumulative impacts must be given meaningful context, including within carbon budgets, rather than simply dismissed as insignificant compared to national or global total GHG emissions. See, e.g., *WildEarth Guardians*, 368 F. Supp. 3d at 77. “Without establishing the baseline conditions . . . there is simply no way to determine what effect the proposed [action] will have on the environment and, consequently, no way to comply with NEPA.” *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988). Excluding climate change effects from the environmental baseline ignores the reality that the impacts of proposed actions must be evaluated based on the already deteriorating, climate-impacted state of the resources, ecosystems, human communities, and structures that will be affected. 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).¹²

¹¹ See, e.g., *350 Mont. v. Haaland*, 50 F.4th 1254, 1266–70 (9th Cir. 2022); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1329–30 (D.C. Cir. 2021); *Sierra Club v. Fed. Energy Regulatory Comm’n*, 867 F.3d at 1371–75 (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. U.S. Bureau of Land Mgmt.*, 870 F.3d 1222, 1236–38 (10th Cir. 2017); *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 550 (8th Cir. 2003); *Wilderness Soc’y*, No. 22-cv-1871 (CRC), 2024 U.S. Dist. LEXIS 51011, at *83–92 (explaining that the BLM cannot “overlook[] what is widely regarded as the most pressing environmental threat facing the world today”); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 63, 67–77 (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”).

¹² 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); *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); *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); *San Juan Citizens All. v.*

In analyzing these impacts, the BLM must consider the full lifecycle of development activities and GHG emissions that are reasonably foreseeable under a BLM oil and gas lease. The social cost of greenhouse gases (SC-GHG) is a useful tool to aid in this analysis. While NEPA does not require a cost-benefit analysis, it is “nonetheless arbitrary and capricious to quantify the *benefits* of the lease modifications and then explain that a similar analysis of the *costs* was impossible when such an analysis was in fact possible and was included in an earlier draft EIS.” *High Country Conservation Advocates v. United States Forest Serv.*, 52 F. Supp. 3d 1174, 1191 (D. Colo. 2014). Courts have rejected agency refusals to properly quantify the impact of GHG emissions.¹³

The Interior Department had “adopt[ed] . . . [the EPA’s] new estimates of the social cost as the best available science.” 90 Fed. Reg. 4779, 4779 (Jan. 16, 2025); see U.S. Dep’t of the Interior, Informational Memorandum on DOI comparison of available estimates of social cost of greenhouse gases (SC-GHG), at 1, 8 (Oct. 16, 2024) [Ex. 9],

[https://eplanning.blm.gov/public_projects/2036015/200638053/20126874/251026854/20241016.](https://eplanning.blm.gov/public_projects/2036015/200638053/20126874/251026854/20241016.DOI%20SC_GHG%20Info%20Memo.pdf)

[DOI%20SC_GHG%20Info%20Memo.pdf](https://eplanning.blm.gov/public_projects/2036015/200638053/20126874/251026854/20241016.DOI%20SC_GHG%20Info%20Memo.pdf) (directing the BLM to “adopt the EPA’s 2023 estimates of the Social Cost of Greenhouse Gases (SC-GHG) as the best available science (as of September 30, 2024)”).

In a final Environmental Assessment (EA) for the Quarter 1 2025 New Mexico Oil and Gas Lease Sale, the BLM explicitly stated that it was rescinding its October 16, 2024, memorandum. See BLM, CARLSBAD FIELD OFFICE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT at 88, QUARTER 1 (2025) [hereinafter NM EA]. But the BLM failed to provide proper justification for changing its position. See *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009) (holding that an agency must provide “good reasons” for a change in position and must provide “a more detailed justification” when a “new policy rests upon factual findings that contradict those which underlay [an agency’s] prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account”).

The recent Supreme Court decision in *Seven County Infrastructure Coalition vs. Eagle County, Colorado*, does not change these necessary analytical obligations under NEPA. Indeed, the Court reaffirmed that analysis of indirect effects of a project—or in this case an oil and gas lease sale—are required from agencies

United States BLM, 326 F. Supp. 3d 1227, 1248 (D.N.M. 2018) (holding that BLM failed to take a 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”))).

¹³ See, e.g., *Montana Env’t Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1094–99 (D. Mont. 2017) (rejecting agency’s failure to incorporate the federal SCC estimates into its cost-benefit analysis of a proposed mine expansion); see also *Zero Zone, Inc. v. U.S. Dep’t of Energy*, 832 F.3d 654, 679 (7th Cir. 2016) (holding estimates of the social cost of carbon (SCC) used to date by agencies were reasonable); *High Country Conservation Advoc. V. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1190–93 (D. Colo. 2014) (holding the SCC was an available tool to quantify the significance of GHG impacts, and it was “arbitrary and capricious to quantify the *benefits* of the lease modifications and then explain that a similar analysis of the costs was impossible”) (emphasis in original). An agency may not assert that the social cost of fossil fuel development is zero: “by deciding not to quantify the costs at all, the agencies effectively zeroed out the costs in its quantitative analysis.” *High Country Conservation Advocates*, 52 F. Supp. 3d at 1192; see *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1200 (9th Cir. 2008) (holding that while there is a range of potential social cost figures, “the value of carbon emissions reduction is certainly not zero”).

undertaking NEPA analyses. *Seven Cnty. Infrastructure Coal. vs. Eagle Cnty., Colorado*, 605 U.S. ___, 11, 16 (2025) [hereinafter *Seven County*]. There is no need in the case of greenhouse gas analyses related to a specific lease sale to undertake the sort of line-drawing exercise discussed in *Seven County* regarding indirect effects analysis. *Seven County* at 11. This is because the Interior Department’s decision to offer and sell a given lease is directly tied to the facilitation of oil and gas production—an outcome that will lead to quantifiable greenhouse gas emissions. As discussed above, the Interior Department has numerous tools at its disposal for carrying out this required analysis.

This Draft EA fails to consider the social costs of carbon at all in its GHG emissions analysis, simply stating instead that, “[e]xpansion of the oil and gas industry *may be perceived* as having a negative effect on quality-of-life considerations for people who value undeveloped landscapes, opportunities for isolation, and activities such as wildlife viewing, other forms of recreation, or rangeland management.” See Draft EA at 45 (emphasis added). There is no meaningful discussion of the social costs of carbon provided at all, despite the fact that for years and over multiple projects, the BLM has quantified climate impacts, primarily relying on the well-supported SC-GHG estimates. See, e.g., BLM, ENVIRONMENTAL ASSESSMENT FOR THE WYOMING 2023 SECOND QUARTER COMPETITIVE LEASE SALE at 54–55 (2023) [Ex. 10]. The BLM must provide such analysis for this lease sale.

Rather than the social cost of carbon and climate change, the Draft EA promotes the economic impact of the leasing industry:

“The only impact of issuing new oil and gas leases on quantifiable market socioeconomic values within the analysis area would be generation of revenue from the Lease Sale, as the State of Utah retains approximately 49 percent of the proceeds. Should all or some of the leases prove productive, such production would generate additional revenue from royalties. Revenues generated by royalties on production totalled \$187.05 million in the county study area for calendar year 2024 (ONRR, 2025). Subsequent oil and gas exploration development activities could include road and drill pad construction, which could be contracted to local contractors. Wells would typically be drilled over a period of time and not concurrently. Local businesses may realize increased revenue from the purchase of supplies, meals, rooms, etc. Local trucking and delivery companies may also benefit economically by transporting supplies, building materials, and oil products.” See Draft EA at 44-45.

NEPA also requires agencies to “identify and develop methods and procedures . . . which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations.” 42 U.S.C. § 4332(B). A livable climate is a “presently unquantified environmental amenit[y].” Neglecting to use SC-GHG or replace it with a comparable tool to quantify climate impacts fails to “identify and develop methods and procedures” to ensure that this “presently unquantified environmental . . . value” is “given appropriate consideration in decisionmaking.”

The BLM must not only analyze GHG emissions. It must also address how GHG emissions inform its leasing decisions. “[T]he 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.”

Wilderness Soc’y, No. 22-cv-1871 (CRC), 2024 U.S. Dist. LEXIS 51011, at *91. The BLM “must . . . explain how its GHG analysis inform[s] the decision to select” its preferred alternative. *Id.* at *91–92. If the BLM does “not consider GHG emissions when rendering its decision . . . it would . . . overlook[] what is widely regarded as the most pressing environmental threat facing the world today.” *Id.*, No. 22-cv-1871 (CRC), 2024 U.S. Dist. LEXIS 51011, at *87–88. The BLM must also quantify the projected monetary costs of moving forward with leasing in the state so that the BLM and the public can determine whether the asserted benefits of leasing outweigh the costs.

e. The Draft EA fails to properly analyze methane emissions that would result from this lease sale.

The Draft EA barely touches on methane emissions, let alone flaring, venting, or the BLM’s own waste rule.¹⁴ The BLM must take the requisite hard look at the impacts of methane emissions that will result from development of and production on these lease parcels, including the economic, public health, and public welfare impacts of venting and flaring. *See, e.g.*, Environmental Defense Fund, FLARING AERIAL SURVEY RESULTS (2021) [Ex. 11], <https://www.permianmap.org/flaring-emissions/>. In 2019 alone, venting or flaring accounted for roughly 150 billion cubic feet of wasted federally-owned methane, resulting in the loss of over \$50 million in federal royalty revenue. This waste also means lost royalty revenues for taxpayers and Tribes. An 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. *See* 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. at 3 (Jan. 20, 2023) [hereinafter Griot *et al.*] [Ex. 12], https://blogs.edf.org/energyexchange/files/2023/01/EMBARGOED_EDF-TCS_Public_Lands_Analysis.pdf. The report found that, in 2019, leaks accounted for 46% and flaring for 54% of lost gas. *See id.* at 23.

Venting and flaring on Tribal and federal public lands has significant health impacts on frontline and fence line communities. *See e.g.*, Jeremy Proville et al., *The demographic characteristics of populations living near oil and gas wells in the USA*, 44 POPULATION AND ENV’T 1 (2022) [Ex. 13], <https://doi.org/10.1007/s11111-022-00403-2>. Proximity to oil and gas infrastructure creates disproportionate adverse health risks and impacts on Indigenous communities in particular. *See, e.g., id.* at 2–5. 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. *See* Griot *et al.* Another study links flaring to shorter gestation and reduced fetal growth. *See* Lara J. Cushing et al., *Flaring from*

¹⁴ Though Public Law 119-21 rescinded the Department of Interior mandate to collect royalties on all produced methane, the Bureau of Land Management’s “Waste Prevention, Production Subject to Royalties, and Resource Conservation” Rule remains in force and is based on longstanding legal authorities outside of the Inflation Reduction Act, including the Mineral Leasing Act’s directive to “use all reasonable precautions to prevent waste of oil or gas developed in the land” *See* 30 U.S.C. § 224.

Unconventional Oil and Gas Development and Birth Outcomes in the Eagle Ford Shale in South Texas, 128 Env'tl. Health Perspectives 077003-1, 077003-1 to 077003-8 (2020) [Ex. 14]. Reducing waste from flaring on federal and Tribal lands would lessen these harms. Therefore, the BLM should not issue additional oil and gas leases until the agency addresses waste on Tribal and federal public lands.

f. The Draft EA fails to 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. *See WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 457 F. Supp. 3d 880, 886–89 (D. Mont. 2020).

In the Draft EA, the BLM deemed groundwater to be an issue considered but not analyzed in detail. *See* Draft EA at 62. This is a hard break from past practice over many years of lease sale EAs. The discussion of groundwater impacts relegated to AIB-20 of the Draft EA primarily contains boilerplate language that could apply to any oil and gas project in Utah or any other western state. The only mention of impacts to groundwater from hydraulic fracturing concerns a Survey Note from the Utah Geological Survey regarding general water use and production within the Uintah Basin.

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 water “will likely be affected by changes in climate and water use.” *See* 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-16/236fa, at 2-1 to 2-18 (Dec. 2016) [hereinafter EPA 2016 Report] [Ex. 15], <https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990>. As a result, the BLM must protect aquifers currently used for drinking water and all aquifers that may serve as a source of drinking water in coming decades, even if they are deeper or of higher salinity.

Oil and gas drilling involves boring wells to depths thousands of feet below the surface, often through or close to groundwater aquifers. Without proper well construction and vertical separation between aquifers and producing formations, oil and gas development can contaminate underground sources of water. *See*, e.g., Gayathri Vaidyanathan, FRACKING CAN CONTAMINATE DRINKING WATER, *Sci. Am.* (Apr. 4, 2016) [Ex. 16], <https://www.scientificamerican.com/article/fracking-can-contaminate-drinking-water/>; *see also* 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 Env'tl. Sci. & Tech. 4524, 4524–4536 (Mar. 29, 2016) [hereinafter DiGiulio 2016] [Ex. 17]. 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. *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> [Ex. 18].

Industry has admitted that it often does not protect usable water in practice. The 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. *See* 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> [Ex. 19]. Multiple reports studying samples of existing federal 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. *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) [hereinafter Tisherman Report] [Ex. 20], https://eplanning.blm.gov/public_projects/2015538/200495187/20062621/250068803/Exhibit%20119-%20PSE%20WY%20Report%20May%202022%20Final.pdf; *see also* Dominic DiGiulio, EXAMINATION OF GROUNDWATER RESOURCES IN AREAS OF MONTANA PROPOSED FOR THE MARCH 2018 BLM LEASE SALE (Dec. 22, 2017) [hereinafter DiGiulio Report] [Ex. 21], 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). 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. *See* DiGiulio 2016, at 4532. Indeed, multiple courts have invalidated BLM lease sales in recent years due to the agency’s failure to grapple with this evidence. *See Wilderness Soc’y*, No. 22-cv-1871 (CRC), 2024 U.S. Dist. LEXIS 51011, at *14–50; *WildEarth Guardians*, 457 F. Supp. 3d at 886–89.

Given these risks to a critical resource, the BLM must evaluate potential groundwater impairment from any lease parcels it proposes to offer in much greater depth in the EA.

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, *see* Tisherman Report and DiGiulio Report, 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. The BLM must provide an explanation of the impacts to usable water zones where fracking is already occurring (even if those

zones are not currently being used as a drinking water source), and how that fracking may degrade the quality of groundwater.

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 the depth of surface casing, the extent to which deeper areas of the wellbore are both cased and cemented (especially across zones containing groundwater with less than 10,000 ppm TDS), 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. *See WildEarth Guardians*, 457 F. Supp. 3d at 888. As noted above, data is available to identify the depth and quality of aquifers in the area of proposed leasing. 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. The Draft EA's failure to conduct such an analysis violates NEPA. *See id.*

g. The Draft EA fails to analyze the impacts of oil and gas leasing on environmental justice.

The BLM must take a hard look at environmental justice, and not only in relation to health. However, the Draft EA does not mention "environmental justice" once. Courts have repeatedly held that agencies must take a hard look at environmental justice pursuant to NEPA.¹⁵ The BLM fails to explain this change in position from previous lease sale analyses that discussed the adverse effects of oil and gas activity on environmental justice communities. The agency's failure to undertake this analysis is arbitrary and capricious.

VI. Conclusion

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

Respectfully submitted,



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¹⁵ *See, e.g., Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 87 (4th Cir. 2020); *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).

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1	2	Public Employees for Environmental Responsibility (PEER), GREATER SAGE GROUSE - PROTECTION EXEMPTION REQUESTS: BUREAU OF LAND MANAGEMENT, WYOMING 1/1/18 - 2/1/23 (Feb. 17, 2023)
1	3	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) (Part 1)
1	4	KEVIN DOHERTY ET AL., A SAGEBRUSH CONSERVATION DESIGN TO PROACTIVELY RESTORE AMERICA’S SAGEBRUSH BIOME: U.S. GEOLOGICAL SURVEY OPEN-FILE REPORT 2022–1081 (Sept. 22, 2022)
1	5	Adele 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 (May 2019)
1	6	Ellen O. Aikens et al., <i>Industrial energy development decouples ungulate migration from the green wave</i> , 6 NATURE ECOLOGY. & EVOLUTION 1733 (Oct. 2022)
1	7	Utah Division of Wildlife Resources, Department of Natural Resources, Utah Mule Deer Statewide Management Plan 2025-30, 10 (November 2024)
1	8	World Meteorological Society, WMO GLOBAL ANNUAL TO DECADEAL CLIMATE UPDATE, 2025-2029 (2025)
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4	16	Gayathri Vaidyanathan, FRACKING CAN CONTAMINATE DRINKING WATER, Sci. Am. (Apr. 4, 2016)
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