THE WILDERNESS SOCIETY * COALITION TO PROTECT AMERICA'S NATIONAL PARKS * NEW MEXICO WILD

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SUBMITTED VIA E-PLANNING

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Re: Scoping Comments on Parcels for the New Mexico Bureau of Land Management 2026 Third Quarter Competitive Oil & Gas Lease Sale (DOI-BLM-NM-F010-2026-0020-EA, DOI-BLM-NM-P020-2026-0484-EA)

To Whom It May Concern:

Thank you for the opportunity to submit these scoping comments on parcels under consideration for the Bureau of Land Management's (BLM's) New Mexico 2026 Third 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.

For this sale, the BLM is considering 21 parcels covering 19,094.78 acres in New Mexico. 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,

[1] There is insufficient information about the parcels in question to submit complete comments. Accordingly, we will be able to provide additional input only when a draft Environmental Assessment (EA) is released, which we fully expect will occur.

the BLM must comply with all applicable federal, state, and local laws and regulations and all federal court rulings.

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

Evidence does not support the existence of a "national energy emergency" as declared in Executive Order 14156, 90 Fed. Reg. 8,433 (Jan. 29, 2025), or the associated emergency procedures set forth in the "Alternative Arrangements for NEPA Compliance"[2] [hereinafter, "Emergency Procedures"]. The BLM cannot justify leasing based on the alleged national energy emergency, as it has already attempted to do in other lease sale processes. *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 17 (May 2025), https://eplanning.blm.gov/public_projects/2036690/200641746/20133504/251033484/DOI-BLM-UT-0000-2025-00001-EA%20Public%20Scoping.pdf ("[R]emoval of parcels from lease consideration would not contribute to the fulfillment of EO 14154, Unleashing American Energy."). Nor can the agency 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; (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 timeframes and participation periods mandated by 43 C.F.R. § 3120.42(b). The BLM's 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. BUREAU OF LAND MGMT., INSTRUCTION MEMORANDUM 2025-028: OIL AND GAS LEASING – LAND USE PLANNING AND LEASE PARCEL

[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.

REVIEWS 5 (May 8, 2025). This 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 the unlawful 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. *See* discussion *infra* Section V.

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* Letter from Earthjustice et al. to Doug Burgum, Sec. of the Interior on Department of the Interior Emergency NEPA Procedures (May 16, 2025) [Ex. 1].

II. The BLM has authority to defer lease parcels—and must evaluate deferral of 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.[3] Where conflicts with other uses exist, the BLM must analyze the deferral of lease parcels. The Mineral Leasing Act (MLA) does not contravene 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" and 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

[3] *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 All. 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.").

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.[4] Moreover, where conflicts with other uses exist, the agency must affirmatively evaluate deferral of parcels in its alternatives analysis under NEPA, as discussed below. *See* discussion *infra* Section VI.

III. The BLM must ensure that leasing complies with FLPMA.

FLPMA creates a framework governing the BLM's management of public lands. *See* 43 U.S.C. §§ 1701–1772. As explained above, *see* discussion *supra* Section II, the statute provides for managing public lands under principles of multiple use and sustained yield.

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).

a. The BLM may not proceed with this lease sale if the governing field office RMPs are invalid.

Under FLPMA, the BLM may issue decisions such as leases, permits, rights of way, and other authorizations only "in accordance with" a valid land use plan. 43 U.S.C. § 1732(a). FLPMA's implementing regulations likewise provide that all "resource management authorizations and actions . . . shall conform to the approved [RMP]." 43 C.F.R. § 1610.5-3(a). BLM cannot proceed with approving new leases or authorizations or take other action predicated on a plan that is not in effect. Doing so would violate FLPMA along with the recently enacted 2025 Reconciliation Act[5] (and the MLA, which it amended) and be contrary to law in violation of the APA.

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[4] *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 WL 3737520, at *4–7 (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).

[5] Pub. L. No. 119-21, § 50101(c)(2)(A), 129 Stat. 72, 138 (2025) ("[The BLM] shall offer . . . parcels . . . *under the applicable resource management plan in effect*" (emphasis added)); *id.* at 138–39 (directing that certain lands meeting certain conditions be made available for leasing "if the Secretary determines that the parcel of land is open to oil or gas leasing *under the approved resource management plan applicable to the planning area in which the parcel of land is located that is in effect*" (emphasis added)); *id.* at 139 (explaining that issued leases "shall be subject to the terms and conditions of the *approved resource management plan*" (emphasis added)).

The Congressional Review Act (CRA) requires federal agencies to submit rules to Congress for review before they can take effect. 5 U.S.C. § 801(a)(1)(A). Historically, land management agencies like the BLM have not submitted their land or resource management plans to Congress, taking the position that such plans are not "rules" for CRA purposes. However, after the Government Accountability Office (GAO) determined, at the request of members of Congress, that four BLM RMPs/Resource Management Plan Amendments (RMPAs) *were* "rules" for purposes of the CRA,[6] Congress voted in the fall of 2025 to disapprove those four RMPs/RMPAs under the terms of the CRA, subjecting such plans to the CRA's procedural requirements for the first time.[7] This legislative action and its associated significant adverse and destabilizing consequences for federal land management raise serious questions as to whether land or resource plans or amendments approved after passage of the CRA in 1996 are in effect if they have not been submitted to Congress under the CRA's requirements. *See* 5 U.S.C. § 801(a)(1)(A).

The BLM must address these questions before proceeding with this lease sale. The BLM Farmington Field Office approved its RMP in 2003,[8] the Carlsbad Field Office amended its 1988 RMP in 1997,[9] the Pecos District Office partially amended the Carlsbad Field Office's RMP in 2008,[10] and the Rio Puerco Field Office issued its Approved RMP in 2024, updating the 1986 Rio Puerco RMP and its 1992 amendment.[11] Since then, the BLM has not transmitted any of those RMPs to Congress under the CRA, which renders the status of the RMPs questionable. The BLM should not proceed with issuing leases in the absence of a valid RMP. Doing so may violate FLPMA, the 2025 Reconciliation Act, and the MLA and may therefore be contrary to law, in violation of the APA.

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[6] U.S. Gov't Accountability Off., *Applicability of the Congressional Review Act to Central Yukon Record of Decision and Approved Resource Management Plan*, B-337200, at 5–6 (June 25, 2025); *accord* U.S. Gov't Accountability Off., *Applicability of the Congressional Review Act to North Dakota Field Office Record of Decision and Approved Resource Management Plan*, B-337175 (June 25, 2025); U.S. Gov't Accountability Off., *Applicability of the Congressional Review Act to Miles City Field Office Record of Decision and Approved Resource Management Plan Amendment*, B-337163 (June 25, 2025); U.S. Gov't Accountability Off., *Applicability of the Congressional Review Act to Buffalo Field Office Record of Decision and Approved Resource Management Plan Amendment*, B-337503 (Sept. 18, 2025).

[7] H.J. Res. 104, 119th Cong. (2025) (providing for CRA disapproval of the Miles City Field Office Record of Decision and Approved Resource Management Plan Amendment); H.J. Res. 105, 119th Cong. (2025) (providing for CRA disapproval of North Dakota Field Office Record of Decision and Approved Resource Management Plan); H.J. Res. 106, 119th Cong. (2025) (providing for CRA disapproval of Central Yukon Record of Decision and Approved Resource Management Plan); H.J. Res 130, 119th Cong. (2025) (providing for congressional disapproval of the Biden administration's Buffalo Field Office RMP Amendment).

[8] BLM FARMINGTON FIELD OFFICE, RESOURCE MANAGEMENT PLAN WITH RECORD OF DECISION (Dec. 2003) [hereinafter FARMINGTON RMP].

[9] BLM CARLSBAD FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN (SEPT. 1988) [hereinafter CARLSBAD RMP]; BLM CARLSBAD FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT (Oct. 1997) [hereinafter CARLSBAD RMPA].

[10] BLM PECOS DISTRICT OFFICE, SPECIAL STATUS SPECIES RECORD OF DECISION AND APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT (Apr. 2008) [hereinafter PECOS RMPA].

[11] BLM RIO PUERCO FIELD OFFICE, RECORD OF DECISION AND APPROVED RESOURCE MANAGEMENT PLAN (Dec. 2024) [RIO PUERCO RMP].

b. Even assuming the RMPs are valid and in effect, they are inadequate to support leasing.

Before issuing leases pursuant to an RMP, 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 no longer supports a new leasing decision if there is important new data, policies, or changed circumstances 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 at 34–35 (Mar. 11, 2005); 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.

Some of the plans governing lands subject to this lease sale are old or stale. For example, the Farmington RMP, Carlsbad RMPA, and Pecos RMP range from 18 to 29 years old. In addition, none of the following RMPs covering the parcels under consideration for this lease sale adequately accounts for or addresses the environmental impacts on resources and land uses due to climate change:

- The BLM Carlsbad Field Office 1988 Approved RMP never discusses climate change or GHG emissions, nor does its 1997 Amendment do so.[12]
- The BLM Farmington Field Office 2003 Approved RMP never discusses climate change or greenhouse gas emissions.[13]
- The BLM Pecos District Office 2008 RMP Amendment never discusses climate change or greenhouse gas emissions.[14]

These RMPS may be further inadequate depending on the BLM's interpretation of the 2025 Reconciliation Act, as discussed below. *See* discussion *infra* Section IV.

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 considers the potential impacts (direct, indirect, and cumulative[15]) that new leasing and development would have on sensitive resources.

Even where implicated RMPs were finalized within the last five years, the BLM must take a hard look at new resource inventories and stipulations at the lease sale stage to ensure that

[12] *See* CARLSBAD RMP; CARLSBAD RMPA.

[13] *See* FARMINGTON RMP.

[14] *See* PECOS RMPA.

[15] 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. Fed. Power Comm'n*, 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).

new leases comply with existing plans, reflect updated inventory data, and adequately protect sensitive resources. Failure to consider, analyze, and disclose these issues would violate NEPA and FLPMA.

a. A parcel proposed in the Carlsbad Field Office conflicts with the current RMP.

The BLM is proposing to offer 9 parcels in the Carlsbad Field Office. The following parcel offered in the Carlsbad Field Office appears to overlap an area that is **closed to leasing:** NM-2026-08-0768.

The BLM should not and cannot be leasing acreage closed to leasing in an RMP. Consequently, the BLM cannot offer these parcels for sale. This error appears to be part of a pattern and practice of errors on the part of the BLM of failing to apply the applicable ROD to its oil and gas leasing processes. *See, e.g.*, The Wilderness Society et al., *Re: Comments on the Draft Environmental Assessment and Finding of No Significant Impact for the New Mexico Bureau of Land Management 2026 Second Quarter Competitive Oil & Gas Lease Sale (DOI-BLM-NM-P000-2026-0001-EA, DOI-BLM-NM-F010-2026-0001-EA)*, 7 (Feb. 20, 2026) (flagging the 8 parcels being offered in the New Mexico Second Quarter 2026 lease sale that are closed to leasing under the Pecos RMPA); The Wilderness Society et al., *Re: Scoping Comments on Parcels for the Wyoming Bureau of Land Management 2026 Quarter 2 Competitive Oil & Gas Lease Sale (DOI-BLM-WY-0000-2026-0001- EA)*, 7 (Nov. 17, 2025) (flagging 14 parcels listed for the Wyoming Second Quarter 2026 lease sale that are partially or fully closed to leasing under the 2024 Rock Springs Field Office ROD and Approved RMP)[16]; Special 2025-06 Sale Notice_06112025, DOI-BLM-WY-0000-2023-0001-EA (in Wyoming, offering multiple parcels for auction in that were closed to new oil and gas leasing under the 2024 Rock Springs Field Office ROD and Approved RMP and not applying stipulations from the ROD to parcels).

[16] Note that most—but not all—of these parcels in areas closed to leasing were deleted prior to posting the Notice of Sale. *See* are being considered for deletion at the Draft Environmental Assessment stage. *See* BLM WYOMING, NOTICE OF COMPETITIVE OIL AND GAS INTERNET LEASE SALE (Mar. 18, 2026); The Wilderness Society et al., *Re: Comments on the Draft Environmental Assessment and Finding of No Significant Impact for the Wyoming Bureau of Land Management 2026 Second Quarter Competitive Oil & Gas Lease Sale* (DOI-BLM-WY-0000-2026-0001-EA), 33 (Jan. 21, 2026). The BLM Wyoming office has indicated that it intentionally listed these parcels in areas closed to leasing at the scoping stage with the intention of later removing those parcels. *See* Mike Koshmrl, *BLM Deletes Contested, Off-Limits 'Golden Triangle' Parcels from Upcoming Wyoming Oil and Gas Auction*, WYOFILE (Dec. 22, 2025), https://wyofile.com/blm-deletes-contested-off-limits-golden-triangle-parcels-from-upcoming-wyoming-oil-and-gas-auction/ (quoting BLM-Wyoming Acting State Director Kris Kirby as stating that "the BLM state office included the 'whole list' of the 'expressions of interest' from oil and gas companies and individuals when it was vetting the lease auction in the 'scoping phase'" which "included 'parcels that can't be leased'" in an effort to "show [their] work" and "be as transparent as possible"). But, even under recently issued Instruction Memorandum 2025-028, the agency is instructed to scope only those parcels in areas *open* to leasing. BUREAU OF LAND MGMT., INSTRUCTION MEMORANDUM 2025-028: OIL AND GAS LEASING – LAND USE PLANNING AND LEASE PARCEL REVIEWS (May 8, 2025) (directing the agency to "evaluate and consider all expressions of interest (EOIs) to determine whether the lands are eligible for leasing. Consistent with longstanding practice, the BLM will conduct an initial screening of all timely submitted EOIs and determine whether they include lands that the BLM has the authority to lease.").

Accordingly, the BLM must take measures to ensure that its oil and gas leasing protocols take current RMPs and land management RODs into account. The BLM should swiftly remove this parcel that is closed to leasing from this lease sale and take steps to remedy its flawed review process.

IV. The BLM must address the impact of the Reconciliation Act on the proposed New Mexico lease sale.

The recently enacted 2025 Reconciliation Act contains several amendments to the statutes governing the BLM's management of oil and gas development. In its analysis of the proposed New Mexico lease sale, the BLM must explain the impact of the 2025 Reconciliation Act and must demonstrate—in light of that impact—that the lease sale complies with the BLM's substantive obligations under FLPMA and with its procedural obligations under NEPA.

a. The Reconciliation Act amended the BLM's oil and gas leasing procedure.

As indicated above, *see* discussion *supra* Section II, under the MLA, the BLM has traditionally exercised broad discretion over whether to lease lands for oil and gas development as well as over the conditions under which leasing occurs. And while the MLA provides for quarterly lease sales in each state "where eligible lands are available," the courts have made clear that this language does not reduce the BLM's discretion, because (among other reasons) lands are not "available" for leasing under the MLA until all statutory requirements are met and legal reviews are complete. *See, e.g.*, *W. Energy All. v. Biden,* No. 21-CV-13-SWS, 2022 WL 18587039, *9 (D. Wyo. Sept. 2, 2022).

Among other changes to the leasing process, the 2025 Reconciliation Act amends the MLA to replace language providing that lands subject to disposition which are known or believed to contain oil or gas deposits "*may* be leased," 30 U.S.C § 226(a) (2024) (emphasis added), with a provision stating that such lands "*shall* be made available for leasing . . . not later than 18 months after the date of receipt . . . of an expression of interest in leasing the applicable parcel." 30 U.S.C. § 226(a) (2025) (emphasis added). The 2025 Reconciliation Act also amends the provision of the MLA providing for quarterly lease sales "where eligible lands are available" to define "eligible lands" as those "not excluded from leasing by a statutory prohibition" and "available" lands as those designated as open for leasing under an RMP and "that have been nominated for leasing through the submission of an expression of interest, are subject to drainage in the absence of leasing, or are otherwise designated as available pursuant to regulations adopted by the Secretary." 30 U.S.C. § 226(b)(1)(A). Additionally, the 2025 Reconciliation Act provides that any oil and gas leases issued "may not require any stipulations or mitigation requirements not included in the approved resource management plan." 30 U.S.C. § 226(a)(2)(A)(ii).

While the BLM has not yet issued formal guidance outlining how it will implement the 2025 Reconciliation Act, the agency appears to interpret the Act as significantly altering its discretion throughout the oil and gas development process, potentially requiring the BLM to offer for lease all lands designated as open if requested by industry, and precluding the agency from placing any stipulations or mitigation requirements on leases that are not included in the

relevant RMP. *See* Federal Defendants' Opening Brief at *36, Mont. Wildlife Fed'n v. Burgum, No. 22-35367 (9th Cir. filed Jan. 14, 2026) ("[T]he OBBBA requires the Bureau to offer parcels nominated by industry through an expression of interest for lease within 18 months of receipt of the nomination, so long as those lands are open to leasing under the applicable resource management plan.").[17]

To be clear, the parties to this letter do not endorse this interpretation. However, this position gives rise to serious questions about the BLM's ability to balance oil and gas development against other public-land values and achieve its statutory obligations. The BLM must address those questions and clarify its interpretation of the 2025 Reconciliation Act as it applies to the proposed leasing. To the extent that the BLM believes that the 2025 Reconciliation Act restricts its discretion over oil and gas leasing, the agency faces additional burdens in demonstrating that its proposed lease sale comports with FLPMA's substantive mandates and in demonstrating compliance with NEPA.

b. The BLM must address the impact of the 2025 Reconciliation Act on the agency's discretion not to lease lands designated open under an RMP.

The BLM has traditionally followed a three-step process for managing oil and gas development on public lands. *W. Energy All. v. Zinke*, 877 F.3d 1157, 1161 (10th Cir. 2017). At the first step, the BLM develops RMPs for each land management unit. *Id.*; 43 U.S.C. § 1712(a). Each RMP specifies those lands that will be open or closed to oil and gas leasing and under what conditions. At the second step, the BLM may (but is not required to) offer leases in areas designated as open. *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 689 n.1 (10th Cir. 2009); 43 U.S.C. § 1712(e); *see also* 43 C.F.R. § 1610.5-3. At the final step, the BLM approves applications for permits to drill where a lessee seeks to develop a lease. *New Mexico*, 565 F.3d at 689 n.1; 43 C.F.R. § 3162.3-1(c).

The fundamental assumption in this multi-stage development process—and one on which all RMPs rest—is that the designation of lands as open to leasing at the RMP-stage is *not* a decision that those lands will be offered for lease or leased. The BLM has long exercised discretion to determine—in service of its FLPMA obligations to manage for multiple-use and sustained-yield—not to offer to lease or to ultimately lease lands designated as open. Indeed, based on this fundamental assumption, the BLM's RMPs list the vast majority of public land—over 80%—as open to oil and gas leasing. THE WILDERNESS SOCIETY, OPEN FOR DRILLING: THE OUTSIZED INFLUENCE OF OIL & GAS ON PUBLIC LANDS, 2 (2025) [EX. 2], https://www.wilderness.org/sites/default/files/media/file/Open%20for%20Drilling_TWS%20Report.pdf. But the BLM has elected not to lease the majority of these lands. *See* U.S. Gov't

[17] *See also* Int.-Def. State of Wy. Not. of Supp. Auth., *W. Watersheds Proj. v. Bernhardt*, 1:18-cv-00187 (D. Idaho, filed 8/12/25), at *2 (in litigation to which the United States is a party, the state of Wyoming interpreting the 2025 Reconciliation Act as stripping the BLM of discretion to determine which parcels should be offered for lease; "mandat[ing]" an approach in which the BLM's response to industry nominations may "create[] widespread leasing, even in sensitive habitat"; and restricting the BLM's ability to impose protective mitigations or stipulations on leases beyond those identified in the RMP, limiting the agency's role to "passively processing expressions of interest").

Accountability Off., GAO-22-103968, Oil and Gas Leasing: BLM Should Updated Its Guidance and Review Its Fees 18 (2021) (finding that between 2009 and 2019 BLM nominated 87 million acres for leasing but only offered 18 million acres—or 21% of nominated land—at auction).

To the extent that the BLM believes that the 2025 Reconciliation Act removes the agency's discretion not to offer for lease or to lease areas designated as open in an RMP, and instead obligates the agency to offer for lease or to lease any open land for which it receives an industry expression of interest, the BLM's NEPA analysis and assessment of its compliance with its duties under FLPMA must account for that fundamental change.[18] For example, if the BLM believes it now has a non-discretionary duty to offer for lease or to lease all lands designated as open if requested by industry, it must demonstrate that those current open-to-leasing designations in an RMP comport with FLPMA's multiple use and sustained yield requirements. And if—as is likely—they do not, the BLM must revisit those designations in light of such a fundamental change in its discretion. Similarly, if the BLM must lease all lands for which it has received an expression of interest, it must account for that fact in its NEPA analysis of all affected lease sales, including this lease sale. For instance, the BLM must consider important questions such as: apart from the parcels being considered for this sale, how many additional expressions of interest have been submitted that overlap with big game or lesser prairie-chicken habitat? How many additional expressions of interest in these same areas are foreseeable in the coming years? And how would the BLM's non-discretionary response to any such expressions of interest affect its compliance with fundamental FLPMA and NEPA mandates for oil and gas leasing, discussed below?

c. The BLM must demonstrate that this lease sale complies with FLPMA's substantive obligations in light of the 2025 Reconciliation Act.

The obligation to comply with FLPMA's substantive sustained yield and unnecessary and undue degradation requirements applies at each stage of the BLM's three-step (oil and gas) management process. *See, e.g.*, 40 C.F.R. § 3120.32 (requiring the BLM to address substantive FLPMA obligations in determining whether to offer lands for lease). The BLM, however, has frequently taken the position in litigation that it can satisfy its substantive FLPMA obligations by imposing any needed protective conditions at the final stage of the process, when approving applications for permits to drill (APDs). *See, e.g.*, *Dakota Res. Council v. Dep't of Int.*, 2024 WL 1239698, *22 (D.D.C. 2024) (accepting the BLM's argument that it could avoid unnecessary and undue degradation at the APD stage by "impos[ing] more specific lease requirements tailored to the projects and tracts at issue."); *Bd. of Cnty. Comm'rs of San Miguel Cnty. v.BLM*, 584 F. Supp. 3d 949, 978 (D. Colo. 2022) (same). Indeed, the BLM frequently points to the implementation of post-leasing mitigation measures to demonstrate that proposed oil and gas development complies with the agency's sustained yield and unnecessary and undue degradation obligations. *See Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 78 (D.C. Cir. 2011) (holding that the BLM could reasonably conclude that mitigation measures would prevent unnecessary and undue degradation).

[18] For a discussion of the way in which IM 2025-028 impermissibly requires the BLM to offer for lease all eligible lands regardless of their preference designation or resource conflicts in violation of FLPMA and NEPA, see discussion *infra* Section V.

If the BLM interprets the 2025 Reconciliation Act as foreclosing the agency's discretion not to offer and ultimately lease open lands and precludes the agency from imposing lease stipulations or other mitigations beyond those included in the governing RMP, then the agency must demonstrate complete compliance with its substantive FLPMA obligations—including the sustained yield and unnecessary and undue degradation requirements—*before* holding the proposed lease sale. It cannot defer the development of protective measures without assessing the adequacy of the requirements in the RMP. On the other hand, if the BLM believes it continues to have discretion to impose additional conditions on leases beyond those in the RMP, it needs to make that clear, including by proposing appropriate stipulations to protect wildlife and other public-land values during the lease sale process.

1. The RMPs do not ensure compliance with the BLM's substantive FLPMA obligations.

The applicable RMPs defer determination of what mitigations or stipulations are necessary for certain important issues to the leasing or permitting stage. For example, with respect to wildlife, the Farmington Field Office "strives to maintain a biologically diverse complement of endemic wildlife species" and states that "[t]he condition of wildlife habitats [is] affected by . . . mineral extraction." BLM FARMINGTON FIELD OFFICE, FARMINGTON PROPOSED RESOURCE MANAGEMENT PLAN AND FINAL ENVIRONMENTAL IMPACT STATEMENT VOL. I, 3-40–3-42 (Mar. 2003). Despite recognizing the importance of maintaining wildlife populations and the risks that oil and gas development pose on those populations, the Farmington RMP defers some analysis of the necessary mitigations or stipulations to a later, site-specific phase, stating that "[d]evelopment in [certain] areas will be considered on a case-by-case basis and will contain site-specific mitigation designed . . . to prevent fragmentation of areas determined to provide important wildlife habitat." BLM FARMINGTON FIELD OFFICE, RESOURCE MANAGEMENT PLAN WITH RECORD OF DECISION, 4 (Dec. 2003). More generally, the Farmington Field Office defers consideration of mitigation measures to the permitting stage, stating that "[s]ite-specific mitigation measures for oil- and gas-related activities are implemented at the permitting stage during site-specific environmental analysis" and that, in addition to the mitigation measures listed in its appendix, "[a]dditional mitigating measures . . . may be developed during permitting to address site-specific resource concerns." BLM FARMINGTON FIELD OFFICE, RESOURCE MANAGEMENT PLAN WITH RECORD OF DECISION, 13 (Dec. 2003). Similarly, the Rio Puerco Field Office states in its RMP that the listed best management practices "are not intended to be a complete list but rather to provide examples of commonly used practices that the RPFO may require to reduce impacts of surface-disturbing activities, use, or occupancy. More specific BMPs based on local conditions and resource-specific concerns could be developed once a specific proposal is evaluated through the environmental analysis process." RIO PUERCO RMP at 1.6.

In short, the BLM structured its RMPs such that the agency's ability to demonstrate that oil and gas leasing will not cause unnecessary or undue degradation or compromise sustained yield is deferred to the leasing and APD stages, particularly with respect to wildlife and karst. Yet now the BLM confronts claims that the 2025 Reconciliation Act forecloses the BLM's ability to impose new protective measures at these stages. In light of the serious questions about the 2025 Reconciliation Act's potential restriction on the BLM's discretion over what parcels to

lease and its ability to add mitigations or stipulations not expressly included in an RMP, the BLM must explain—before proceeding with the proposed lease sale—how it will satisfy its substantive obligations under FLPMA.

2. The BLM's NEPA analysis for this lease sale must reflect the impacts of the 2025 Reconciliation Act.

As set forth above in this section, the BLM developed its RMPs on the assumption that additional mitigation measures or stipulations would be developed during the leasing and/or APD stages of oil and gas development. The NEPA analyses for the RMPs rely on that same assumption. *See, e.g.*, PECOS DISTRICT OFFICE, SPECIAL STATUS SPECIES PROPOSED RESOURCE MANAGEMENT PLAN AMENDMENT/FINAL ENVIRONMENTAL IMPACT STATEMENT VOL. 1, 2-3 (Nov. 2007) ("Site-specific environmental assessments (EAs) are required prior to siting a new well. During this process, environmental impacts are identified and management constraints are developed, which will mitigate impacts to the environment, public health and safety, cultural resources, and threatened, endangered, and sensitive species. The mitigation measures become the COAs attached to the permits for surface disturbing activities, such as APDs and sundry notices."); BLM FARMINGTON FIELD OFFICE, FARMINGTON PROPOSED RESOURCE MANAGEMENT PLAN AND FINAL ENVIRONMENTAL IMPACT STATEMENT VOL. I, 2-3 (Mar. 2003) (same); BLM ROSWELL FIELD OFFICE, APPROVED RMP AND RECORD OF DECISION, AP11-19 (Oct. 1997) (incorporating the 1995 Interim Oil and Gas Leasing and Development EA for the Roswell Resource Area, which provided that "sitespecific environmental assessments would be prepared for individual actions, and additional impact mitigations could be developed in those assessments").

The BLM is obligated, at the leasing stage, to prepare a NEPA analysis that accurately reflects the agency's understanding of the oil and gas leasing process as amended by the 2025 Reconciliation Act. If the BLM understands the 2025 Reconciliation Act to limit its discretion over the leases to be offered and the mitigation measures and stipulations that subsequently can be applied to those leases, the NEPA analysis must reflect that understanding. The BLM cannot tier to the EISs for the RMPs, which all assume that the BLM has discretion to apply additional mitigation and stipulations at the leasing stage. *See, e.g.*, *Dine Citizens Against Ruining Our Environment v. Bernhardt*, 923 F. 3d 831, 856–57 (10th Cir. 2019) (holding BLM erred in tiering EAs for APDs to flawed analysis of water use in RMP EIS); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 71 (D.D.C. 2019) (holding BLM erred in tiering lease sale NEPA analyses to RMP EISs that relied on outdated data and methodologies); *see also W. Org. of Res. Councils v. Zinke*, 892 F. 3d 1234, 1245 (D.C. Cir. 2018 ("[D]eficiencies in the [Program] EIS may affect the ability of [the agency] to tier to that document when making individual leasing decisions." (internal quotation marks omitted)).

In short, the BLM must prepare a NEPA analysis for the proposed lease sale that reflects any change in agency discretion over oil and gas development under the 2025 Reconciliation Act and that displays for the public the environmental impacts of that change.

V. The BLM must analyze the conservation and multiple use conflicts and environmental impacts associated with the proposed lease parcels under NEPA and FLPMA, as well as evaluate the deferral or deletion of parcels based on such conflicts, including through use of the leasing preference criteria.

The BLM must evaluate the environmental impacts of this proposed lease sale under NEPA. *See* 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 Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978).[19] 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] into account in reaching a decision." *Sierra Club v. Fed. Energy Regul. Comm'n*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (internal quotation omitted).

The BLM must analyze these environmental impacts at the lease sale stage. It is well established that leasing constitutes an "irreversible and irretrievable commitment of resources," and that the BLM is therefore obliged to analyze such impacts at this stage. *Sierra Club v. Peterson*, 717 F.2d 1409, 1414 (D.C. Cir. 1983). Federal courts have repeatedly rejected agency attempts to avoid analyzing reasonably foreseeable future impacts by claiming that considering them at the lease sale stage would be speculative. *See, e.g.*, *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078–79 (9th Cir. 2011). BLM's obligation to analyze impacts at the leasing stage triggers requirements under substantive environmental protection statutes in addition to NEPA's procedural requirements. *See e.g.*, *Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir. 1988) (holding that the Fish & Wildlife Service violated the Endangered Species Act by failing to adequately analyze threats to species at the leasing stage).

In considering environmental effects, the BLM must also address whether to defer lease parcels based on conservation or other use conflicts, including by applying the leasing preference criteria to the parcels subject to scoping. *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

[19] *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); *NRDC v. Callaway*, 524 F.2d 79, 89 (2d Cir. 1975); *Envtl. 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); *Minn. Public Interest Rsch. Grp. v. Butz*, 498 F.2d 1314, 1322 (8th Cir. 1974); *NRDC 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).

conflicts between oil and gas development and other public land uses that were not resolved in the resource management plans, and to 'take[ ] into account the long-term needs of future generations for renewable and nonrenewable resources.'" 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 EA 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 its specific reasons for doing so.

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, exacerbating ongoing and historical degradation to the affected area and the public health of nearby communities. We urge the BLM not to assign an overall preference to 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.

In direct tension with its regulations, the BLM's recently released IM 2025-028 mandates that the agency move forward all "eligible" parcels for leasing regardless of their preference designation or resource conflicts. *See* IM 2025-028, OIL AND GAS LEASING – LAND USE PLANNING AND LEASE PARCEL REVIEWS at 5 (May 8, 2025). The IM's directive is unlawful not only because it roots the command to offer all parcels in the illegitimate energy emergency declaration, *see id.*; discussion *supra* Section I, but also because: (a) the IM conflicts with the BLM's legal requirements; and (b) it represents a substantive agency rule that requires, but did not receive, notice and comment under the APA.

First, the IM conflicts with the BLM's obligations under FLPMA and NEPA. The BLM's eligibility determination is general and performed before the BLM has examined what specific resource conflicts might exist for nominated parcels. The BLM cannot ascertain those conflicts until it conducts the environmental analysis and examines resource conflicts for the specific parcels at issue for a particular sale. Thus, the IM's directive to move forward all "eligible" parcels binds the agency to offering parcels for lease irrespective of their resource conflicts. This violates the BLM's obligations under FLPMA.

The IM also fails to recognize that lands must not only be "eligible" for leasing but also "available." 30 U.S.C. § 226(b)(1)(A). By requiring that all lands the BLM determines are "eligible" be leased, without also determining whether acreage is "available," the IM violates both the MLA and the agency's own regulations. *See* 30 U.S.C. 226(b)(1)(A) ("Lease sales shall be held for each State where eligible lands are *available* at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary.") (emphasis added); 43 C.F.R. § 3120.11 ("All lands eligible *and available* for leasing *may be offered* for competitive auction . . . ." (emphases added)).

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.

The IM 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, 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 has still been considering modified leasing alternatives analyzing parcel deferrals in recent 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 the use of 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, as discussed earlier, the BLM's EAs are often tiered to severely outdated RMPs. *See* discussion *supra* Section III.b.; *see also, 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) (relying on RMPs from as far back as 1997 and 1988). Relying on such outdated RMPs to justify a DNA would violate NEPA's hard-look requirement, in addition to the requirements under NEPA and FLPMA not to rely on old or stale environmental analysis.

The IM's directive to use a DNA and forego additional NEPA analysis is particularly problematic given that the agency has engaged in a practice of conducting abbreviated NEPA analyses that fail to meet the BLM's obligations. In one EA, for example, the agency analyzed most of the issues "in brief," rather than analyzing issues in depth for specific resource conflicts based on the scoping parcels. *See* 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 i–ii (Apr. 2025) (analyzing all but four issues "in brief").

Curtailing NEPA analysis at the leasing stage is undermined by the BLM's pattern and practice of deferring analysis to the permitting stage and then failing to properly conduct that analysis. 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 Interior*, No. 22-CV-1871 (CRC), 2024 WL 1241906, at *17 (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 a typical example out of the Bakersfield, California, Field Office, in December 2021, the BLM posted basic well information on its National NEPA Register website for six APDs from the operator California Resources Elk Hills. *See* BLM National NEPA Register, *DOI-BLM-CA-C060-2022-0024-EA*, "Documents" page, https://eplanning.blm.gov/eplanning-ui/project/2017168/510 (last visited May 29, 2025). The BLM's Automated Fluid Minerals Support System (AFMSS) has repeatedly reported approving APDs *before* the BLM has released the EAs and decision records. (AFMSS includes only basic well information and does not provide EAs or decision records, so the public has no way of understanding how or why BLM issued the approvals.) The BLM, in several instances, has then released the EAs and decision records for the APDs on its National NEPA Register site months after they were apparently approved. In a specific instance 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 dated August 2, 2022, with the release date nearly two years later, on April 11, 2024).

In another example out of the Carlsbad Field Office in New Mexico, in February 2025 the BLM posted the EA, a Finding of No Significant Impact (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-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 several instances, the BLM released the EAs and Decision Records for the APDs on its National NEPA Register site months after they were apparently approved. For example, in the Carlsbad Field Office, the EA, FONSI, and Decision Record Documents were released on the National NEPA Register on February 8, 2024, but the documents were dated December 20, 2024. Given that this timing does not make sense, and therefore assuming that the document was incorrectly dated 2024 instead of December 2023, these documents were posted two months *after* their approval date. The posted documents 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 EA, 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).

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).

In summary, the BLM's failures to adequately review environmental impacts, in addition to its failures to provide opportunity for public comment and to 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.

Moreover, the IM prohibits the BLM from satisfying its requirement under NEPA to analyze a reasonable range of alternatives, *New Mexico ex rel. Richardson*, 565 F.3d at 683, 708, because the agency is required to consider only the no-action alternative and a full-leasing alternative. *See* IM 2025-028 at 5. The IM thus unlawfully (and impractically) constrains the BLM's ability to realize its statutory and regulatory obligations.

Second, the IM is akin to a "substantive agency rule . . . that carries the force and effect of law" by creating new obligations. *W. Watersheds Project v. Zinke*, 441 F. Supp. 3d 1042, 1067 (D. Idaho 2020), *aff'd in part, rev'd in part on other grounds and remanded sub nom. Mont. Wildlife Fed'n v. Haaland*, 127 F.4th 1 (9th Cir. 2025) (citing *Sacora v. Thomas*, 628 F.3d 1059, 1070 (9th Cir. 2010) (holding that interpretative rules cannot be "inconsistent with" existing laws or "impose new rights or obligations")). "The critical factor" in determining whether" such an agency document "constitutes a general statement of policy is 'the extent to which the challenged [directive] leaves the agency, or its implementing official, free to exercise discretion to follow, or not to follow, the announced policy in an individual case.'" *Id.* (citation modified) (quoting *Mada-Luna v. Fitzpatrick*, 813 F.2d 1006, 1012–13 (9th Cir. 1987)).

IM 2025-028 leaves the agency and its offices no discretion to defer parcels or consider any other leasing alternative. Moreover, as noted, the IM directly conflicts with the BLM's Leasing Rule. The IM's prescriptions render the leasing preference criteria a meaningless paperwork exercise, nullifying the agency's own regulatory requirements. Accordingly, the agency was required to undergo notice-and-comment procedures pursuant to the APA for this IM but failed to do so.

* * * * *

For this lease sale, the BLM must disregard the IM's unlawful directives when analyzing parcels. Rather, the agency must consider whether to defer—and, if conflicts exists, must defer—parcels based on the leasing preference criteria and the agency's other statutory and regulatory obligations.

The following subsections discuss environmental analysis for the BLM to include in its NEPA review and associated parcel deferral recommendations.

a. The BLM must analyze the impacts of leasing parcels in big game habitat and designate as low preference for leasing and defer parcels in such areas.

Under FLPMA, the BLM must manage public lands according to "multiple use" and "sustained yield" and "in a manner that . . . will provide food and habitat for fish and wildlife and domestic animals." 43 U.S.C. §§ 1701(a)(7) & (8), 1712(c)(1), 1732(a). The agency will preference "lands that would not impair the proper functioning of [fish and wildlife] habitats or corridors." 43 C.F.R. § 3120.32(b).

The below 3 proposed parcels overlap big game priority habitat for two species as designated by the New Mexico Department of Game and Fish (NMDGF) Crucial Habitat Assessment Tool (CHAT) for Terrestrial Species of Economic and Recreational Importance (Terr SER)[20]:

NM-2026-08-0764
NM-2026-08-6921
NM-2026-08-6924

The BLM must thoroughly analyze the impacts to big game of leasing in crucial winter range. Research makes clear that oil and gas development in big game winter ranges can have substantial negative effects, including habitat avoidance and population declines. *See e.g.*, Hall Sawyer et al., *Mule Deer and Energy Development—Long Term Trends of Habituation and Abundance*, 23 GLOB. CHANGE BIOLOGY 4521 (2017) [Ex. 3], https://onlinelibrary.wiley.com/doi/10.1111/gcb.13711 (analyzing 17 years of telemetry data from GPS-radio collared mule deer that used crucial winter range on lands that were converted for natural gas development, showing a 36% decrease in population and substantial habitat loss due both to physical displacement as well as avoidance behaviors, and finding further that the avoidance behavior did not lessen over time, i.e., that the animals do not habituate to the disturbance); Hall Sawyer et al., *Long-Term Effects of Energy Development on Winter Distribution and Residency of Pronghorn in the Greater Yellowstone Ecosystem*, CONSERVATION SCI. & PRAC., 1 (July 2, 2019) [Ex. 4], https://conbio.onlinelibrary.wiley.com/doi/10.1111/csp2.83 (analyzing winter range residency behaviors of pronghorn antelope across a 15-year period, and finding significant declines in the amount of time pronghorn were resident on winter ranges due to oil and gas development and an increase in the percentage of the population that stopped using the winter range entirely, as well as an increased avoidance of, on average, 408 meters from well pads); Adele K. Reinking et al., *Across Scales, Pronghorn Select Sagebrush, Avoid Fences, and Show Negative Responses to Anthropogenic Features in Winter*, 10 ECOSPHERE 1, 1–14 (May 2019) [Ex. 5], https://esajournals.onlinelibrary.wiley.com/doi/epdf/10.1002/ecs2.2722 (another study showing the harm to pronghorn from oil and gas development in their crucial winter range). Extensive leasing in crucial winter range has significant adverse impacts on New Mexico's big game herds.

The BLM must also thoroughly analyze the impacts to big game of leasing in migration corridors. Extensive research over the past decade has documented significant impacts from oil and gas development on migrating big game, including habitat fragmentation, displacement, and loss. For example, migrating mule deer show strong fidelity >80% to their migration corridors and exhibit very little flexibility in whether or where they migrate. Hall Sawyer, et al. *Migratory*

[20] Note that while NMDGF's CHAT does not provide an indication as to the precise species and habitat type implicated in each parcel, CHAT includes as priority habitat "corridors, winter range, and stop-over sites based on data from the [United States Geological Survey] USGS series of ungulate migrations publications and other sources." It designates priority habitat for bighorn sheep, pronghorn, elk, and mule deer. N.M. Dep't of Game & Fish, *Crucial Habitat Metadata*, NM CHAT, https://nmchat.org/data-metadata.html (last visited Dec. 8, 2025).

Plasticity Is Not Ubiquitous Among Large Herbivores, 88 J. OF ANIMAL ECOLOGY 450, 450–60 (2019) [Ex. 6], https://doi.org/10.1111/1365-2656.12926. This species does not demonstrate habituation to oil and development when migrating; instead, individuals increase the speed with which they move through disturbed areas of their corridors, and spend less time foraging in the corridor, leading to poorer nutritional outcomes from reduced access to high quality forage. Teal B. Wyckoff et al., *Evaluating the Influence of Energy and Residential Development on the Migratory Behavior of Mule Deer*, 9 ECOSPHERE 1 (Feb. 23, 2018) [Ex. 7], https://esajournals.onlinelibrary.wiley.com/doi/10.1002/ecs2.2113. A 14-year study on a mule deer herd found that the herd's ability to track springtime green-up forage—which supports antler growth, nursing of offspring, and abundance—declined by 39% when energy development occurred in its migration corridor. Ellen O. Aikens et al., *Industrial Energy Development Decouples Ungulate Migration from the Green Wave*, 6 NATURE ECOLOGY & EVOLUTION 1733, 1733–39 (2022) [Ex. 8].

The BLM must provide a full analysis of the reasonably foreseeable impacts to big game populations from development on these particular lease parcels. The BLM's prior approach to analyzing big game has been found to violate NEPA because it relied on analysis prepared for the agency's RMPs and lacked "anything resembling an estimate of how the lease sale [at issue] will impact these species." *Wilderness Soc'y*, 2024 WL 1241906, at *19. This approach is especially inadequate here because many of the BLM's New Mexico RMPs are old or stale, and new research has shown that big game are suffering substantial population losses in areas of intensive oil and gas development. *See id.* at *17. The BLM "must use available evidence to reasonably forecast how these lease sales will affect . . . big game" on the specific lands being proposed for leasing. *Id*. at *19.

The BLM must also consider how drilling on the proposed parcels will add to habitat impairment from past, present, and reasonably foreseeable future drilling elsewhere in New Mexico's big game habitat. In doing so, the agency must provide a baseline of impacts from existing development, including how much critical winter range acreage is directly disturbed or impaired in connection with ongoing and future development. The BLM has an obligation to determine whether the direct, indirect, and cumulative effects of this lease sale will have a significant impact on big game, and thus whether an EIS is required.

Accordingly, the parcels listed above that overlap critical big game habitat should be designated as low preference for leasing and deferred.

b. The BLM must analyze the impacts of leasing parcels in areas with low oil and gas development potential and not near existing development, and must 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. 43 C.F.R. § 3120.32(e). The following 15 parcels are on lands with low development potential:

NM-2026-08-0747 (and not within 5 miles of producing wells)

NM-2026-08-0748 (and not within 5 miles of producing wells)
NM-2026-08-0750 (and not within 5 miles of producing wells)
NM-2026-08-0751 (and not within 5 miles of producing wells)
NM-2026-08-0752 (and not within 5 miles of producing wells)
NM-2026-08-0757
NM-2026-08-0758 (and not within 5 miles of producing wells)
NM-2026-08-0759 (and not within 5 miles of producing wells)
NM-2026-08-0760 (and not within 5 miles of producing wells)
NM-2026-08-0763 (and not within 5 miles of producing wells)
NM-2026-08-0764
NM-2026-08-0766
NM-2026-08-6919 (and not within 5 miles of producing wells)
NM-2026-08-6920
NM-2026-08-6924

All these parcels should be designated as having a low preference for leasing and should be deferred.

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." 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."). Leasing lands with no or low potential for oil and gas development violates FLPMA's multiple use mandate. Offering parcels in low potential lands precludes management for other uses. The BLM itself has 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." 89 Fed. Reg. at 30,956. Accordingly, the BLM should analyze for deferral—and defer—parcels on land with low development potential.

c. The BLM should analyze and defer parcels that overlap Areas of Critical Environmental Concern (ACEC) until management decisions are made for those lands in order to comply with NEPA and FLPMA.

FLPMA obligates the BLM to take its resource inventory into account when preparing management plans and authorizing uses, observing the principles of multiple use and sustained yield. *See* 43 U.S.C. §§ 1711(a), 1712(c); *see Or. Nat. Desert Ass'n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2008). The BLM is also required to "prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). In making decisions about leasing areas for oil and gas development, the BLM can and should protect wildlife, scenic values, recreation opportunities, and wilderness character on public lands. This is necessary and consistent with the definition of multiple use, which identifies the importance of various aspects of wilderness characteristics (such as recreation, wildlife, and natural scenic values) and requires the BLM's consideration of the relative values of these resources but "not necessarily to the combination of uses that will give the greatest economic return." *See id.* § 1702(c).

The BLM has exercised its discretion to defer parcels overlapping with areas with wilderness characteristics where management direction has not been made or where lands are being managed under such designations. For example, 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." DOI-BLM-CO-N050-2017-0051-DNA, at 1 (Dec. 6, 2017). The Grand Junction Field Office completed its RMP revision in 2015 but 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 consider management options for those wilderness resources. The BLM should similarly defer leasing in inventoried ACECs for which management decisions have not been made or which are actively being managed based on these designations. This approach is consistent with agency policy and authority and is critical to preserving the BLM's ability to make management decisions for those wilderness resources through a public planning process.

The following 4 parcels overlap BLM-recognized ACEC units:

NM-2026-08-0758 (Torrejon Fossil Fauna ACEC)
NM-2026-08-0759 (Torrejon Fossil Fauna ACEC)
NM-2026-08-0760 (Torrejon Fossil Fauna ACEC)
NM-2026-08-0763 (Torrejon Fossil Fauna ACEC)

The BLM must preserve its ability to decide whether and how to protectively manage wilderness resources in a public planning process. Such decisions could be foreclosed by leasing those lands to the oil and gas industry at this time. The BLM should defer all leases that overlap ACECs until the agency has the opportunity to make management decisions for those areas through a public planning process.

d. The BLM must analyze the impacts of leasing parcels in lesser prairie-chicken (LPC) habitat and designate as low preference for leasing and defer parcels in such areas.

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). 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 below 3 proposed parcels overlap LPC modeled habitat[21]:

[21] The Western Association of Fish and Wildlife Agencies' (WAFWA) CHAT defines modeled habitat as "modeled . . . available and potential habitat." W. Ass'n of Fish & Wildlife Agencies, *LPC Crucial Habitat (CHAT)*, ARCGIS, https://www.arcgis.com/home/item.html?id=89f7f4a84f6c478d98367e8a6 a89260e (last visited Dec. 9, 2025).

NM-2026-08-0768
NM-2026-08-0773
NM-2026-08-0774

The BLM should designate the above-listed parcels as having a low preference for leasing and evaluate all parcels for deferral.

In particular, the BLM must thoroughly analyze the impacts to LPC of leasing in potential habitat and must defer leasing in areas of occupied habitat. The Pecos 2008 RMP states that leasing with the requisite Conditions of Approval in LPC habitat "will be considered on a case-by-case basis, providing impacts from exploration and development will not cause unnecessary or undue impact to efforts to restore habitat." PECOS 2008 RMP at 8. It closes to new leasing "[a]reas designated as occupied or suitable lesser prairie-chicken habitat" and states that areas of potentially suitable LPC habitat will be closed to new leasing "[i]f leasing and development in these areas will impact suitable habitat." PECOS 2008 RMP at 10–11. In addition, "[a]reas of potentially suitable habitat where lands can be used to 'block up' larger surrounding areas of suitable habitat will also be closed to new leasing." PECOS 2008 RMP at 11.

It is especially important for the BLM to adequately analyze impacts to LPC given the uniqueness and fragility of the New Mexico's LPC population, where survival and recovery of this population will almost certainly require not just stopping habitat loss, but also conservation, restoration, and reintroduction of birds into previously occupied habitat. Each population of the LPC is genetically unique, and this is particularly true of the LPC New Mexico population. Sara J. Oyler-McCance et al., *Rangewide Genetic Analysis of Lesser Prairie-Chicken Reveals Population Structure, Range Expansion, and Possible Introgression*, 17 CONSERVATION GENETICS 643, 653 (2016) [Ex. 9]. The LPC population in New Mexico resides in an ecoregion known as the Shinnery Oak Prairie, and members within this population exhibit especially unique genetic patterns. Lyman McDonald et al., *Range-Wide Population Size of the Lesser Prairie-Chicken: 2012, 2013, 2014, 2015, and 2016*, TECH. REP. FOR THE W. ASS'N OF FISH & WILDLIFE AGENCIES (2016), https://eplanning.blm.gov/public_projects/2021616/200533749/20077929/250084111/Ex%2016 4a_McDonald%202016%20Range-wide%20Population%20Size%20of%20the%20Lesser%20Prairie%20Chicken.pdf [Ex. 10]; McCance, *Rangewide Genetic Analysis of Lesser Prairie-Chicken Reveals Population Structure, Range Expansion, and Possible Introgression* at 653. In fact, numerous genetic studies comparing LPC populations of New Mexico to the nearest neighboring population in Oklahoma have documented substantial genetic differences between these regions that suggest significant, if not complete, isolation by distance. *See* WildEarth Guardians et al., *Petition to List the Lesser Prairie Chicken (Tympanuchus Pallidicinctus) and Three Distinct Population Segments Under the U.S. Endangered Species Act & Emergency Listing Petition for the Shinnery Oak Prairie & Sand Sage Prairie Distinct Population Segments*, 9 (Sept. 8, 2016), https://ecosphere-documents-production-public.s3.amazonaws.com/sams/public_docs/petition/135.pdf [Ex. 11] [hereinafter Wildearth Guardians, *Petition*] (collecting studies). This isolation has resulted in a number of adaptations that make the population uniquely suited to the conditions of the Shinnery Oak Prairie. *Id.* at 9–13. The particular adaptations of the New Mexico LPC make this population

highly biologically significant, and loss of this specific population of the LPC would mean substantial and irrevocable loss of intra-species biodiversity.

While the LPC has historically occupied habitat in east-central New Mexico, both its population and range have decreased dramatically in the last two hundred years. According to a report issued in 1980, since the 1800s, the overall occupied range of the LPC has decreased 92 percent—a figure which incorporates a 78 percent decrease in their range since 1963. Maple A. Taylor et. al., *Status, Ecology, and Management of the Lesser Prairie Chicken*, USDA FOREST SERV. GEN. TECH. REP. RM-77, 4 (1980), https://dn790009.ca.archive.org/0/items/IND81013612/IND81013612.pdf [Ex. 12]. This decrease in LPC range is accompanied by a marked decrease in its population numbers. Total LPC population estimates have declined from 150,000 birds in the mid-1980s to around 27,000 birds in 2022. Elisabeth C. Teige et al., *Assessment of Lesser Prairie-Chicken Translocation Through Survival and Lek Surveys*, WILDLIFE SOC'Y BULLETIN, 3 (Sept. 11, 2023) https://wildlife.onlinelibrary.wiley.com/doi/10.1002/wsb.1493#:~:text=Lesser%20prairie%2Dchicken%20population%20estimates,2022) [Ex. 13]; Kristen Nasman et al, *Range-Wide Population Size of the Lesser Prairie-Chicken: 2012 to 2022*, W. ASS'N OF FISH & WILDLIFE AGENCIES, ii (Oct. 2022), https://wafwa.org/wp-content/uploads/2022/11/LPC_RangeWidePopSize2012-2022.pdf [Ex. 14]. In New Mexico, LPCs are concentrated in patches within the few regions in New Mexico they still occupy, and only 26 percent of suitable habitat occupied by the LPC is considered large enough to support the populations. Kristine Johnson et al., *GIS Habitat Analysis for Lesser Prairie-Chickens in Southeastern New Mexico*, BMC ECOLOGY, 3 (Dec. 4, 2006) https://link.springer.com/article/10.1186/1472-6785-6-18 [Ex. 15].

In order to survive and thrive, the LPC requires large tracts of relatively intact native grasslands. The LPC requires continuous areas of habitat that are at least 25,000 acres and connected to other large areas of habitat. Wildearth Guardians, *Petition* at 20. Without large enough tracts of land, and sufficient corridors connecting this land to other large tracts of land, the LPC population is likely to significantly decrease. This is particularly true because LPC are habitat specialists, meaning that they are uniquely adapted to their specific environment. As a result, the decline in LPC population size associated with habitat destruction and fragmentation is greater than the effect of acreage of habitat lost alone. *See* Darren J. Bender et al., *Habitat Loss and Population Decline: A Meta-Analysis of the Patch Size Effect*, 79 ECOLOGY 517 (1998), https://www.researchgate.net/publication/246352915_Habitat_Loss_and_Population_Decline_A_Meta-Analysis_of_the_Patch_Size_Effect [Ex. 16]. As a result of its habitat-specific adaptations, it is far more difficult for the LPC to adapt to new environments. Unlike habitat generalist species, in which population decline due to habitat loss is mitigated by the species' ability to adapt to a new habitat, the LPC cannot generally make up for lost habitat by finding and adapting to new land.

Having sizeable and reliable habitat is also critically important for LPC because they regularly return to the same mating sites, called leks. The species typically has high fidelity to lek sites: males and females often return to the same lek sites year after year, underscoring the importance of consistent and suitable LPC habitat to the continued survival of the species. William E. Van Pelt et al., *Lesser Prairie-Chicken Range-Wide Conservation Plan*, W. ASS'N OF

FISH & WILDLIFE AGENCIES, 14 (Oct. 2013), https://eplanning.blm.gov/public_projects/2021616/200533749/20078003/250084185/Exhibit%20219%20-%20LPC%20rangewide%20conservation%20plan.pdf [Ex. 17].

The BLM should therefore thoroughly analyze the above-listed parcels for deferral.

e. The BLM must thoroughly analyzed and defer parcels in areas with high karst or cave potential and that are in a critical karst or cave resource area.

FLPMA obligates the BLM to take its resource inventory into account when preparing management plans and authorizing uses, observing the principles of multiple use and sustained yield. *See* 43 U.S.C. §§ 1711(a), 1712(c). The BLM is also required to "prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b).

The following 4 parcels are in areas with critical karst designations or high potential, and the BLM should evaluate them for deferral:

NM-2026-08-6920 (critical karst)
NM-2026-08-0757 (high potential)
NM-2026-08-0766 (critical karst)
NM-2026-08-0767 (high potential)

These parcels are located within an area in known soluble rock types with high or medium densities of significant cave systems or bedrock fractures that lead to the rapid recharge of karst groundwater aquifers from surface runoff. These areas provide critical drinking water supplies for major communities, ranching operations, and springs that support rivers and vital riparian habitat. Further, those cave and karst areas are close to the protected cave systems at Carlsbad Caverns National Park and could very well be connected through underground passages or fractures that have not yet been mapped. In fact, one of the scoped parcels is within 10 miles of Carlsbad Caverns National Park: NM-2026-08-6921.

The entire area which makes up the Carlsbad Field Office should be studied thoroughly to assess the vulnerabilities to aquifer resources and fragile karst resources, which can also be home to unique wildlife and habitat, as the cave and karst system throughout the region is deeply interconnected. Carlsbad Caverns is a designated World Heritage Area and indeed attracts visitors from around the world. A single leak from hydraulic fracturing or reinjection of "produced water," or seismic activity that has been linked to hydraulic fracturing and produced water, could have a devastating and irreversible impact on the National Park and on public health and safety. In recent years, exploratory wells have run into empty space at about the same depth as Carlsbad's caverns. According to a 2007 NPS Geologic Resource Evaluation Report, hundreds of producing oil and gas wells have been drilled north, east, and south of Carlsbad Caverns:

> Exploratory wells have been drilled within a few thousand feet of the north and east boundaries of Carlsbad Caverns, and some of these have encountered voids at the same depth as major passages in Lechuguilla Cave. At least 61 wells drilled

> near the park have encountered lost circulation zones in the Capitan and Goat Seep Formations, suggesting that unexplored cave passages were intersected during drilling. Substantial hydrocarbon reserves and known cave resources exist immediately north of the park boundary. It is probable that exploratory drilling will intersect openings that connect with caves in the park. Resources inside the park could be at risk of contamination from toxic and flammable gases and other substances associated with the exploration and production of oil and gas.

NAT'L PARK SERV., CARLSBAD CAVERNS NATIONAL PARK: GEOLOGIC RESOURCE EVALUATION REPORT, 10 (2007) [Ex. 18], http://npshistory.com/publications/cave/nrr-2007-003.pdf (citations omitted).

A Stanford University study released in February 2018 documents seismic threats in the Permian Basin resulting from injection wells. Stanford University, *Seismic Stress Map Developed by Stanford Researchers Profiles Induced Earthquake Risk for West Texas, New Mexico*, STANFORDREPORT (Feb. 8, 2018) [Ex. 19], https://news.stanford.edu/2018/02/08/seismic-stress-map-profiles-induced-earthquake-risk-west-texas-new-mexico/. In addition, a Durham University Study released in February 2018 noted that "[t]he risk of human-made earthquakes due to fracking is greatly reduced if high-pressure fluid injection used to crack underground rocks is 895m away from faults in the Earth's crust." Durham University, *Human-made Earthquake Risk Reduced if Fracking is 895m from Faults*, SCIENCEDAILY (Feb. 27, 2018) [Ex. 20], https://www.sciencedaily.com/releases/2018/02/180227233301.htm. Hydraulic fracking in the Permian Basin was not remotely close to current levels 15 years ago. Not only does this underscore the issue of the BLM not adequately responding to comments, it also indicates the BLM is not using the best available science. NEPA requires the BLM to "ensure[] 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 (1989).

In addition to the potential impacts to cave systems, poorly planned leasing and oil and gas development can have a negative impact on a sustainable local tourism economy. Carlsbad Caverns and Guadalupe Mountains National Parks combined generated over $70.8 million in local economic output and supported 580 jobs in 2024. NAT'L PARK SERV., 2024 NATIONAL PARK VISITOR SPENDING EFFECTS, 21, 27 (Sept. 2025) [EX. 21], https://www.nps.gov/nature/customcf/NPS_Data_Visualization/docs/NPS_2024_Visitor_Spending_Effects.pdf. The breadth and density of oil and gas development around Carlsbad Caverns is one of the factors that has already taken a toll on the park's popularity. Visitation to Carlsbad has decreased to 460,000 from 792,000 in 1989. *Carlsbad Caverns NP*, IRMA PORTAL NATIONAL PARK SERVICE (last visited Nov. 16, 2025) [Ex. 22], https://irma.nps.gov/Stats/SSRSReports/Park%20Specific%20Reports/Annual%20Park%20Recreation%20Visitation%20Graph%20(1904%20-%20Last%20Calendar%20Year)?Park=CAVE.

The development that might be driving visitors away includes blighting of the viewshed with drill rigs, pump jacks, and other industrialization, and the loss of dark night skies from excessive lighting and flaring in the area—all of which underscores the importance of taking care

in managing leasing and land use activities near Carlsbad Caverns, Guadalupe Mountains, and other publicly accessible caves, recreational areas, groundwater resources, and agricultural activities in the area. As such, the BLM should thoroughly analyze impacts of leasing on these parcels, and should evaluate deferring some or all of these parcels.

f. The BLM must analyze greenhouse gas (GHG) emissions and climate effects, and must 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*, 2024 WL 1241906, at *23–26. As one court explained, "[a]ny 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 *24. 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). The BLM has the tools to undertake this analysis. Failing to do so for this lease sale would be arbitrary and capricious.

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 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 Regul. Comm'n*, 867 F.3d at 1373–74 (explaining that whether an agency must analyze certain environmental effects under NEPA turns on the question of "[w]hat factors [the agency] can . . . consider when regulating in its proper sphere," and holding that the agency must 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.[22] The BLM must ensure it fully considers not only the GHG emissions from

[22] *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. Fed. Energy Regul. Comm'n*, 6 F.4th 1321, 1329–30 (D.C. Cir. 2021); *Sierra Club v. Fed. Energy Regul. 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. BLM*, 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*, 2024 WL 1241906, at *24 (explaining that the BLM cannot "overlook[] what is widely regarded as the most pressing environmental threat facing the world today"); *WildEarth Guardians*, 368 F. Supp. 3d at 63, 67–77 (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").

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 being 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).[23]

The Supreme Court's recent decision in *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025) does not alter the BLM's NEPA obligations to analyze GHG emissions and climate impacts for this lease sale. *Seven County* affirmed that agencies must still analyze indirect effects under NEPA. *See id.* at 187 ("To be clear, the environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the geographical territory of the project or might materialize later in time . . . . But if the project at issue might lead to the construction or increased use *of a separate project* . . . the agency need not consider the environmental effects *of that separate project*." (emphases in original)); *id.* at 189 (holding that the Surface Transportation Board rightly considered indirect effects such as soil erosion from new rail embankments and air pollution from trains in evaluating the environmental effects of a railroad line construction); *see also Las Vegas Paiute Tribe*, 200 IBLA 172, 187 (2025) (applying the Court's holding in *Seven County* to find that the tribe was likely to succeed on the merits of its claim that the BLM had unlawfully failed to consider how a transfer of land for development might impact the tribe's water availability or its ability to exercise water rights, because those were reasonably foreseeable potential impacts of the land sale).

Here, the downstream GHG emissions that will result from this lease sale require analysis. The oil or gas to be extracted is a direct result of the leases at issue and is thus not too proximately separate in time or place. *Cf. Seven County*, 605 U.S. at 187 (distinguishing between an agency's obligation to conduct NEPA analysis where "effects might extend outside the geographical territory of the project or might materialize later in time" and effects of "a possible future project or one that is geographically distinct from the project at hand" that do not require NEPA analysis). And here, unlike in *Seven County*, the BLM controls the oil and gas leasing process and thus possesses regulatory authority over managing the oil or gas subject to the prospective leasehold. *Cf.* 605 U.S. at 175 ("[T]he Board possesses no authority or control over potential future oil and gas development in the Basin." (citation modified)); *id.* at 195 (Sotomayor, J., concurring in judgment) ("[T]he Board cannot control the products transported on the proposed rail line." (citation modified)). As such, under a rule of reason, the BLM must analyze the GHG emissions that would result because it manages and exerts authority over the oil or gas, which is directly related to this lease sale.

[23] *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. U.S.*

i. The BLM must quantify climate impacts with a tool such as the social cost of greenhouse gases.

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. Courts have rejected agency refusals to properly quantify the impact of GHG emissions.[24] While NEPA does not require a cost-benefit analysis, it is "nonetheless arbitrary and capricious to quantify the *benefits* . . . and then explain that a similar analysis of the *costs* was impossible when such an analysis was in fact possible." *High Country Conservation Advocs. v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1191 (D. Colo. 2014) (emphases in original).

The tons of GHGs emitted by a project are not the "actual environmental effects" under NEPA. Merely listing the quantity of emissions is insufficient if the agency "does not reveal the meaning of those impacts in terms of human health or other environmental values," since "it is not releases of [pollution] that Congress wanted disclosed" but rather "the effects, or environmental significance, of those releases." *NRDC v. Nuclear Regul. Comm'n*, 685 F.2d 459, 486–87 (D.C. Cir. 1982), *rev'd on other grounds*, *Balt. Gas & Elec. Co*., 462 U.S. at 106–07. In other words, the actual effects and relevant factors that must be analyzed and disclosed to the public are the incremental climate impacts caused by a project's GHG emissions, including: property lost or damaged by sea-level rise; changes in energy demand; lost productivity and other impacts to agriculture; and human health impacts, such as cardiovascular and respiratory mortality from heat-related illnesses, changing disease vectors like malaria and dengue fever, increased diarrhea, and changes in associated pollution that cause or exacerbate other health conditions. These impacts are all included to some degree in the different assessment models included in SC-GHG estimates. *See, e.g.*, ENV'T PROT. AGENCY, REPORT ON THE SOCIAL COST OF GREENHOUSE GASES: ESTIMATES INCORPORATING RECENT SCIENTIFIC ADVANCES, 47–62 (2023) [Ex. 23] [hereinafter GREENHOUSE GAS REPORT].

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*, 538 F.3d at 1217 (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"))).

[24] *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 Advocs. 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*, 538 F.3d at 1200 (holding that while there is a range potential social cost figures, "the value of carbon emissions reduction is certainly not zero").

Even in combination with a general, qualitative discussion of climate change, an agency that only calculates the tons of GHGs emitted fails to meaningfully assess the actual incremental impacts to property, human health, productivity, and so forth.[25] An agency therefore falls short of its legal obligations and statutory objectives by disclosing only volume estimates. To take an analogous example, courts have held that just quantifying the acres of timber to be harvested or the miles of road to be constructed does not constitute a "description of *actual* environmental effects," even when paired with a qualitative "list of environmental concerns such as air quality, water quality, and endangered species," when the agency fails to assess "the degree that each factor will be impacted." *Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 995 (9th Cir. 2004) (emphasis in original) ("A calculation of the total number of acres to be harvested in the watershed is . . . not a sufficient description of the actual environmental effects that can be expected from logging those acres."); *see also Or. Nat. Res. Council v. BLM*, 470 F.3d 818 (9th Cir. 2006).

Monetizing climate damages using the SC-GHG helps the agency assess the incremental and actual effects bearing on the public interest. SC-GHG calculates how the emission of an additional unit of GHG affects atmospheric greenhouse concentrations, how that change in atmospheric concentrations changes temperature, and how that change in temperature incrementally contributes to economic damages, including property damages, energy demand effects, lost agricultural productivity, human mortality and morbidity, lost ecosystem services and non-market amenities, and others. *See, e.g.*, INTERAGENCY WORKING GRP. ON SOC. COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS 5 (2010) [Ex. 24]. The SC-GHG therefore captures the factors that actually affect public welfare and assesses the degree of impact to each factor, in ways that simply estimating the volume of emissions cannot.

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 LE ESTIMATES OF SOCIAL COST OF GREENHOUSE GASES (SC-GHG), 1, 8 (Oct. 16, 2024) [Ex. 25], 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

[25] *See Ctr. for Biological Diversity*, 538 F.3d at 1216–17 (rejecting analysis under NEPA when agency "quantifie[d] the expected amount of [carbon dioxide] emitted" but failed to "evaluate the incremental impact that these emissions will have on climate change or on the environment more generally," noting that this approach impermissibly failed to "discuss the *actual* environmental effects resulting from those emissions" or "provide the necessary contextual information about the cumulative and incremental environmental impacts" that NEPA requires); *California v. Bernhardt*, 472 F. Supp. 3d 573, 623 (N.D. Cal. 2020) ("[F]raming sources as less than 1% of global emissions is dishonest and a prescription for climate disaster . . . Mere quantification [of greenhouse gas emissions] is insufficient."); *Mont. Envtl. Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1096–99 (D. Mont. 2017) (rejecting the argument that the agency "reasonably considered the impact of greenhouse gas emissions by quantifying the emissions which would be released if the [coal] mine expansion is approved, and comparing that amount to the net emissions of the United States"); *High Country Conservation Advocs. v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1191 (D. Colo. 2014) ("Beyond quantifying the amount of emissions relative to state and national emissions and giving general discussion to the impacts of global climate change, [the agencies] did not discuss the impacts caused by these emissions.").

estimates of the Social Cost of Greenhouse Gases (SC-GHG) as the best available science (as of September 30, 2024)"). However, the BLM is now omitting SC-GHG from its environmental analysis. For example, in a final EA for the Quarter 1 2025 New Mexico Oil and Gas Lease Sale, the BLM chose to omit its quantification of climate impacts (which had been included in the draft EA), did not replace this omission with any other adequate quantitative analysis, and purported to rescind its memorandum. *See* BLM, CARLSBAD FIELD OFFICE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT at 88, QUARTER 1 (2025). But the BLM failed to provide proper justification for changing its position. *Cf. 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 BLM's only apparent substantive justification for not including such quantification is that "costs attributed to GHGs are often so variable and uncertain that they are unhelpful for the BLM's analysis." BLM, FINDING OF NO SIGNIFICANT IMPACT: 2025 THIRD QUARTER COMPETITIVE LEASE SALE: DOI-BLM-WY-0000-2025-0001-EA, at *7 (Apr. 2025).

That bare contention, with no reference or explanation to support it, is insufficient to justify a change in position. The Office of Information and Regulatory Affairs' (OIRA's) May 5, 2025, memorandum[26] directing agencies to minimize consideration of climate impacts likewise contains deeply flawed reasoning that cannot support failure to use SC-GHG. 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: WYOMING 2023 SECOND QUARTER COMPETITIVE LEASE SALE, 54–55 (2023). Contrary to the BLM's justification for not using SC-GHG, the tool's estimates are based on extensive expert development and peer review for nearly two decades. *See, e.g.*, PETER HOWARD ET AL., INSTITUTE FOR POLICY INTEGRITY, ZERO RATIONALITY: WHAT OIRA'S NEW MEMORANDUM GETS WRONG ON MONETIZING CLIMATE IMPACTS, i (May 2025) [Ex. 26] [hereinafter ZERO RATIONALITY].

The Environmental Protection Agency's (EPA's) 2023 SC-GHG report underwent public comment and peer review by eminently qualified experts. *See, e.g.*, ENV'T PROT. AGENCY, DETAILS OF EXTERNAL PEER REVIEW PANEL PROCESS FOR THE REVIEW OF EPA'S "REPORT ON THE SOCIAL COST OF GREENHOUSE GASES: ESTIMATES INCORPORATING RECENT SCIENTIFIC ADVANCES," 2–4 (2023) [Ex. 27] (listing peer reviewers). EPA valued climate impacts using the best available scientific information, such as state-of-the-art damage functions from leading climate economists and research laboratories: one from the University of Chicago's Climate Impact Lab; one from Resources for the Future and the University of California, Berkeley; and one from Dr. Thomas Sterner and Dr. Peter Howard that integrates and combines many other published estimates through a meta-analysis. *See* GREENHOUSE GAS REPORT at 47. Collectively,

[26] OMB MEMORANDUM M-25-27, MEMORANDUM FOR REGULATORY POLICY OFFICERS AT DEPARTMENTS AND AGENCIES AND MANAGING AND EXECUTIVE DIRECTORS OF COMMISSIONS AND BOARDS RE: GUIDANCE IMPLEMENTING SECTION 6 OF EXECUTIVE ORDER 14154, ENTITLED "UNLEASHING AMERICAN ENERGY" (May 5, 2025).

these three damage functions capture various market and non-market damages caused by climate change, including impacts on health, energy, labor productivity, agriculture, and coastal regions. *Id.* at 52 Table 2.3.1, 55 Table 2.3.2. The choice to combine three independently constructed damage functions also helped ensure rigor by incorporating a range of expert analyses and thereby guarding against overreliance on any one methodology. Subsequently, numerous federal agencies (including DOI, as noted above) assessed EPA's updated estimates and determined that the updated estimates reflect the best available science on monetizing GHG emissions. *See* OFF. OF MGMT. & BUDGET, REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND AGENCY COMPLIANCE WITH THE UNFUNDED MANDATES REFORM ACT: FISCAL YEAR 2023, 21–22 & n.52 (2024) [Ex. 28], https://bidenwhitehouse.archives.gov/wp-content/uploads/2025/01/FY23-Benefit-Cost-Report.pdf.

Moreover, federal courts have repeatedly recognized that agency analysis necessitates making predictive judgments under uncertain conditions, explaining that "[r]egulators by nature work under conditions of serious uncertainty," *Pub. Citizen v. Fed. Motor Carrier Safety Admin.*, 374 F.3d 1209, 1221 (D.C. Cir. 2004), and "are often called upon to confront difficult administrative problems armed with imperfect data." *Mont. Wilderness Ass'n v. McAllister*, 666 F.3d 549, 559 (9th Cir. 2011). As the Ninth Circuit has explained, "the proper response" to the problem of uncertain information is not for the agency to ignore the issue but rather "for the [agency] to do the best it can with the data it has." *Id.*

Experts have also accounted for uncertainty in SC-GHG estimation in rigorous ways. In developing its SC-GHG estimates, for example, EPA applied three damage models developed by different experts, *see* GREENHOUSE GAS REPORT at 2, and incorporated a range of probabilistic socioeconomic and emissions scenarios, *see id.* at 21–33. Further, to address uncertainty and how it compounds throughout the different modules, EPA used a Monte Carlo simulation-based approach. *See id.* at 2. And while this approach produced a range of estimates, EPA provided average estimates at different discount rates including a "central" discount rate of 2%. *See id.* at 12. Accordingly, EPA both rigorously accounted for uncertainty and provided a single central SC-GHG estimate that regulators can apply, and the Working Group, in its estimates, did so as well. *See* ZERO RATIONALITY at 3–4.

Failing to properly quantify climate impacts in this process would thus be arbitrary and capricious. The BLM must also make a significance determination based on GHG emissions and climate impacts.

Finally, NEPA 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(2)(B). A livable climate is a "presently unquantified environmental amenit[y]." By neglecting to use SC-GHG, the BLM would be failing to "identify and develop methods and procedures" to ensure that this "presently unquantified environmental . . . value" is "given appropriate consideration in decisionmaking."

* * * * *

Accordingly, 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*, 2024 WL 1241906, at *25. The BLM "must . . . explain how its GHG analysis inform[s] the decision to select" its preferred alternative. *Id.* at *25. 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.* at *24.

g. 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. *See WildEarth Guardians v. BLM*, 457 F. Supp. 3d 880, 886–89 (D. Mont. 2020).

Groundwater is a critical resource that supplies many communities, particularly rural ones, with drinking water. Protecting these resources is imperative to protect human health and the environment, especially because groundwater will become more important as increased aridity and higher temperatures due to climate change alter water use, quality, and availability. The 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." U.S. ENV'T PROT. 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, 2-1 to 2-18 (Dec. 2016) [Ex. 29], https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990 [hereinafter HYDRAULIC FRACTURING REPORT]. As a result, the BLM must protect aquifers currently being used for drinking water as well as any aquifers that could serve as drinking water sources in coming decades, including deeper and higher salinity aquifers.

Oil and gas drilling typically involves boring wells to depths thousands of feet below the surface, often through or just above groundwater aquifers. Without proper oil or gas well construction and vertical separation between aquifers and producing formations, oil and gas development can contaminate underground sources of water. *See, e.g.*, HYDRAULIC FRACTURING REPORT at 27; Gayathri Vaidyanathan, *Fracking Can Contaminate Drinking Water*, SCI. AM. (Apr. 4, 2016) [Ex. 30], 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 ENV'T SCI. & TECH. 4524, 4524–36 (2016) [Ex. 31] [hereinafter DiGiulio 2016]; Tetiana Cantlay et al., *Contamination of Private Water Supplies After a Well Communication Event (Frac-Out) in Southwest Pennsylvania*, NATURE (2025), [Ex. 32], https://www.nature.com/articles/s41598-025-16976-5.epdf. 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.

Industry has admitted that it often does not protect usable water in practice. The Western Energy Alliance (WEA) 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. WEA 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. 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. 33], https://eplanning.blm.gov/public_projects/2015538/200495187/20062621/250068803/Exhibit%20119-%20PSE%20WY%20Report%20May%202022%20Final.pdf; 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. 34], 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*, 2024 WL 1241906, at *8–11; *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.

First, as a threshold matter, the BLM must provide a detailed accounting 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; 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 during all phases of the operation, 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 presence, depth, quantity, 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. A failure to conduct such an analysis would violate NEPA. *See id.*

h. The BLM must properly analyze methane emissions that would result from this 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 lease parcels, including the economic, public health, and public welfare impacts of venting and flaring. In 2019 alone, venting, flaring, and leaks accounted for roughly 160 billion cubic feet of methane. OLIVIA GRIOT ET AL., SYNAPSE ENERGY ECONOMICS INC., ONSHORE NATURAL GAS OPERATIONS ON FEDERAL AND TRIBAL LANDS IN THE UNITED STATES: ANALYSIS OF EMISSIONS AND LOST REVENUE, 3 (Jan. 20, 2023) [hereinafter GRIOT ET AL.] [Ex. 35], https://blogs.edf.org/energyexchange/files/2023/01/EMBARGOED_EDF-TCS_Public_Lands_Analysis.pdf. 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. *Id.* The study found a loss of $63.6 million in royalties, $18.8 million in state revenue from taxes (from the top six states), and $509 million in gas value in 2019 due to venting, flaring, and leaks on federal and Tribal lands. *Id.* at 3. The report found that, in 2019, leaks accounted for 46% and flaring for 54% of lost gas. *See id.* at 23. *See also, e.g.*, Env't Def. Fund, *Flaring Aerial Survey Results*, PERMIAN MAP (2021) [Ex. 36], https://www.permianmap.org/flaring-emissions/ (2021 study finding that companies in the Permian Basin burned away roughly 1 trillion cubic feet of gas since 2013).

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 &

ENV'T 1 (June 17, 2022) [Ex. 37], 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. Over 18 million people live within a mile of an oil and gas well. *Id.* at 10. Flaring has been linked to shorter gestation and reduced fetal growth. *See* Lara J. Cushing et al., *Flaring from Unconventional Oil and Gas Development and Birth Outcomes in the Eagle Ford Shale in South Texas*, 128 ENV'T HEALTH PERSPECTIVES 077003-1, 077003-1 to 077003-8 (2020) [Ex. 38]. 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.

i. The BLM must analyze the impacts of oil and gas leasing on public health.

Protecting public health is fundamental to the underlying purpose of NEPA, which includes "stimulat[ing] the health and welfare of man" and mandates that agencies consider the degree to which their proposed actions affect public health or safety. 42 U.S.C § 4321. NEPA requires federal agencies "to use all practicable means, consistent with other essential considerations of national policy" to "assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings." *Id.* § 4331(b). To protect public health and promote informed agency decision-making, transparency, and public participation, NEPA imposes "action-forcing procedures … requir[ing] that agencies take a hard look at environmental consequences," *Robertson*, 490 U.S. at 350, which includes public health.

Oil and gas development poses myriad public health concerns. An extensive and ever-growing body of peer-reviewed research has shown what people living near oil and gas operations already know firsthand: proximity to drilling operations, including hydraulic fracturing, and other oil and gas facilities is linked to adverse health risks and impacts. These risks and impacts include but are not limited to:

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

See, e.g., ZOTERO, PHYSICIANS, SCIENTISTS, AND ENGINEERS FOR HEALTHY ENERGY, REPOSITORY FOR OIL AND GAS ENERGY RESEARCH (ROGER) DATABASE, HEALTH, https://www.zotero.org/groups/248773/repository_for_oil_and_gas_energy_research_roger_-_pse_healthy_energy/collections/SASKSKDG (last visited Nov. 19, 2025).

The ROGER database contains the best available scientific information, which shows the voluminous public health risks and impacts associated with oil and gas activities that result from the BLM's leasing decisions.[27] Multiple peer-reviewed papers have identified adverse health effects and risks arising from exposure to unconventional oil and gas drilling operations, even within a large radius of residences, potentially up to 10 miles. *See* Janet Currie et al., *Hydraulic Fracturing and Infant Health: New Evidence from Pennsylvania*, 3 SCI. ADVANCES 1, 5 (Dec. 13, 2017) [Ex. 43] (finding evidence of negative health effects of in utero exposure to fracking sites within 3 km, or about 1.86 miles, of a mother's residence, with the largest health impacts seen within 1 km, or about 0.62 miles). For example, one study found that babies whose mothers lived in close proximity to multiple oil and gas wells were 30% more likely to be born with heart defects than babies born to mothers who did not live close to oil and gas wells. *See* Lisa M. McKenzie et al., *Birth Outcomes and Maternal Resident Proximity to Natural Gas Development in Rural Colorado*, 122 ENV'T HEALTH PERSPECTIVES 412, 414 (2014) [Ex. 44]. Other adverse health impacts documented among residents living near drilling and fracking operations include increased reproductive harms, asthma attacks, higher rates of hospitalization, ambulance runs, emergency room visits, self-reported respiratory problems and rashes, motor vehicle fatalities, trauma, and drug abuse. *See* SETH B.C. SHONKOFF ET AL., PUBLIC HEALTH DIMENSIONS OF UPSTREAM OIL AND GAS DEVELOPMENT IN CALIFORNIA: SCIENTIFIC ANALYSIS AND SYNTHESIS TO INFORM SCIENCE-POLICY DECISION MAKING at 2-4, 2-9, 3-17 (June 21, 2024) [Exs. 45a & 45b], https://www.conservation.ca.gov/calgem/Documents/Public%20Health%20Panel%20Final%20Report_20240621.pdf. Another recent study found that fracking and drilling near people's homes "drives stress experiences that go beyond the mere presence of industrial land uses in neighborhoods" and identified two key institutional barriers driving negative mental health impacts for people living near unconventional oil and gas (UOG) production—namely: (1) uncertainty, due to inaccessible, transparent information about environmental and public health risks; and (2) powerlessness to meaningfully impact regulatory or zoning processes. *See* Stephanie A. Malin, *Depressed Democracy, Environmental Injustice: Exploring the Negative Mental Health Implications of Unconventional Oil & Gas Production in the United States*, 70 ENERGY RSCH. & SOCIAL SCI. 1 (Sept. 11, 2020) [Ex. 46]. In turn, "these institutional barriers make UOG production a chronic stressor – which can be more insidious, negative, and, significantly, can generate longer-term mental health impacts such as self-reported depression."

[27] *See, e.g.*, Longxiang Li et al., *Exposure to Unconventional Oil and Gas Development and All-Cause Mortality in Medicare Beneficiaries*, 7 NATURE ENERGY 177 (2022) [Ex. 39]; Zoya Banan & Jeremy M. Gernand, *Emissions of Particulate Matter Due to Marcellus Shale Gas Development in Pennsylvania: Mapping the Implications*, 148 ENERGY POLICY 1 (Oct. 20, 2020) [Ex. 40]; Katie Jo Black et al., *Economic, Environmental, and Health Impacts of the Fracking Boom*, 13 ANN. REV. OF RES. ECON. 311 (2021) [Ex. 41]; Roxana Z. Witter et al., *Occupational Exposures in the Oil and Gas Extraction Industry: State of the Science and Research Recommendations*, 57 AM. J. OF INDUS. MED. 847 [Ex. 42].

Id. (citation omitted). The BLM must take a hard look at the adverse health risks and effects associated with proximity to oil and gas activity and facilities and disclose them to the public. The agency should disclose, at minimum, how many residences are within approximately 1, 5, and 10 miles of the proposed leases.

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

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

The BLM must analyze the lease sale's impact on environmental justice, and not only in relation to health. Courts have repeatedly held that agencies must take a hard look at environmental justice pursuant to NEPA.[28] The agency's failure to undertake such analysis would be arbitrary and capricious.

VI. The BLM must consider a range of reasonable alternatives.

The BLM must evaluate a range of reasonable alternatives in the NEPA document prepared for this lease sale. *See* 42 U.S.C. 4332(2)(F) (requiring agencies to "study, develop, and describe technically and economically feasible alternatives"). The range of alternatives is the heart of a NEPA document because "[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of [a NEPA analysis] to inform agency deliberation and facilitate public involvement would be greatly degraded." *New Mexico ex rel. Richardson*, 565 F.3d at 683, 708. NEPA analysis must cover a reasonable range of alternatives so that an agency can make an informed choice from the spectrum of reasonable options. An environmental review offering a choice between leasing every parcel nominated and leasing nothing at all under the no-action alternative fails to present a reasonable range of alternatives. A middle-ground alternative must consider deferring at least some parcels.

Such an alternative is particularly important when considering impacts to specific resources, such as big game and LPC, for example. For this lease sale, the BLM must evaluate an alternative that would defer leasing on some or all parcels in big game habitat and LPC habitat,

[28] *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).

along with deferrals based on other use conflicts. Deferring parcels with such conservation conflicts—and certainly parcels that the BLM itself designates as having low preference for leasing—is precisely what the Leasing Rule contemplates.

VII. The BLM must properly evaluate mitigation measures.

NEPA requires the BLM to include a discussion of possible mitigation measures in an EA.[29] *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"). The BLM must, in the following order: seek to avoid impacts, minimize impacts, and, only if those approaches are insufficient to fully mitigate the impacts, appropriately and sufficiently offset any remaining impacts.

VIII. BLM must disclose its use of artificial intelligence (AI) for any components of this scoping process.

The BLM must disclose any use of AI throughout this lease sale process, and if AI is used, the BLM must describe the AI tools employed and explain how the agency has used them.

While AI can be used appropriately to improve agency efficiency, its use must be properly moderated and disclosed such that the public has the opportunity to identify and correct errors. FLPMA, NEPA, the BLM's regulations, and case law emphasize rigorous public engagement in all public lands processes, including leasing. *See e.g.*, 43 U.S.C. § 1702(d) (defining "public involvement" to mean "the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance); *Montana Wildlife Fed'n v. Haaland*, 127 F.4th 1, 41 (9th Cir. 2025) (emphasizing NEPA's requirement that the public have the "ability to provide 'meaningful' input into the agency's decision"); 43 C.F.R. § 3120.42(b) (providing several opportunities for public comment and input throughout the leasing process). The disclosure of the use of AI is essential to a transparent and rigorous public engagement process. And while high volumes of comments certainly could leave an agency searching for efficiency-improving measures, the BLM should be aware that the practice of AI-generated response to comments erodes the public trust that the NEPA process is designed to cultivate. *Cf.* OFF. OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, MEMORANDUM M-25-21, ACCELERATING FEDERAL USE OF AI THROUGH INNOVATION, GOVERNANCE, AND PUBLIC TRUST, 13 (Apr. 3, 2025) (noting that while "[a]gencies must continue to develop AI that serves the public by . . . increasing government efficiency," "[a]gencies must ensure their AI use is trustworthy, secure, and accountable").

[29] For a discussion of the 2025 Reconciliation Act's bearing on the agency's obligation to explore mitigation measures, see discussion *supra* Section IV.

Any undisclosed use of AI could render the BLM's leasing process unlawful. Courts have interpreted the arbitrary and capricious language to require reasoned decision-making from the agency. *See e.g.*, *Fox v. Clinton*, 684 F.3d 67, 74 (D.C. Cir. 2012). When agencies rely on computer-generated results, like computer models, courts have long held that "ultimate responsibility for the policy decision remains with the agency rather than the computer." *Sierra Club v. Costle*, 657 F.2d 298, 334
–35 (D.C. Cir. 1981). Courts have also specified that agencies must respond to comments "in a reasoned manner." *Conf. of State Bank Supervisors v. Off. of Thrift Supervision*, 792 F. Supp. 837, 846 (D.D.C. 1992). Using AI without sufficient human oversight to respond to relevant comments may not fulfill an agency's legal duty of consideration because AI does not think in a reasoned manner. To the extent that the BLM uses AI in this scoping process—or intends to use it in the remainder of the lease sale process—without explaining the assumptions and methodology behind that use, any action taken will be unlawful under the arbitrary and capricious standard.

To the extent that the BLM uses AI in this leasing process, it is consequently obligated to document its use and any relevant inputs and outputs for the public. In addition, given the rapid and developing use of AI and the importance of the associated obligations concerning its proper use and disclosure, the BLM cannot reasonably remain silent on the use of AI in leasing even where no such product was used. In sum, to ensure public confidence in the BLM's compliance with NEPA requirements, and judicial confidence in their ability to review a complete record, the BLM should confirm whether it will use AI tools throughout this leasing process. The public is entitled to know whether the absence of information on the agency's use of AI is because none was in fact used, or whether it will be used, and how.

IX. 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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Exhibit Index to Scoping Comments on Parcels for the New Mexico Bureau of Land Management 2026 Third Quarter Competitive Oil & Gas Lease Sale (DOI-BLM-NM-F010-2026-0020-EA, DOI-BLM-NM-P020-2026-0484-EA)

Appendix	Exhibit No.	Title/Description
A	1	Letter from Earthjustice et al. to Doug Burgum, Sec. of the Interior on Department of the Interior Emergency NEPA Procedures (May 16, 2025)
A	2	THE WILDERNESS SOCIETY, OPEN FOR DRILLING: THE OUTSIZED INFLUENCE OF OIL & GAS ON PUBLIC LANDS (2025)
A	3	Hall Sawyer et al., *Mule Deer and Energy Development—Long Term Trends of Habituation and Abundance*, 23 GLOB. CHANGE BIOLOGY 4521 (2017)
A	4	Hall Sawyer et al., *Long-Term Effects of Energy Development on Winter Distribution and Residency of Pronghorn in the Greater Yellowstone Ecosystem*, CONSERVATION SCI. & PRAC. (July 2, 2019)
A	5	Adele K. Reinking et al., *Across Scales, Pronghorn Select Sagebrush, Avoid Fences, and Show Negative Responses to Anthropogenic Features in Winter*, 10 ECOSPHERE 1 (May 2019)
A	6	Hall Sawyer, et al. *Migratory Plasticity Is Not Ubiquitous Among Large Herbivores*, 88 J. OF ANIMAL ECOLOGY 450 (2019)
A	7	Teal B. Wyckoff et al., *Evaluating the Influence of Energy and Residential Development on the Migratory Behavior of Mule Deer*, 9 ECOSPHERE 1 (Feb. 23, 2018)
A	8	Ellen O. Aikens et al., *Industrial Energy Development Decouples Ungulate Migration from the Green Wave*, 6 NATURE ECOLOGY & EVOLUTION 1733 (2022)
A	9	Sara J. Oyler-McCance et al., *Rangewide Genetic Analysis of Lesser Prairie-Chicken Reveals Population Structure, Range Expansion, and Possible Introgression*, 17 CONSERVATION GENETICS 643 (2016)
A	10	Lyman McDonald et al., *Range-Wide Population Size of the Lesser Prairie-Chicken: 2012, 2013, 2014, 2015, and 2016*, TECH. REP. FOR THE W. ASS'N OF FISH & WILDLIFE AGENCIES (2016)
B	11	WildEarth Guardians et al., *Petition to List the Lesser Prairie Chicken (Tympanuchus Pallidicinctus) and Three Distinct Population Segments Under the U.S. Endangered Species Act & Emergency Listing Petition for the Shinnery Oak Prairie & Sand Sage Prairie Distinct Population Segments* (Sept. 8, 2016)
B	12	Maple A. Taylor et. al., *Status, Ecology, and Management of the Lesser Prairie Chicken*, USDA FOREST SERV. GEN. TECH. REP. RM-77, 4 (1980)
B	13	Elisabeth C. Teige et al., *Assessment of Lesser Prairie-Chicken Translocation Through Survival and Lek Surveys*, WILDLIFE SOC'Y BULLETIN (Sept. 11, 2023)

B	14	Kristen Nasman et al, *Range-Wide Population Size of the Lesser Prairie-Chicken: 2012 to 2022*, W. ASS'N OF FISH & WILDLIFE AGENCIES (Oct. 2022)
C	15	Kristine Johnson et al., *GIS Habitat Analysis for Lesser Prairie-Chickens in Southeastern New Mexico*, BMC ECOLOGY (Dec. 4, 2006)
C	16	Darren J. Bender et al., *Habitat Loss and Population Decline: A Meta-Analysis of the Patch Size Effect*, 79 ECOLOGY 517 (1998)
C	17	William E. Van Pelt et al., *Lesser Prairie-Chicken Range-Wide Conservation Plan*, W. ASS'N OF FISH & WILDLIFE AGENCIES (Oct. 2013)
C	18	NAT'L PARK SERV., CARLSBAD CAVERNS NATIONAL PARK: GEOLOGIC RESOURCE EVALUATION REPORT (2007)
C	19	Stanford University, *Seismic Stress Map Developed by Stanford Researchers Profiles Induced Earthquake Risk for West Texas, New Mexico*, STANFORDREPORT (Feb. 8, 2018)
C	20	Durham University, *Human-made Earthquake Risk Reduced if Fracking is 895m from Faults*, SCIENCEDAILY (Feb. 27, 2018)
C	21	NAT'L PARK SERV., 2024 NATIONAL PARK VISITOR SPENDING EFFECTS (Sept. 2025)
C	22	*Carlsbad Caverns NP*, IRMA PORTAL NATIONAL PARK SERVICE (last visited Nov. 16, 2025)
D	23	ENV'T PROT. AGENCY, REPORT ON THE SOCIAL COST OF GREENHOUSE GASES: ESTIMATES INCORPORATING RECENT SCIENTIFIC ADVANCES (2023)
D	24	INTERAGENCY WORKING GRP. ON SOC. COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS (2010)
D	25	U.S. DEP'T OF THE INTERIOR, INFORMATIONAL MEMORANDUM ON DOI COMPARISON OF AVAILABLE ESTIMATES OF SOCIAL COST OF GREENHOUSE GASES (SC-GHG) (Oct. 16, 2024)
D	26	PETER HOWARD ET AL., INST. FOR POLICY INTEGRITY, ZERO RATIONALITY: WHAT OIRA'S NEW MEMORANDUM GETS WRONG ON MONETIZING CLIMATE IMPACTS (May 2025)
D	27	ENV'T PROT. AGENCY, DETAILS OF EXTERNAL PEER REVIEW PANEL PROCESS FOR THE REVIEW OF EPA'S "REPORT ON THE SOCIAL COST OF GREENHOUSE GASES: ESTIMATES INCORPORATING RECENT SCIENTIFIC ADVANCES" (2023)
D	28	OFF. OF MGMT. & BUDGET, REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND AGENCY COMPLIANCE WITH THE UNFUNDED MANDATES REFORM ACT: FISCAL YEAR 2023 (2024)
E	29	U.S. ENV'T PROT. 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 (Dec. 2016) (Part 1)
F	30	Gayathri Vaidyanathan, *Fracking Can Contaminate Drinking Water*, SCI. AM. (Apr. 4, 2016)

F	31	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'T SCI. & TECH. 4524 (2016)
F	32	Tetiana Cantlay et al., *Contamination of Private Water Supplies After a Well Communication Event (Frac-Out) in Southwest Pennsylvania*, NATURE (2025)
F	33	REBECCA TISHERMAN ET AL., EXAMINATION OF GROUNDWATER RESOURCES IN AREAS OF WYOMING PROPOSED FOR THE JUNE 2022 BLM LEASE SALE (May 11, 2022)
F	34	DOMINIC DIGIULIO, EXAMINATION OF GROUNDWATER RESOURCES IN AREAS OF MONTANA PROPOSED FOR THE MARCH 2018 BLM LEASE SALE (Dec. 22, 2017)
F	35	OLIVIA GRIOT ET AL., SYNAPSE ENERGY ECON. INC., ONSHORE NATURAL GAS OPERATIONS ON FEDERAL AND TRIBAL LANDS IN THE UNITED STATES: ANALYSIS OF EMISSIONS AND LOST REVENUE (Jan. 20, 2023)
F	36	Env't Def. Fund, *Flaring Aerial Survey Results*, PERMIAN MAP (2021)
F	37	Jeremy Proville et al., *The Demographic Characteristics of Populations Living Near Oil and Gas Wells in the USA*, 44 POPULATION & ENV'T 1 (June 17, 2022)
F	38	Lara J. Cushing et al., *Flaring from Unconventional Oil and Gas Development and Birth Outcomes in the Eagle Ford Shale in South Texas*, 128 ENV'T HEALTH PERSPECTIVES 077003-1 (2020)
F	39	Longxiang Li et al., *Exposure to Unconventional Oil and Gas Development and All-Cause Mortality in Medicare Beneficiaries*, 7 NATURE ENERGY 177 (2022)
F	40	Zoya Banan & Jeremy M. Gernand, *Emissions of Particulate Matter Due to Marcellus Shale Gas Development in Pennsylvania: Mapping the Implications*, 148 ENERGY POLICY 1 (Oct. 20, 2020)
F	41	Katie Jo Black et al., *Economic, Environmental, and Health Impacts of the Fracking Boom*, 13 ANN. REV. OF RES. ECON. 311 (2021)
F	42	Roxana Z. Witter et al., *Occupational Exposures in the Oil and Gas Extraction Industry: State of the Science and Research Recommendations*, 57 AM. J. OF INDUS. MED. 847 (2014)
F	43	Janet Currie et al., *Hydraulic Fracturing and Infant Health: New Evidence from Pennsylvania*, 3 SCI. ADVANCES 1 (Dec. 13, 2017)
F	44	Lisa M. McKenzie et al., *Birth Outcomes and Maternal Resident Proximity to Natural Gas Development in Rural Colorado*, 122 ENV'T HEALTH PERSPECTIVES 412 (2014)
G	45a	SETH B.C. SHONKOFF ET AL., PUBLIC HEALTH DIMENSIONS OF UPSTREAM OIL AND GAS DEVELOPMENT IN CALIFORNIA: SCIENTIFIC ANALYSIS AND SYNTHESIS TO INFORM SCIENCE-POLICY DECISION MAKING (June 2024) (Part 1)

H	45b	SETH B.C. SHONKOFF ET AL., PUBLIC HEALTH DIMENSIONS OF UPSTREAM OIL AND GAS DEVELOPMENT IN CALIFORNIA: SCIENTIFIC ANALYSIS AND SYNTHESIS TO INFORM SCIENCE-POLICY DECISION MAKING (PART 2)
H	46	Stephanie A. Malin, *Depressed Democracy, Environmental Injustice: Exploring the Negative Mental Health Implications of Unconventional Oil & Gas Production in the United States*, 70 ENERGY RSCH. & SOCIAL SCI. 1 (Sept. 11, 2020)