THE WILDERNESS SOCIETY * NEW MEXICO WILD * COALITION TO PROTECT AMERICA'S NATIONAL PARKS * NEW MEXICO WILDLIFE FEDERATION * ROCKY MOUNTAIN WILD

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SUBMITTED VIA E-PLANNING

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Re: Comments on the Draft Environmental Assessment and Finding of No Significant Impact for the New Mexico Bureau of Land Management Third Quarter 2026 Competitive Oil & Gas Lease Sale (DOI-BLM-NM-P020-2026-0484-EA, DOI-BLM-NM-F010-2026-0020-EA).

To Whom It May Concern:

Thank you for the opportunity to submit these comments on the Draft Environmental Assessments (Draft EAs)[1] and Draft Findings of No Significant Impact (Draft FONSIs)[2] analyzing the 21 parcels covering 19,094.78 acre acres under consideration for potential oil and gas exploration and development for the Bureau of Land Management's (BLM's) New Mexico Third Quarter 2026 Oil and Gas Lease Sale. Our organizations and members are deeply invested

[1] BLM FARMINGTON AND RIO PUERCO FIELD OFFICES, COMPETITIVE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT, RIO ARRIBA AND SANDOVAL COUNTIES, NEW MEXICO QUARTER 3 2026 DOI-BLM-NM-F010-2026-0020-EA (Apr. 15, 2026) [hereinafter FARMINGTON AND RIO PUERCO DRAFT EA]; BLM CARLSBAD FIELD OFFICE, OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT EDDY AND LEA COUNTIES, NEW MEXICO QUARTER 3 2026 DOI-BLM-NM-P020-2026-0484-EA (Apr. 15, 2026) [hereinafter CARLSBAD DRAFT EA].

[2] BLM FARMINGTON AND RIO PUERCO FIELD OFFICES, QUARTER 3 2026 COMPETITIVE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT, DOI-BLM-NM-F010-2026-0020-EA FINDING OF NO SIGNIFICANT IMPACT (Apr. 15, 2026) [hereinafter FARMINGTON AND RIO PUERCO DRAFT FONSI]; BLM CARLSBAD FIELD OFFICE, QUARTER 3 2026 COMPETITIVE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT, DOI-BLM-NM-P020-2026-0484-EA (Apr. 15, 2026) [hereinafter CARLSBAD DRAFT FONSI].

in sound stewardship of public lands and committed to ensuring that public land management prioritizes the health and resilience of ecosystems, benefits the public and local communities, protects biodiversity, and mitigates the impacts of climate change.

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

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"[3] [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

[3] *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.

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 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.[4] 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

[4] *See Udall v. Tallman*, 380 U.S. 1, 4 (1965) ("The Mineral Leasing Act [MLA] of 1920 . . . left the Secretary discretion to refuse to issue any lease at all on a given tract."); *United States ex rel. McLennan v. Wilbur*, 283 U.S. 414, 419 (1931) (ruling that the Interior Secretary possesses "general powers over the public lands as guardian of the people," which include the authority to deny oil and gas lease applications); *Mont. Wildlife Fed'n v. Haaland*, 127 F.4th 1, 44–45 (9th Cir. 2025) ("We note that there is no doubt that the government has the authority affirmatively to determine which parcels shall be offered for oil and gas leasing . . . ."); *Bob Marshall 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.").

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 conservation to protect environmental values. . . ." *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009) (emphasis added).

The BLM is therefore not obligated to lease any *specific* parcel of public land for oil and gas development. The agency retains the authority to defer lease sale parcels, even after bidding has concluded.[5] Moreover, where conflicts with other uses exist, the agency must affirmatively evaluate deferral of parcels in its analysis of a range of reasonable alternatives under NEPA. *See* 42 U.S.C. 4332(2)(F) (requiring agencies to "study, develop, and describe technically and economically feasible alternatives"); *New Mexico ex rel. Richardson*, 565 F.3d at 683, 708 (describing the range of alternatives as 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").

III. The BLM has not ensured 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 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

[5] *See McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (holding that the "fact that land has been offered for lease does not bind the Secretary to actually lease the land, nor is the Secretary bound to lease the land when a qualified applicant has been selected"); *see also W. Energy All. v. Salazar*, No. 10-CV-0226, 2011 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).

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[6] (and the MLA, which it amended) and be contrary to law in violation of the APA.

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,[7] 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.[8] This legislative action and its associated

[6] 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)).

[7] 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).

[8] 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).

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).

As previously explained in scoping comments, the BLM must address these questions before proceeding with this lease sale.[9] The BLM Farmington Field Office approved its RMP in 2003,[10] the Carlsbad Field Office amended its 1988 RMP in 1997,[11] the Pecos District Office partially amended the Carlsbad Field Office's RMP in 2008,[12] and the Rio Puerco Field Office issued its Approved RMP in 2024, updating the 1986 Rio Puerco RMP and its 1992 amendment.[13] 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 based on an RMP that never took effect. Doing so may violate FLPMA, the 2025 Reconciliation Act, and the MLA and may therefore be contrary to law, in violation of the APA.

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

As explained in scoping comments, plans governing lands subject to this lease sale are old or inadequately analyze impacts.[14] For example, the Farmington RMP, Carlsbad RMPA, and the Pecos RMP range from 18 to 29 years old. In addition, the Carlsbad RMP/RMPA, Farmington RMP, and Pecos RMPA never discuss climate change or greenhouse gas emissions.

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 new leasing and development might cause.

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

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[9] *See* The Wilderness Society et al., *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)*, 4–5 (Mar. 23, 2026) [hereinafter *TWS Scoping Comments*].

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

[11] 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].

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

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

[14] *TWS Scoping Comments* at 6.

with existing plans, reflect updated inventory data, and adequately protect sensitive resources. Failure to consider, analyze, and disclose these issues violates NEPA and FLPMA.

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

The BLM is proposing to offer 9 parcels in the Carlsbad Field Office. As explained in scoping comments, the following parcel offered in the Carlsbad Field Office appears to overlap an area that is **closed to leasing:** NM-2026-08-0768.[15]

The BLM should not and cannot be leasing acreage closed to leasing in an RMP. Consequently, the BLM cannot offer this parcel 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: 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]; BLM PECOS DISTRICT OFFICE, COMPETITIVE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT, NEW MEXICO QUARTER 2 2026 DOI-BLM-NM-P000-2026-0001-EA, 231 (Mar. 2026) (acknowledging that one scoped lease parcel was subsequently removed because it was in an area closed to oil and gas leasing); BLM WYOMING, 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

[15] *TWS Scoping Comments* at 7–8.

[16] Note that most—but not all—of these parcels in areas closed to leasing are being considered for deletion at the Draft Environmental Assessment stage. *See* BLM, 2026 SECOND QUARTER COMPETITIVE LEASE SALE: JUNE 2026 ENVIRONMENTAL ASSESSMENT DOI-BLM-WY-0000-2026-0001EA, 14–15 (Dec. 19, 2025); 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 close 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. BLM, 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.").

leasing under the 2024 Rock Springs Field Office ROD and Approved RMP and not applying stipulations from the ROD to parcels).

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 the parcel that is closed to leasing from this lease sale and take steps to remedy its flawed review process.

IV. The BLM failed to address the impact of the 2025 Reconciliation Act on the proposed lease sale.

As set forth in detail in our scoping letter, the 2025 Reconciliation Act contains several amendments to the statutes governing the BLM's management of oil and gas development.[17] In its analysis of the proposed New Mexico lease sale, the BLM must explain the impact of these amendments 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 2025 Reconciliation Act amended the BLM's oil and gas leasing procedure.

The BLM's traditional multi-step process for managing oil and gas development on public lands rests on the assumption that throughout the process, the agency has wide discretion over whether to lease lands and the terms under which they will be leased, as well as discretion to prescribe further mitigation deemed necessary at the post-leasing, site-specific development phase.[18] This discretion has informed how the agency complies with its substantive obligations under FLPMA and its procedural obligations under NEPA.

First, at the RMP stage, pre-2025 Reconciliation Act law made clear that the designation of lands as open to leasing under the RMP is *not* a decision that those lands will be offered for lease, and that the BLM has discretion—in service of its FLPMA obligations to manage for multiple-use and sustained-yield—not to lease lands designated as open.[19] Based on this fundamental assumption, the BLM's existing RMPs list the vast majority of public land—over 80%—as open to oil and gas leasing. *See* 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 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, 87 million acres were

[17] *See TWS Scoping Comments* at 8–9.
[18] *See id.* at 9.
[19] *Id.* at 9.

nominated for leasing but the BLM only offered 18 million acres—or 21% of nominated land—at auction). Second, the BLM has also long exercised discretion at the final stage—approval of applications for permits to drill (APDs)—to examine site-specific circumstances and impose any conditions needed to protect the public land and to satisfy FLPMA's substantive sustained yield and unnecessary and undue degradation requirements.[20]

Since the passage of the 2025 Reconciliation Act, the BLM has been inconsistent with respect to how it has interpreted the Act's impact on its discretion to defer parcels nominated for leasing. While the BLM has not yet issued formal guidance outlining how it will implement the 2025 Reconciliation Act, in some instances, the agency has interpreted the Act as leaving room for this discretion. In response to public comment on the New Mexico Second Quarter 2026 lease sale, for example, the agency unequivocally stated that it has discretion to defer parcels, quoting from the 2025 Reconciliation Act to support the proposition:

> The BLM has discretion to offer or defer any parcel during any sale. 30 U.S.C. § 226(a) ("Any parcel of land subject to disposition . . . that is known or believed to contain oil or gas deposits shall 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 …that is in effect on the date on which the expression of interest was submitted to the Secretary."). . . . As informed by the issue-based analysis in the EA, the BLM AO retains the discretion to lease none, some, or all the nominated lease parcels.

BLM FARMINGTON FIELD OFFICE, COMPETITIVE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT, NEW MEXICO QUARTER 2 2026 DOI-BLM-NM-F010-2026-0001-EA, D-29 (Mar. 20, 2026). Similarly, in its protest dismissal for the Utah Quarter 1 2026 lease sale, the agency stated that "[t]he Reconciliation Act requires the BLM to offer at least 50 percent of available parcels nominated for oil and gas development in a minimum of 4 oil and gas lease sales in Utah each fiscal year. Nothing in the Reconciliation Act precludes the BLM from considering alternatives that would offer fewer than 50 percent of the nominated parcels in any single lease sale." BLM UTAH STATE OFFICE, DECISION ON PROTEST OF THE INCLUSION OF 57 PARCELS IN THE MARCH 2026 COMPETITIVE OIL AND GAS LEASE SALE, 10 (Apr. 2026).

Moreover, the BLM has in many cases continued to exercise its authority to defer lease sale parcels since the passage of the 2025 Reconciliation Act. *See e.g.*, BLM WYOMING, FINDING OF NO SIGNIFICANT IMPACT FOR 2026 SECOND QUARTER COMPETITIVE OIL AND GAS LEASE SALE DOI-BLM-WY-0000-2026-0001-EA, 1-2 (Mar. 18, 2026) (for the Wyoming Second Quarter 2026 lease sale, describing Alternative 3 as offering 108 parcels, and deferring 58 parcels based on sage-grouse prioritization, portions of eight parcels due to sage-grouse

[20] *Id.* at 9–10.

prioritization, six parcels due to sage-grouse prioritization and the need for Surface Management Agency (SMA) consent, 19 parcels due to need for SMA consent, seven parcels due to conflicts with existing coal leases, one parcel due to tribal consultation requirements, and deleting 20 whole parcels and portions of 11 parcels due to the areas being closed to leasing); BLM WYOMING, NOTICE OF COMPETITIVE OIL AND GAS INTERNET LEASE SALE, 1 (Mar. 18, 2026) (for the Wyoming Second Quarter 2026 lease sale, offering only these 108 parcels for sale); BLM WYOMING, 2026 FIRST QUARTER COMPETITIVE LEASE SALE FINAL ENVIRONMENTAL ASSESSMENT DOI-BLM-WY-0000-2025-0003-EA, 14 (Mar. 3, 2026) (designating modified Proposed Action Alternative 3 which defers parcels due to sage-grouse prioritization and deletes parcels in areas closed to leasing); BLM WYOMING, 2026-03 OIL AND GAS SCOPING SALE PARCELS IN RELATION TO WILDLIFE HABITAT (Mar. 3, 2026) (designating Alternative 3 as the chosen alternative for the lease sale held March 3, 2026); BLM WYOMING, 2025 FOURTH QUARTER COMPETITIVE OIL AND GAS LEASE SALE DECISION RECORD DOI-BLM-WY-0000-2025-0002-EA, 2 (Dec. 3, 2025) (for the Wyoming Q4 2025 lease sale held on December 3, 2025, deferring parcels due to sage-grouse prioritization and lack of SMA consent); BLM COLORADO, DECISION RECORD FOR SEPTEMBER 2025 COMPETITIVE OIL AND GAS LEASE SALE DOI-BLM-CO-0000-2025-0001-EA (Sept. 8, 2025) (for the Colorado Q3 2025 lease sale held on September 9, 2025, deferring portions of two parcels due to their overlap with the Yellow Creek Area of Critical Environmental Concern); BLM WYOMING, 2025 THIRD QUARTER COMPETITIVE OIL AND GAS LEASE SALE DECISION RECORD DOI-BLM-WY-0000-2025-0001-EA, 3 (Sept. 16, 2025) (for the Wyoming Q3 2025 lease sale held on September 16, 2025, deferring five parcels based on greater sage-grouse prioritization).

On the other hand, the agency has elsewhere interpreted 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. The agency has proffered this interpretation in a recent court filing, for example. *See* Federal Defendants' Opening Brief at *44, *Mont. Wildlife Fed'n v. Burgum*, No. 22-35367 (9th Cir. filed Jan. 14, 2026) ("[T]he [Act] requires the [BLM] 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.").[21]

Regardless of these differing interpretations, the BLM is not required to actually *lease* parcels. The agency retains the authority to defer lease sale parcels, even after bidding has

[21] *See also* Intervenor-Defendant State of Wyoming Notice of Supplemental Authority at *2-3, *W. Watersheds Proj. v. Bernhardt*, 1:18-cv-00187 (D. Idaho filed Aug. 12, 2025) (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").

concluded. *See McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (holding that the "fact that land has been offered for lease does not bind the Secretary to actually lease the land, nor is the Secretary bound to lease the land when a qualified applicant has been selected"); *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).

However, the position advanced by the agency in briefing 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.

b. The Draft EAs and Draft FONSIs fail to demonstrate compliance with FLPMA's substantive obligations in light of the 2025 Reconciliation Act.

To the extent that the BLM believes that the 2025 Reconciliation Act removes the agency's discretion not to lease areas designated as open in an RMP and instead obligates the agency to lease any open land for which it receives an industry expression of interest, the BLM must account for that change. For example, if the BLM believes it now has a non-discretionary duty to lease all lands designated as open if requested by industry, the agency must demonstrate that the open-to-leasing designations in the governing RMPs comport with FLPMA's multiple use and sustained yield requirements. And if—as is likely—they do not, the BLM must revisit those designations by amending the governing RMPs to ensure that all lands designated as open can be leased while still meeting the agency's substantive FLPMA obligation to provide a sustained yield of all other non-oil and gas resources and to avoid unnecessary and undue degradation.

Similarly, to the extent that the BLM believes the 2025 Reconciliation Act precludes the agency from imposing lease stipulations or other mitigation measures beyond those included in the governing RMPs, the agency must demonstrate complete compliance with its substantive FLPMA obligations—including the sustained yield and unnecessary and undue degradation requirements—*now*, in conjunction with the proposed lease sale. The BLM must evaluate and document in this EA that the lease stipulations or other mitigation measures available under the governing RMPs—without additional measures implemented later—satisfy the agency's substantive FLMPA obligations. In this regard, if the BLM lacks discretion to impose additional protections beyond those provided in the RMPs, it is precluded from asserting, as it commonly does in litigation, that the demonstration of compliance with FLPMA's substantive obligations

can be deferred to the APD stage. *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); *Dakota Res. Council v. Dep't of Int.*, 2024 WL 1239698, *22 (D.D.C. 2024) (accepting 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 County Comm'rs of San Miguel Cnty. v. U.S. Bureau of Land Mgmt.*, 584 F. Supp. 3d 949, 978 (D. Colo. 2022) (same).

Alternatively, if the BLM believes it continues to have discretion to impose additional conditions on leases beyond those in the relevant RMPs, it needs to make that clear and identify and analyze the stipulations and mitigations that it will use to protect wildlife and other public-land values.

The BLM cannot fall back on the assertion that the relevant RMPs are adequate to satisfy FLPMA. To the contrary, as explained at length in our scoping comments, the RMPs at issue defer determination of what mitigations or stipulations are necessary for certain important issues to the leasing or permitting stage.[22] *See, e.g.*, FARMINGTON RMP at 4 ("Development 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."); *id.* at 13 (stating that "[s]te-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"); RIO PUERCO RMP at 1.6 ("[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.").

The Draft EAs and Draft FONSIs entirely fail to address these concerns. The BLM's failure to comply with FLPMA's substantive requirements will render the proposed lease sale arbitrary and capricious.

c. The Draft EAs and Draft FONSIs fail to demonstrate compliance with NEPA in light of the 2025 Reconciliation Act.

To the extent the 2025 Reconciliation Act alters the BLM's discretion over the leasing process, it also alters the BLM's obligations under NEPA. For example, if the BLM asserts that

[22] *See TWS Scoping Comments* at 11–12.

it is obligated to lease all lands for which it has received an expression of interest, it must account for that fact in the EA as the sale of such parcels would be reasonably foreseeable under NEPA. This means 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 important conservation values? How many additional expressions of interest in these same areas are foreseeable in the coming years? Similarly, if the BLM is unable to impose stipulations or mitigations beyond those included in the RMP, it must analyze the impacts of leasing in areas that overlap with important conservation values without assuming that additional, more site-specific mitigations can be added at a later stage. And because, as noted above, the relevant RMPs assume additional stipulations and mitigations can be developed at the leasing or APD stage, the EISs accompanying the RMPs base their analyses on the same assumption. As a result, the BLM cannot tier to the RMP EISs to support a conclusion that oil and gas leasing will not have a significant effect on big game migratory habitat.

The Draft EAs entirely fail to grapple with these issues or to address the impact of the 2025 Reconciliation Act on the BLM's discretion. For example, both EAs refer to the underlying RMPs for information about wildlife impacts, *see* CARLSBAD DRAFT EA at 126; FARMINGTON AND RIO PUERCO DRAFT EA at 113, but the analysis in the underlying RMPs is inadequate because it does not account for changes made to the leasing process under the 2025 Reconciliation Act. The Draft EAs also state that "[a]voidance, minimization, and/or mitigation measures would . . . be determined [at the time of proposed lease development]," CARLSBAD DRAFT EA at 125; FARMINGTON AND RIO PUERCO DRAFT EA at 106, without addressing the potential limitations on the BLM's ability to impose stipulations or mitigations under the Act. Absent a NEPA analysis 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, the proposed lease sale is arbitrary and capricious.

V. The Draft EA and Draft FONSI do not adequately analyze the environmental effects of leasing, and do not adequately evaluate the deferral of parcels based on such conflicts.

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).[23] The BLM must take a "hard look" at the

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[23] *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*

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 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.

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).

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. Here, the BLM states that it is moving forward all parcels despite all of them receiving a low preference designation because of "low resource concerns with these parcels and protections offered through stipulations and COAs." *See* CARLSBAD DRAFT EA at 100; FARMINGTON AND RIO PUERCO DRAFT EA at 89. This statement—without any explanation as to why the resource concerns are considered "low" and how the stipulations offer adequate protection—is insufficient.

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, 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* BLM, INSTRUCTION MEMORANDUM 2025-028, OIL AND GAS LEASING – LAND USE PLANNING AND LEASE PARCEL REVIEWS, 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.

<u>First</u>, 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." 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 that "[a]ll lands eligible and available for leasing may be offered for competitive auction." 89 Fed. Reg. at 30,945. 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).

To meet its legal mandates under FLPMA, the BLM must maintain the ability to defer lease parcels that involve resource conflicts. *See* discussion *supra* Section II. For example, as discussed below in this section, BLM offices must retain the discretion to defer nominated parcels due to conflicts with big game habitat, lesser prairie-chicken habitat, and Areas of Critical Environmental Concern. *See* discussion *infra* Section V.a–e.

By encouraging use of Determinations of NEPA Adequacy (DNAs), *see* 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.*, BLM, 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, 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 some recent EAs, including the ones for this sale, the agency has analyzed most of the issues "in brief," rather than analyzing issues in depth for specific resource conflicts based on the scoping parcels. *See* CARLSBAD DRAFT EA at 5

(analyzing all but four issues "in brief"); FARMINGTON AND RIO PUERCO DRAFT EA at 5 (analyzing all but three issues "in brief"); *see also e.g.*, BLM FARMINGTON FIELD OFFICE, COMPETITIVE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT, QUARTER 2 2026 DOI-BLM-NM-F010-2026-0001-EA, 18-59 (Mar. 20, 2026) (analyzing all but three issues "in brief"); BLM PECOS DISTRICT OFFICE, OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT, NEW MEXICO, QUARTER 4 2025, DOI-BLM-NM-P000-2025-0001-EA, 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 Third Quarter 2025 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. BLM, DRAFT ENVIRONMENTAL ASSESSMENT QUARTER 3 2025, DOI-BLM-CO-0000-2025-0001-EA, E-12 (Mar. 14, 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, BLM, ENVIRONMENTAL ASSESSMENT DOI-BLM-WY-000-2025-0001-EA, 2025 THIRD QUARTER COMPETITIVE LEASE SALE, 12 (Apr. 2025), socioeconomic impacts, *id.* at 76, and groundwater impacts, *see, e.g.*, BLM, ENVIRONMENTAL ASSESSMENT DOI-BLM-WY-000-2021-0003-EA, 2022 FIRST QUARTER COMPETITIVE LEASE SALE, 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*, 2024 WL 1241906, at *17 (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.

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 or *years* after they were apparently approved. In one instance, the BLM posted basic well information on its National NEPA Register website for four APDs in March 2022. 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, BLM National NEPA Register, *DOI-BLM-CA-C060-2022-0065-EA*, https://eplanning.blm.gov/Project-Home/?id=68b004d1-a7f2-f011-8407-001dd806295a (navigate to "Documents" page) (showing EA and decision record dated August 2, 2022, with the release date nearly two years later, on April 11, 2024) (last visited May 4, 2026).

This practice of releasing environmental documents on the National NEPA Register site months or even years after they were apparently approved is common. For example, in the Bakersfield Field Office, the BLM approved an APD package of 50 wells in July 2021, and did not post its DNA—which was dated November 2021—until August 2025, over *four years later*. *See* BLM, BLM National NEPA Register, *DOI-BLM-CA-C060-2021-0074-DNA*, https://eplanning.blm.gov/Project-Home/?id=56ddbacb-a7f2-f011-8406-001dd802fdea (navigate to "Documents" page) (last visited May 4, 2026). In addition, 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*, https://eplanning.blm.gov/eplanning-ui/project/2030996/570 (navigate to "Documents" page) (last visited May 4, 2026).

In another example out of the Carlsbad Field Office in New Mexico, on February 21, 2025, the BLM posted the EA, a Finding of No Significant Impact (FONSI), and Decision Record for APDs for 39 horizontal oil and gas wells from the operator EOG Resources, Inc. *See* BLM, BLM National NEPA Register, *DOI-BLM-NM-P020-2024-1325-EA*, https://eplanning.blm.gov/eplanning-ui/project/2034305/510 (navigate to "Documents" page) (last visited May 4, 2026). 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*, https://eplanning.blm.gov/eplanning-ui/project/2030779/570 (navigate to "Documents" page) (last visited May 4, 2026).

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, BLM National NEPA Register, *DOI-BLM-CA-C060-2022-0046-EA*, https://eplanning.blm.gov/Project-Home/?id=e1b104d1-a7f2-f011-8407-001dd806295a (navigate to "Documents" page) (last visited May 4, 2026).

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 because the agency is required to consider only the no-action alternative and a full-leasing alternative. *See* IM 2025-028 at 5; discussion *infra* Section VI. 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. *See 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 a directive 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.'" *W. Watersheds Project v. Zinke*, 441 F. Supp. 3d at 1067 (alterations in original) (quoting *Mada-Luna v. Fitzpatrick*, 813 F.2d 1006, 1012-13 (9th Cir. 1987)).

IM 2025-028 appears to leave 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.

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The BLM does not explicitly rely on IM 2025-028, but that IM appears to have directed the agency's decision to designate every parcel as having a low preference for leasing but

nonetheless move every parcel forward for leasing. *See* CARLSBAD DRAFT EA at 100; FARMINGTON AND RIO PUERCO DRAFT EA at 89. Parcels are designated as having a low preference for leasing based on proximity to existing development, the presence of known or potentially suitable habitat, the presence of known cultural resources, the presence of recreation or other important uses, and potential for oil and gas. The vast majority of the proposed parcels conflict with at least three of these criteria. 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 that the BLM must include in its NEPA review and the associated parcel deferral recommendations.

a. The BLM has not properly analyzed impacts to big game or deferred parcels in big game habitat.

Pursuant to its regulations, the agency must preference "lands that would not impair the proper functioning of [fish and wildlife] habitats or corridors." 43 C.F.R. § 3120.32(b). 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). Nevertheless, the Draft EAs do not recommend deferral of any parcels due to overlap with big game migratory habitat or crucial winter range.

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)[24]:

NM-2026-08-0764 (Mule Deer migration route)
NM-2026-08-6921
NM-2026-08-6924 (Mule Deer migration route)

In addition, in its EA, the BLM identified the below parcel as overlapping with big game habitat:

[24] 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). Note that the BLM in its Draft EA acknowledged that parcels 0764 parcel 6924 overlap with mule deer migration habitat. *See* FARMINGTON AND RIO PUERCO DRAFT EA at 112. The BLM does not, however, acknowledge parcel 6921's overlap with big game habitat. *See* CARLSBAD DRAFT EA at 124–26.

NM-2026-08-0747 (designated big-game winter range under the Rio Puerco RMP)[25]

The above-listed parcels should be evaluated for deferral.

The BLM also fails to thoroughly analyze the impacts of leasing in big game priority habitat. Rather than providing detailed analysis of impacts to big game, the Draft EAs analyze the impacts "in brief." *See* CARLSBAD DRAFT EA at 5, 124–26; FARMINGTON AND RIO PUERCO DRAFT EA at 5, 111–13. The BLM refers to the underlying RMPs for information about wildlife impacts, which is particularly inadequate here given that many of the BLM's New Mexico RMPs are old or stale. *See* discussion *supra* Section III.b; *see also Wilderness Soc'y*, 2024 WL 1241906, at *17, 19 (finding that the BLM's prior approach to analyzing big game violated 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" and noting that new research has shown that big game are suffering substantial population losses in areas of intensive oil and gas development). 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.

Rather than engaging in any meaningful analysis at the lease sale stage, the BLM defers this analysis to the development stage, stating that pre-disturbance surveys done at the time of proposed lease development "would analyze potential effects on game . . . species habitat. Avoidance, minimization, and/or mitigation measures would also be determined at that time. . . . Subsequently, site-specific analysis of impacts on wildlife will also be addressed with COAs at the development stage." FARMINGTON AND RIO PUERCO DRAFT EA at 113; CARLSBAD DRAFT EA at 125–26. The Draft EAs do not address the potential impacts of the 2025 Reconciliation Act on the agency's ability to implement adequate stipulations, as discussed above. *See* discussion *supra* Section IV. Moreover, mitigation is different from avoidance.

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.

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*

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[25] *See* FARMINGTON AND RIO PUERCO DRAFT EA at 112.

Abundance, 23 GLOB. CHANGE BIOLOGY 4521, 4521–29 (Apr. 4, 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* 1 CONSERVATION SCI. & PRAC. 1, 1–11 (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 pronghorn avoidance due to oil and gas development in their crucial winter range); Joseph M. Northrup et al., *Quantifying Spatial Habitat Loss from Hydrocarbon Development through Assessing Habitat Selection Patterns of Mule Deer*, 21 GLOB. CHANGE BIOLOGY 3961, 3965, 3968 (Aug. 12, 2015) [Ex. 6], https://onlinelibrary.wiley.com/doi/10.1111/gcb.13037 (study showing that mule deer on winter range avoided well pads with active drilling at a distance of at least 600 meters and up to 1000 meters at night; deer completely avoided areas within 200 meters of well pad edges, with some demonstrating avoidance of 600 meters from producing pads during the day and 800 meters at night). Extensive leasing in crucial winter range has significant adverse impacts on New Mexico's big game herds.

Extensive research over the past decade has also 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 Plasticity Is Not Ubiquitous Among Large Herbivores*, 88 J. OF ANIMAL ECOLOGY 450, 450–60 (Nov. 17, 2018) [Ex. 7], 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, 1–13 (Feb. 23, 2018) [Ex. 8], 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, 1733–41 (Oct. 6, 2022) [Ex. 9], https://www.nature.com/articles/s41559-022-01887-9. A recent study demonstrated that mule deer migrating long distances have higher survival and reproduction rates. Deer that migrate more than 50 km to higher elevations in the summer find better forage and because of this, build up about twice as much body fat as non-migratory deer. That additional fitness means migrating deer are about 20% more likely to survive each year; successful reproduction rates are also higher. Overall, migrating deer populations tend to grow, while resident deer populations are likelier to decline over time. Migration gives mule deer a significant survival advantage—and thus maintaining functional migratory habitats is essential to long term herd health. Anna C. Ortega et al., *Foraging Benefits Promote Fitness in Migratory Mule Deer*, 36 CURRENT BIOLOGY 799, 799–808 (Feb. 2, 2026) [Ex. 10], https://www.sciencedirect.com/science/article/abs/pii/S0960982225016793.

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

b. The BLM has not properly analyzed the impacts of leasing parcels in areas with low oil and gas development potential and not near existing development, and has not deferred those parcels from this lease sale.

The BLM will preference lands with "high potential" for oil and gas development. 43 C.F.R. § 3120.32(e). The MLA directs the BLM to hold periodic oil and gas lease sales for "lands . . . which are known or believed to contain oil or gas deposits." 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.

Nevertheless, the BLM fails to analyze the impacts of leasing parcels in areas with low oil and gas development potential, and does not defer those parcels from leasing. With respect to the following 15 parcels that overlap with areas identified as having low development potential, the BLM should defer them from this lease sale:

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

c. The BLM has not adequately analyzed the impacts of leasing parcels that overlap Areas of Critical Environmental Concern (ACECs), and should defer leasing in those areas 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 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)

It is equally important for the BLM to defer leasing in inventoried ACECs for which management decisions have not yet been made. 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. Such decisions could be foreclosed by leasing those lands to the oil and gas industry at this time. The BLM should therefore defer leasing these lands until the agency has the opportunity to make management decisions for those areas through a public planning process.

d. The BLM has not properly analyzed impacts of leasing parcels in lesser prairie-chicken (LPC) habitat or deferred parcels in such areas.

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). 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).

The below 3 proposed parcels overlap LPC modeled habitat[26]:

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

The Pecos RMPA 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 RMPA 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." *Id.* 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." *Id.* at 11.

Rather than thoroughly analyzing the impact of leasing on this habitat or evaluating any of the above-listed parcels for deferral, the Carlsbad Draft EA merely describes some general impacts to the species that can occur as a result of oil and gas leasing before determining that "[b]ased on the stipulations attached to the three nominated lease parcels and the requirements for site-specific analysis and application of [standard terms and conditions] and [conditions of approval] at the APD stage, . . . future potential development of the nominated lease parcels is not anticipated to adversely affect LEPC directly or indirectly." CARLSBAD DRAFT EA at 56–61.

[26] 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).

The LPC 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., USDA FOREST SERV., STATUS, ECOLOGY, AND MANAGEMENT OF THE LESSER PRAIRIE CHICKEN: GEN. TECH. REP. RM-77, 4 (Sept. 1980) [Ex. 11], https://dn790009.ca.archive.org/0/items/IND81013612/IND81013612.pdf. 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*, 47 WILDLIFE SOC'Y BULLETIN 1, 3 (Oct. 10, 2023) [Ex. 12], https://wildlife.onlinelibrary.wiley.com/doi/10.1002/wsb.1493#:~:text=Lesser%20prairie%2Dchicken%20population%20estimates,2022); 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. 20, 2022) [Ex. 13], https://wafwa.org/wp-content/uploads/2022/11/LPC_RangeWidePopSize2012-2022.pdf. 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*, 6 BMC ECOLOGY 1, 3 (Dec. 4, 2006) [Ex. 14], https://link.springer.com/article/10.1186/1472-6785-6-18.

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. *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*, 20 (Sept. 8, 2016) [Ex. 15], https://ecosphere-documents-production-public.s3.amazonaws.com/sams/public_docs/petition/135.pdf [hereinafter Wildearth Guardians, *Petition*]. 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, 517–33 (Mar. 1998) [Ex. 16], https://www.researchgate.net/publication/246352915_Habitat_Loss_and_Population_Decline_A_Meta-Analysis_of_the_Patch_Size_Effect. 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) [Ex. 17], https://eplanning.blm.gov/public_projects/2021616/200533749/20078003/250084185/Exhibit%20219%20-%20LPC%20rangewide%20conservation%20plan.pdf.

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 (Jan. 28, 2016) [Ex. 18], https://link.springer.com/article/10.1007/s10592-016-0812-y. 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 (July 21, 2016) [Ex. 19], https://www.researchgate.net/publication/306556358_RANGE-WIDE_POPULATION_SIZE_OF_THE_LESSER_PRAIRIE-CHICKEN_2012_2013_2014_2015_AND_2016; 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. Wildearth Guardians, *Petition* at 9 (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.

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

e. The BLM has not properly analyzed and deferred 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)

The BLM does not adequately analyze the impact of leasing on cave and karst resources. Instead, the agency merely describes some general impacts to karst that can occur as a result of oil and gas leasing before concluding that "[a]ll future potential development within medium and high karst occurrence zones on the nominated lease parcels would be further reviewed and mitigated at the time of proposed lease development, or during other proposed ground-disturbing activities." *See* CARLSBAD DRAFT EA at 128–29. The BLM also maintains that "stipulations applied to the nominated lease parcels for other ecological concerns may provide secondary protections to cave and karst resources," and that "[a]ny overlap between cave and karst resources and protections for other ecological resources would be determined at the APD stage after site-specific surveys have been completed." *Id.* at 129. Reliance on protection for other resources that may or may not overlap with karst areas, however, is a haphazard and inadequate method of protecting these resources.

The above-listed 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 of 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, reinjection of "produced water," or seismic activity that has been linked to hydraulic fracturing and produced water could have devastating and irreversible impacts 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

Caverns. According to a 2007 National Park Service ("NPS") Geologic Resource Evaluation Report, hundreds of producing oil and gas wells have been drilled north, east, and south of Carlsbad Caverns. In that report, NPS noted that "[i]t 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. 20], http://npshistory.com/publications/cave/nrr-2007-003.pdf.

The increased threat of seismic activity due to development in this region is well documented. 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. 21], https://news.stanford.edu/2018/02/08/seismic-stress-map-profiles-induced-earthquake-risk-west-texas-new-mexico/. In addition, researchers recommend that fracking be at least 895m from faults to avoid human-caused earthquakes, and given the close connection between caves and fault lines, development in these areas presents great risk. Durham University, *Human-made Earthquake Risk Reduced if Fracking is 895m from Faults*, SCIENCEDAILY (Feb. 27, 2018) [Ex. 22], https://www.sciencedaily.com/releases/2018/02/180227233301.htm. 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. 23], 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 decreased to 410,778 visitors in 2025 from just over 792,000 in 1989. *Carlsbad Caverns NP*, IRMA PORTAL NATIONAL PARK SERVICE (last visited Apr. 30, 2026) [Ex. 24], 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 has not properly analyzed greenhouse gas (GHG) emissions and climate effects or factored GHG emissions and climate effects into its leasing decisions.

The Draft EAs fail to properly consider GHG emissions and their effect on climate change. 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.[27] The BLM must ensure it fully considers not only the GHG emissions from

[27] *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

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

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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").

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.

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).[28]

The BLM fails to properly analyze GHG emissions. In its analysis, the BLM relies on the 2023 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends, *see* CARLSBAD DRAFT EA at 39; FARMINGTON AND RIO PUERCO DRAFT EA at 45, information that is outdated by virtue of it being an *annual* plan from 2023. Reliance on such outdated information is arbitrary and capricious under the APA. *See e.g.*, *Defs. of Wildlife v. U.S. Dep't of the Interior*, 931 F.3d 339, 351–52 (4th Cir. 2019) (quoting *Dow AgroSciences LLC v. Nat'l Marine Fisheries Serv.*, 707 F.3d 462, 473 (4th Cir. 2013) (noting that agency action may be arbitrary where agency's data is "either outdated or inaccurate").

In analyzing GHG impacts, the BLM must consider the full lifecycle of development activities and GHG emissions that are reasonably foreseeable under a BLM oil and gas lease. The social cost of greenhouse gases (SC-GHG) is a useful tool to aid in this analysis. While NEPA does not require a cost-benefit analysis, it is "nonetheless arbitrary and capricious to quantify the *benefits* of the lease modifications and then explain that a similar analysis of the *costs* was impossible when such an analysis was in fact possible and was included in an earlier draft EIS." *High Country Conservation Advocates v. United States Forest Serv.*, 52 F. Supp. 3d 1174, 1191 (D. Colo. 2014). Courts have rejected agency refusals to properly quantify the impact of GHG emissions.[29]

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[28] *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. 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"))).

[29] *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 v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1200 (9th Cir. 2008) (holding that while there is a range potential social cost figures, "the value of carbon emissions reduction is certainly not zero").

The Interior Department had "adopt[ed] . . . [the EPA's] new estimates of the social cost as the best available science." 90 Fed. Reg. 4779, 4779 (Jan. 16, 2025); *see* U.S. DEP'T OF THE INTERIOR, INFORMATIONAL MEMORANDUM ON DOI COMPARISON OF AVAILABLE ESTIMATES OF SOCIAL COST OF GREENHOUSE GASES (SC-GHG), 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 estimates of the Social Cost of Greenhouse Gases (SC-GHG) as the best available science (as of September 30, 2024)"). In a final Environmental Assessment (EA) for the Quarter 1 2025 New Mexico Oil and Gas Lease Sale, the BLM explicitly stated that it was rescinding its October 16, 2024, memorandum. *See* BLM, CARLSBAD FIELD OFFICE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT at 88, QUARTER 1 (2025). But the BLM failed to provide proper justification for changing its position. *See FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009) (holding that an agency must provide "good reasons" for a change in position and must provide "a more detailed justification" when a "new policy rests upon factual findings that contradict those which underlay [an agency's] prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account").

The Draft EAs make no reference to social cost estimates. 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 CARLSBAD FIELD OFFICE, ENVIRONMENTAL ASSESSMENT: NEW MEXICO 2023 FOURTH QUARTER COMPETITIVE LEASE SALE, 85 (2023). The BLM must provide such analysis for this lease sale, or else provide good reason for its change in position.

The Draft EAs do, however, quantify the *benefits* of leasing. The BLM discusses various economic and other financial benefits of leasing, including increased employment opportunities and federal mineral leasing revenue. *See* CARLSBAD DRAFT EA at 143–46; FARMINGTON AND RIO PUERCO DRAFT EA at 126–29. The agency may not consider only one side of the economic equation for this lease sale. The BLM must consider the full lifecycle of development activities and GHG emissions that are reasonably foreseeable under a BLM oil and gas lease. SC-GHG is a useful tool to aid in this analysis. Courts have rejected agency refusals to properly quantify the impact of GHG emissions.[30] It is therefore arbitrary and capricious for the BLM to justify this

[30] *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 v. Nat'l Highway Traffic Safety*

sale based on economic benefits without even considering the societal costs from the GHG emissions and their adverse impacts on climate change and whether those costs outweigh the project's purported monetary benefits. *See, e.g.*, *High Country Conservation Advocates*, 52 F. Supp. 3d at 1191.

NEPA also requires agencies to "identify and develop methods and procedures . . . which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." 42 U.S.C. § 4332(2)(B). A livable climate is a "presently unquantified environmental amenit[y]." Neglecting to use SC-GHG or replace it with a comparable tool to quantify climate impacts fails to "identify and develop methods and procedures" to ensure that this "presently unquantified environmental . . . value" is "given appropriate consideration in decisionmaking."

Therefore, 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. The BLM must quantify the projected monetary costs of moving forward with leasing in the state so that the BLM and the public can determine whether the asserted benefits of leasing outweigh the costs.

g. The BLM has not adequately analyzed groundwater impacts.

The Draft EAs fail to adequately address groundwater impacts. To isolate and protect usable water, groundwater zones should be isolated with both casing and cementing. REBECCA TISHERMAN, ET AL., EXAMINATION OF GROUNDWATER RESOURCES IN AREAS OF WYOMING PROPOSED FOR THE JUNE 2022 BLM LEASE SALE (May 11, 2022) [Ex. 26], 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 (Jan. 10, 2018) [Ex. 27], 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). The BLM's groundwater analysis must

Admin., 538 F.3d 1172, 1200 (9th Cir. 2008) (holding that while there is a range potential social cost figures, "the value of carbon emissions reduction is certainly not zero").

aim to protect all usable groundwater, not just groundwater that is deemed "economically viable" or that is near an existing water well. *See Wilderness Soc'y*, 2024 WL 1241906, at *10–11.

Here, the BLM's Draft EAs do not provide adequate analysis of its measures to protect all usable water zones. The BLM's general accounting of the potentially impacted groundwater basins, without more, does not provide any information about the depth or quality of the groundwater in those basins. In terms of impacts, the BLM continues to insert boilerplate language about potential risks to groundwater generally if wells are not properly constructed, without providing any information specific to the potential impacts of these lease sales. And the BLM's general description of the regulatory framework for oil and gas well construction does not provide insight into how and whether those regulations adequately protect the groundwater at issue here. *See* FARMINGTON AND RIO PUERCO DRAFT EA at 90–93; CARLSBAD DRAFT EA at 101–104.

For shallow fracturing, the EAs also fall short. The BLM fails to 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.

The agency cannot defer its analysis of potential impacts to the APD stage, which it attempts to do here. *See* FARMINGTON AND RIO PUERCO DRAFT EA at 90 (incorporating the Water Support Document); CARLSBAD DRAFT EA at 101 (same); BUREAU OF LAND MGMT., BLM WATER SUPPORT DOCUMENT FOR OIL AND GAS DEVELOPMENT IN NEW MEXICO (2024), at ch. 4.2.3.2 https://www.blm.gov/sites/default/files/docs/2024-09/oil-and-gas-wsd-nm-2024.pdf (deferring analysis to the APD stage). Ample information is available now to consider those risks. Failing to analyze these groundwater issues at the leasing stage is arbitrary and capricious. *See Wildearth Guardians v. U.S. Bureau of Land Mgmt.*, 457 F. Supp. 3d 880, 888–89 (D. Mont. 2020); *Wilderness Soc'y*, 2024 WL 1241906, at *8–11.

h. The BLM has not properly analyzed methane emissions that would result from this lease sale.

The Draft EAs barely touch on methane, except to reference existing regulations that aim to reduce harmful methane emissions. *See* CARLSBAD DRAFT EA at 47; FARMINGTON AND RIO PUERCO DRAFT EA at 53. 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 over 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 REPORT] [EX. 28], https://blogs.edf.org/energyexchange/files/2023/01/EMBARGOED_EDF-TCS_Public_Lands_Analysis.pdf. A study conducted in 2020 found that, in the Permian Basin, companies lose 3.5% of the gas that they produce and that flares malfunction about 10% of the time, venting methane directly into the atmosphere. ENV'T DEF. FUND, PERMIANMAP FINAL REPORT, 9 (2021) [Ex. 29]. Researchers noted that the oil and gas industry is one of the world's largest sources of methane emissions. *Id.* at 4.

Venting, flaring, and leaks have additional implications, including on the economy and on public health. The wasted gas leads to millions in lost revenue every year. An analysis conducted by Synapse Energy Economics calculated the economic value of gas lost in 2019 due to venting, flaring, and leaks on federal and Tribal lands, and 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 lost potential sales revenue. GRIOT REPORT at 3.

Venting and flaring also has significant health impacts. Proximity to flaring has been linked to shorter gestation, preterm birth, and lower birthweight. *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. 30], https://pubmed.ncbi.nlm.nih.gov/32673511/. A study published in 2024 estimates that emissions from venting and flaring cause over $7.4 billion in health damages, 710 premature deaths, and 73,000 asthma exacerbations among children annually. Huy Tran et al., *Air Quality and Health Impacts of Onshore Oil and Gas Flaring and Venting Activities Estimated Using Refined Satellite-Based Emissions*, 8 GEOHEALTH 1, 1 (Mar. 6, 2024)[Ex. 31] - https://agupubs.onlinelibrary.wiley.com/doi/10.1029/2023GH000938. Given that oil and gas wells are disproportionately sited near historically marginalized populations, these communities suffer from these and other adverse health impacts at a disproportionate rate. *See* Jeremy Proville et al., *The Demographic Characteristics of Populations Living Near Oil and Gas Wells in the USA*, 44 POPULATION & ENV'T 1, 10-12 (June 17, 2022) [Ex. 32], https://doi.org/10.1007/s11111-022-00403-2. Indeed, the aforementioned 2024 study found that of the early deaths caused by flaring and venting, one in three occurred in low-income census tracts, 30% occurred in Hispanic/Latino census tracts, and 10% occurred in predominantly Native census tracts. Huy Tran, *Air Quality and Health Impacts of Onshore Oil and Gas Flaring and Venting Activities Estimated Using Refined Satellite-Based Emissions* at 11. Similar proportions of impact were seen for childhood asthma exacerbations among these census tracts, with a slightly larger proportion of impact in Hispanic/Latino tracts (40%). *Id.*

The BLM should not issue additional oil and gas leases until the agency addresses the issue of venting and flaring.

i. The BLM has not adequately analyzed the impacts of oil and gas leasing on environmental justice.

The BLM fails to take a hard look at environmental justice. The Draft EAs do not once even mention "environmental justice," other than to acknowledge that there were public comments received on the issue. *See* CARLSBAD DRAFT EA at 4; FARMINGTON AND RIO PUERCO DRAFT EA at 4. Courts have repeatedly held that agencies must take a hard look at environmental justice pursuant to NEPA.[31] The BLM fails to explain this change in position from previous lease sale analyses that discussed the adverse effects of oil and gas activity on environmental justice communities. The agency's failure to include this analysis in the EA is arbitrary and capricious both because it has failed to explain its change in position and because, by ignoring environmental justice, the agency has failed to consider an important part of the problem.

VI. The BLM has failed to consider a range of reasonable alternatives.

The BLM failed to evaluate a range of reasonable alternatives in the Draft EAs 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. The two alternatives evaluated here—namely, 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 habitat. For this lease sale, the BLM must evaluate an alternative that would defer leasing on some or all parcels overlapping this habitat, 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 fails to properly evaluate mitigation measures.

[31] *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).

NEPA requires the BLM to include a discussion of possible mitigation measures in an EA.[32] *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. The BLM fails to disclose its use of artificial intelligence (AI).

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").

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

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

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 has used or will use 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 TWS et al.'s Comments on the Draft Environmental Assessment and Finding of No Significant Impact for the New Mexico Bureau of Land Management Third Quarter 2026 Competitive Oil & Gas Lease Sale (DOI-BLM-NM-P020-2026-0484-EA, DOI-BLM-NM-F010-2026-0020-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	Joseph M. Northrup et al., *Quantifying Spatial Habitat Loss from Hydrocarbon Development through Assessing Habitat Selection Patterns of Mule Deer*, 21 GLOB. CHANGE BIOLOGY 3961 (Aug. 12, 2015)
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