

**THE WILDERNESS SOCIETY \* COALITION TO PROTECT AMERICA'S  
NATIONAL PARKS \* WYOMING OUTDOOR COUNCIL \* CONSERVATION LANDS  
FOUNDATION \* 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 Wyoming Bureau of Land Management Third Quarter  
2026 Competitive Oil & Gas Lease Sale (DOI-BLM-WY-0000-2026-0002-EA).**

To Whom It May Concern:

Thank you for the opportunity to submit these comments on the Draft Environmental Assessment (Draft EA)<sup>1</sup> and Draft Finding of No Significant Impact (Draft FONSI)<sup>2</sup> analyzing

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<sup>1</sup> BLM WYOMING STATE OFFICE, 2026 THIRD QUARTER COMPETITIVE LEASE SALE ENVIRONMENTAL ASSESSMENT DOI-BLM-WY-0000-2026-0002EA (May 5, 2026).

<sup>2</sup> BLM WYOMING STATE OFFICE, FINDING OF NO SIGNIFICANT IMPACT FOR 2026 THIRD QUARTER COMPETITIVE OIL AND GAS LEASE SALE DOI-BLM-WY-0000-2026-0002-EA (May 5, 2026).

the 276 parcels covering 357,357.61 acres under consideration for potential oil and gas exploration and development for the Bureau of Land Management's (BLM's) Wyoming Third Quarter 2026 Oil and Gas Lease Sale. Our organizations and members are deeply invested in sound stewardship of public lands and committed to ensuring that public land management prioritizes the health and resilience of ecosystems, 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.

We appreciate that the BLM is considering Alternative 3 (Modified Proposed Action). Under Alternative 3, the BLM would offer 118 parcels containing approximately 152,249.74 acres. Under both this alternative and Alternative 2 (Proposed Action), five (5) parcels would be partially deleted and eight (8) parcels would be removed entirely from the analysis: parcels WY-2026-09-2617 and 7518 would be partially deleted due to overlap with existing leases; parcels WY-2026-09-2620 and 2731 would be partially deleted due to overlap with fee minerals; parcel WY-2026-09-2639 would be partially deleted because the area is closed to leasing under the Casper Resource Management Plan (RMP); and parcels WY-2026-09-2425, 2471, 2483, 2628, 2651, 2653, 3077, and 7520 would be deleted in their entirety because they have been withdrawn by the nominator. In addition to these deletions made under both Alternative 2 and Alternative 3, Alternative 3 provides for deferrals based on various conflicts. One hundred twenty-one (121) whole parcels would be deferred based on greater-sage grouse prioritization. An additional twenty-five (25) parcels would be deferred due to lack of Surface Management Agency (SMA) consent from the United States Forest Service (USFS) (WY-2026-09-2587, 2588, 2589, 2631, 2677, 2678, 2698, 2703, 2708, 2716, 2790, 2791, 2793, 2795, 2801, 2897, 2990, 6985, 7575, 7584, 7585, 7586, 7587, 7724, and 7746). Of these 25 parcels, fourteen (14) parcels would be deferred due to a combination of both greater-sage grouse prioritization and lack of SMA consent. Three (3) parcels (WY-2026-09-2639, 2731, and 7518) would be partially deferred due to sage grouse prioritization; the remaining portions of these parcels would be deleted (due to being closed to leasing, overlap with fee minerals, or overlap with existing leases, as described above). One (1) additional whole parcel would be deferred due to needing an updated cadastral survey (WY-2026-09-2625).<sup>3</sup>

We further recommend that the BLM defer or not issue leases for the additional parcels discussed below.

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<sup>3</sup> See DRAFT EA at 14–15.

**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”<sup>4</sup> [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](https://eplanning.blm.gov/public_projects/2036690/200641746/20133504/251033484/DOI-BLM-UT-0000-2025-00001-EA%20Public%20Scoping.pdf) (“[R]emoval of parcels from lease consideration would not contribute to the fulfillment of EO 14154, Unleashing American Energy.”). Nor can the agency utilize the Emergency Procedures to circumvent its obligations under NEPA.

The Emergency Procedures are unlawful for numerous reasons: (1) they are premised on the baseless and unsupported declaration of a “national energy emergency”; (2) they conflict with the Department of the Interior’s NEPA regulation on emergency responses; (3) they violate the Department’s public participation obligations; (4) they fail to conform to the requirements for Administrative Procedure Act (APA) notice and comment rulemaking; and (5) they are inconsistent with the timeframes and participation periods mandated by the BLM’s oil and gas leasing regulations. The Department must clarify that the Emergency Procedures cannot be used to approve onshore oil and gas leasing because, among other reasons, they are inconsistent with the timeframes and participation periods mandated by 43 C.F.R. § 3120.42(b). The BLM’s regulation contains no exceptions and requires the BLM to provide a 30-day scoping period, 30-day comment period, a Notice of Competitive Lease Sale at least 60 calendar days prior to the lease auction, and a 30-day protest period following the posting of the Notice of Competitive Lease Sale. The Emergency Procedures are inconsistent with these requirements and thus cannot be used to approve onshore oil and gas leasing.

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<sup>4</sup> *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](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 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.<sup>5</sup> Where conflicts with other uses exist, the BLM must analyze the deferral of lease parcels. The Mineral Leasing Act (MLA) does not contravene FLPMA’s resource conservation requirements. Under FLPMA, the BLM must manage public lands according to “multiple use” and “sustained yield” and “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archeological values.” 43 U.S.C. §§ 1701(a)(7) & (8), 1712(c)(1), 1732(a). Multiple use obligates the agency to make the “most judicious use” of public lands and their resources to “best meet the present and future needs of the American people.” *Id.* § 1702(c). This requires taking “into account the long-term needs of future generations” and ensuring “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment.” *Id.* Sustained

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<sup>5</sup> *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.”).

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.<sup>6</sup> 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, “[I]and areas for limited, restricted or exclusive use,” “[a]llowable resource uses . . . and related levels of production or use to be maintained,” “[r]esource condition goals and objectives to be attained,” and “[p]rogram constraints and general management practices.” *Id.*; *see* 43 U.S.C. § 1712(a).

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

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<sup>6</sup> *See McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (holding that the “fact that land has been offered for lease does not bind the Secretary to actually lease the land, nor is the Secretary bound to lease the land when a qualified applicant has been selected”); *see also 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).

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<sup>7</sup> (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,<sup>8</sup> 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.<sup>9</sup> This legislative action and its associated significant adverse and destabilizing consequences for federal land management raise serious questions as to whether land or resource plans or amendments approved after passage of the CRA in 1996 are in effect if they have not been submitted to Congress under the CRA’s requirements. *See* 5 U.S.C. § 801(a)(1)(A).

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<sup>7</sup> 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)).

<sup>8</sup> 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).

<sup>9</sup> 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).

As previously explained in scoping comments, the BLM must address these questions before proceeding with this lease sale.<sup>10</sup> The BLM approved the Buffalo Field Office RMP in 2015, the Pinedale Field Office RMP in 2008, the Newcastle Field Office RMP in 2000, the Casper Field Office RMP in 2007, the Rawlins Field Office RMP in 2008, the Lander Field Office RMP in 2014, and the Rock Springs Field Office RMP in 2024. 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, including the 2015 Buffalo Field Office RMP, the 2008 Pinedale Field Office RMP, the 2000 Newcastle Field Office RMP, the 2007 Casper Field Office RMP, the 2008 Rawlins Field Office RMP, and the 2014 Lander Field Office RMP; all six of these RMPs are over five years old, with some as old as 25 years. In addition, none of those six RMPs adequately account for or address the environmental impacts on resources and land uses due to climate change.<sup>11</sup>

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

**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.<sup>12</sup> In its analysis of the proposed Wyoming lease sale, the BLM must explain the impact of these

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<sup>10</sup> See The Wilderness Society et al., *Re: Scoping Comments on Parcels for the Wyoming Bureau of Land Management 2026 Third Quarter Competitive Oil & Gas Lease Sale (DOI-BLM-WY-0000-2026 0002-EA)*, 4–5 (Feb. 23, 2026) [hereinafter *TWS Scoping Comments*].

<sup>11</sup> See *TWS Scoping Comments* at 5–7.

<sup>12</sup> See *TWS Scoping Comments* at 8–9.

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.<sup>13</sup> 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.<sup>14</sup> 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](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 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.<sup>15</sup>

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:

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<sup>13</sup> *See id.* at 9.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.* at 10.

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 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.”).<sup>16</sup>

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 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.

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<sup>16</sup> *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”).

**b. The Draft EA and Draft FONSI 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 FLPMA 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 big game migratory habitats to the leasing or permitting stage.<sup>17</sup> *See also, e.g.*, BLM PINEDALE FIELD OFFICE, RECORD OF DECISION AND APPROVED PINEDALE RESOURCE MANAGEMENT PLAN, 2-46 (Nov. 2008) (“BLM-permitted activities *will be designed and implemented* to minimize impacts on big game during migration [in intensively developed fields].”) (emphasis added); BLM PINEDALE FIELD OFFICE, PINEDALE RESOURCE MANAGEMENT PLAN DIRECTOR’S PROTEST RESOLUTION REPORT, 52–53 (Nov. 2008) (“Each proposed project that could impact big game migration will be evaluated on its own merits and mitigation applied, if necessary to maintain the integrity of big game migration across the planning area.”); RAWLINS FIELD OFFICE, RECORD OF DECISION AND APPROVED RAWLINS RESOURCE MANAGEMENT PLAN, 2-54 (Dec. 2008) (containing no oil and gas lease stipulations designed for protection of big game migration, and stating only that future surface disturbing activities “will be managed, on a case-by-case basis, in identified big game migration and transitional ranges to maintain their integrity and function for big game species in these areas”); ROCK SPRINGS FIELD OFFICE, PROPOSED RESOURCE MANAGEMENT PLAN AND FINAL ENVIRONMENTAL IMPACT STATEMENT (Aug. 2024) (adopting oil and gas leasing stipulations only for a single migration corridor designated by Wyoming Game and Fish Department (“WGFD”)—the Sublette Mule Deer Corridor—which is not implicated in these proposed parcels).

The Draft EA and Draft FONSI 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 EA and Draft FONSI 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 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 big game and sage-grouse habitat? 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

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<sup>17</sup> *See TWS Scoping Comments* at 10–12.

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 EA entirely fails to grapple with these issues or to address the impact of the 2025 Reconciliation Act on the BLM's discretion. For example, the EA refers to the underlying RMPs for information about impacts to big game, *see* DRAFT EA at 53, 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 EA also states that “the need for additional mitigation [for big game] will also be determined at the time development is proposed,” DRAFT EA at 71–72, 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).<sup>18</sup> The BLM must take a “hard look” at the environmental effects before making any leasing decisions, ensuring “that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–50 (1989). Environmental “[e]ffects are reasonably foreseeable if they are sufficiently likely to occur that a person of ordinary prudence would take [them] into account in

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<sup>18</sup> *See Kleppe v. Sierra Club*, 427 U.S. 390, 410, 413 (1976); *City of Rochester v. U.S. Postal Serv.*, 541 F.2d 967, 973–74 (2d Cir. 1976); *Concerned About Trident v. Rumsfeld*, 555 F.2d 817, 825 (D.C. Cir. 1976); *City of Davis v. Coleman*, 521 F.2d 661, 666–677 (9th Cir. 1975); *Brooks v. Coleman*, 518 F.2d 17, 18 (9th Cir. 1975); *NRDC v. Callaway*, 524 F.2d 79, 89 (2d Cir. 1975); *Envil. 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).

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.

Applying the leasing preference criteria clearly and consistently is important. A helpful example of clear application of the criteria is in the EA for the Wyoming Quarter Four 2023 Lease Sale. *See* BUREAU OF LAND MGMT., ENVIRONMENTAL ASSESSMENT, DOI-BLM-WY-0000-2023-0004-EA, 2023 FOURTH QUARTER COMPETITIVE LEASE SALE, at 18–21 & Table 2.3 (Nov. 2023). There, the BLM included an explanation of each criterion being used, followed by a table designating the preference (low or high). *See id.* Each parcel that received a “low” designation was deferred, with a brief parenthetical explanation in the chart as to why it was being deferred. *See id.* We urge the BLM to follow a similar, consistent approach for this lease sale.

The BLM should defer lease parcels with a low preference value. If the BLM does move forward any parcels that receive a low preference designation, the agency must explain its specific reasons for doing so.

While the regulations preference leasing parcels with “[p]roximity to existing oil and gas development,” 43 C.F.R. § 3120.32(a), some of these areas risk further concentrating and expanding development, exacerbating ongoing and historical degradation to the affected area and the public health of nearby communities. We urge the BLM not to assign an overall preference to lease parcels that are in proximity to existing oil and gas development or that are on lands with high development potential if the proposed parcels are on lands where other sensitive resources are present. In addition, we urge the BLM to document and prioritize community health and environmental justice impacts. The agency has documented proximity to residences and communities in other lease sales. *See, e.g.*, BUREAU OF LAND MGMT., PECOS DISTRICT OFFICE OIL AND GAS LEASE SALE, ENVIRONMENTAL ASSESSMENT, QUARTER 2 2024, DOI-BLM-NM-P000-2023-0002-EA, 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 conflict 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.

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

The IM also fails to recognize that lands must not only be “eligible” for leasing but also “available.” 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). The Leasing Rule also incorporated IM 2023–007, which makes clear that the preference criteria represent a substantive directive to steer leasing away from areas with conflict. *See* 89 Fed. Reg. at 30,921. IM 2025-028 conflicts with these provisions of the Leasing Rule.

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 sage-grouse habitat, big game habitat, and Areas of Critical Environmental Concern. *See* discussion *infra* Section V.b–c, d.

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).

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. 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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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 Draft EA improperly applies the leasing preference criteria.**

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

The BLM does not explicitly rely on Instruction Memorandum (IM) 2025-028, but that IM appears to have directed the agency’s decision to designate every parcel as having a high preference for leasing. *See* DRAFT EA at 16–24. This stands in contrast to the Draft EA’s recommendation to defer parcels in, for example, sage-grouse habitat. It is arbitrary and capricious for the BLM to determine that parcels in priority sage-grouse habitat should be considered for deferral yet designate those same parcels as having a high preference for leasing under the “habitat criteria.” We urge the agency to correct its leasing preference table in the Final EA.

**b. The BLM should defer all parcels in Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA). The BLM must comply with the preference criteria, the prioritization requirement of the**

**RMPs, and NEPA to the extent that any parcels are offered in greater sage-grouse habitat.**

This lease sale includes numerous parcels that overlap PHMA and GHMA for the greater sage-grouse. We appreciate that the BLM is proposing to defer parcels in PHMA under Alternative 3. However, Alternative 3 does not defer all parcels in PHMA, defers almost no GHMA parcels, and does not adequately analyze the adverse effects of leasing parcels in sage-grouse habitat.

In addition to the proposed parcel deferrals in PHMA under Alternative 3, we urge the BLM to defer the following 36 parcels due to overlap with PHMA:

WY-2026-09-2400\*<sup>19</sup>  
WY-2026-09-2403  
WY-2026-09-2404\*  
WY-2026-09-2412\*  
WY-2026-09-2413\*  
WY-2026-09-2418\*  
WY-2026-09-2424  
WY-2026-09-2426  
WY-2026-09-2485\*  
WY-2026-09-2486\*  
WY-2026-09-2488\*  
WY-2026-09-2630\*  
WY-2026-09-2660  
WY-2026-09-2661  
WY-2026-09-2662  
WY-2026-09-2665  
WY-2026-09-2667  
WY-2026-09-2668  
WY-2026-09-2669

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<sup>19</sup> Parcels with an asterisk are identified as PHMA based on the most up-to-date sage-grouse habitat map data from the Greater Sage-Grouse Rangewide Planning Amendments adopted by the BLM in 2025 (the 2025 Amendments). The BLM appears to rely on the 2015 sage-grouse data to identify PHMA and GHMA in its Environmental Assessment. While commenters agree with the approach of applying the prioritization criteria from the 2015 Greater Sage-Grouse Plan Amendments (the 2015 Plans) to this sale, *see* discussion *infra* n.20, we encourage the BLM to use the most up-to-date data on resource conservation conflicts when identifying those conflicts for purposes of its environmental analysis. To rely on out-of-date data when there is updated data readily available is unsound, particularly given that the BLM claims to be “using the most current GHMA/PHMA boundaries” in its analysis. *See* DRAFT EA at A-126.

WY-2026-09-2682  
WY-2026-09-2689  
WY-2026-09-2698  
WY-2026-09-2716  
WY-2026-09-2728  
WY-2026-09-2741  
WY-2026-09-2784  
WY-2026-09-2793  
WY-2026-09-2795  
WY-2026-09-2803  
WY-2026-09-2804  
WY-2026-09-7564\*  
WY-2026-09-7569  
WY-2026-09-7570  
WY-2026-09-7573  
WY-2026-09-7580  
WY-2026-09-7724

And, in addition to the 15 parcels proposed for deferral in Alternative 3 due to overlap with GHMA, *see* DRAFT EA at A-50–53 tbl.4.3-7, we urge the BLM to consider for deferral all parcels that overlap GHMA based on the data from the 2025 Amendments.

To the extent BLM does not defer all parcels in sage-grouse habitat, it must comply with the preference criteria, the prioritization requirement of the sage-grouse RMPs, and NEPA. The Draft EA does not do so.

**1. The BLM must comply with the preference criteria.**

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). As the BLM acknowledges, parcels “located in [n]on-habitat are given first priority.” DRAFT EA at A-126. The Draft EA identifies which parcels intersect sage-grouse habitat, *see id.* at App’x 4.3, but nevertheless “found all parcels to have a high preference for leasing,” *id.* at 16–18 & tbl.2.3-2. Designating these parcels as high preference for leasing stands in direct contradiction to the purpose of the leasing preference criteria regulation, which is to *avoid* adverse resource impacts.

The BLM should designate these parcels as having a low preference for leasing and should avoid leasing all parcels in GHMA and PHMA—by deferring or otherwise omitting from this lease sale the whole parcels or those portions of parcels overlapping GHMA or PHMA—

under the 2015 Plans.<sup>20</sup> As explained above, the leasing preference criteria in the BLM’s regulations direct deferral of parcels in sage-grouse habitat, irrespective of the command contained in the recently released IM 2025-028, which violates sage-grouse prioritization requirements. *See* discussion *supra* Section V.

As explained in the Leasing Rule’s preamble, “[t]he 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 and associated attachment have been rescinded, the Leasing Rule’s requirement that the BLM apply the preference criteria consistent with the principles in the IM remains. Those principles direct deferral of parcels with identified conflicts with the criteria, such as parcels in sage-grouse habitat.

## 2. The BLM fails to comply with prioritization requirements.

The Draft EA also fails to comply with the prioritization requirement of the 2015 Plans. The 2015 Plans require the BLM to prioritize new oil and gas leasing outside of PHMA and GHMA in order to protect that habitat from future disturbance. The Ninth Circuit last year affirmed that “the government must take an affirmative role in encouraging oil and gas leasing in non-sage-grouse habitat.” *Mont. Wildlife Fed’n*, 127 F.4th at 45. The BLM cannot merely “respond[] to industry expressions of interest . . . in leasing specific land parcels,” but rather it

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<sup>20</sup> Note that while the BLM Wyoming State Office released an updated Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Rangewide Planning in December 2025, the BLM in its Environmental Assessment states that all parcels except one are subject to the 2015 Plans because they were “nominated after the signing of the [2025 Reconciliation Act] but prior to finalization of the 2025 [Amendments] and must therefore be analyzed under the 2015 [Plans], the approved RMP in effect at the time of nomination.” DRAFT EA at 47. Only one parcel (WY-2026-09-6985) was nominated prior to the signing of the 2025 Reconciliation Act and is analyzed under the 2025 Amendments, but that parcel is proposed for deferral under Alternative 3 due to a lack of SMA consent. DRAFT EA at 47.

While commenters do not endorse the BLM’s broader interpretation of the 2025 Reconciliation Act, commenters agree that the BLM should apply the prioritization and preference criteria requirements from the 2015 Plans. The 2025 Amendments suffer from a variety of legal defects that we outlined in our RMP protest and supplemental comments, both of which are attached. *See* The Wilderness Society, *Re: Protest of Greater Sage-Grouse Rangewide Planning: Proposed Resource Management Plan Amendment and Final Environmental Impact Statement* (Dec. 16, 2024) [Ex. 3]; Earthjustice, *Re: Comments on Proposed Changes to Greater Sage-Grouse RMP Amendments* (Oct. 2, 2025) [Ex. 4]. For the reasons described in our RMP protest and supplemental comments, application of the 2025 Amendments in this lease sale would violate FLPMA, the APA, and NEPA.

must undertake “independent agency determinations of which parcels to offer for oil and gas leases.” *Id.* at 43. The agency must prioritize leasing away from PHMA and also guide leasing away from GHMA lands. Stipulations are insufficient—the “Prioritization Objective imposes an affirmative requirement on the Bureau to ‘guide’ and ‘encourage’ development away from sage-grouse habitat.” *Id.* Failure to follow this approach conflicts with the RMPs and thus violates FLPMA.

Alternative 2 in the Draft EA plainly violates prioritization. It would offer all PHMA and GHMA parcels under consideration without deferring any leases based on prioritization. DRAFT EA at 14–15, A-37–A-45 & tbls.4.3-4, 4.3-5. This is the same approach that courts have repeatedly found to violate FLPMA.

While Alternative 3 would offer fewer parcels in sage-grouse habitat, the BLM fails to provide a reasoned explanation for how it decided which parcels to move forward and which parcels to defer. The BLM states that it is deferring 130 of the 156 nominated PHMA parcels and 15 of the 119 nominated GHMA parcels, but it does not adequately explain why it is offering many PHMA parcels and the vast majority of GHMA parcels, and how that approach comports with prioritization requirements. The BLM should defer all parcels in PHMA and GHMA.

### **3. The BLM fails to properly analyze impacts.**

The Draft EA also fails to properly analyze impacts to the sage-grouse. The agency generally describes potential impacts and harm to the species that can result from drilling before stating that “[s]ome of these impacts are reduced during the construction and drilling phases by implementing the appropriate timing, and/or surface use stipulations.” *See* DRAFT EA at 52–53. The BLM goes on to state that, “[d]ue to the uncertainties from a lease development standpoint, it is difficult to predict exactly what impacts may occur,” and it therefore refers to general impacts discussed in the underlying RMPs. DRAFT EA at 54.

This analysis is insufficient. First, the cursory statements that drilling close to leks or in other sensitive habitat areas will have adverse impacts, and that those impacts may to some degree be limited by mitigation measures, just “informs [the BLM] and the public what they already know.” *WildEarth Guardians v. BLM*, 457 F. Supp. 3d 880, 886 (D. Mont. 2020). Such “general statements” do not substitute for evaluating the foreseeable impacts. *See Or. Nat. Desert Ass’n v. Rose*, 921 F.3d 1185, 1191 (9th Cir. 2019). Without some meaningful analysis, the BLM has no basis for its conclusion that “[i]mpacts beyond those analyzed in the underlying RMP FEISs and the 2015/2025 GRSG ARMPA FEISs are not expected.” *See* DRAFT EA at 55. The BLM “must do more to justify its conclusion that the effects would be the same as those outlined in the RMPs.” *Wilderness Soc’y*, 2024 WL 1241906, at \*17.

The BLM must provide an analysis of the reasonably foreseeable impacts to sage-grouse from development on the proposed lease parcels. The agency has “specifically identified ‘oil and gas development’ as a ‘major threat’ to sage-grouse habitat.” *Mont. Wildlife Fed’n*, 127 4th at 43. Previous lease sale analysis of Sage-Grouse impacts has been found to violate NEPA. *See Wilderness Soc’y*, 2024 WL 1241906, at \*17. In *Wilderness Society*, the district court recognized that the BLM’s practice of simply claiming that impacts from leases will be “similar” to those discussed in the NEPA documents for the 2015 Plans falls short of what the law requires. *See id.* at \*16–17. Instead, the NEPA analysis must address the *specific* lands being offered and develop a “prediction of how this lease sale will likely impact sage-grouse populations in light of all available evidence, including the more recent science that has motivated [the BLM] to redraft the existing [2015 Plans].” *Id.* at \*17; *see also W. Watersheds Project v. Bernhardt*, 543 F. Supp. 3d 958, 991–93 (D. Idaho 2021). NEPA requires the BLM to analyze the impacts of the decision it will consider for this lease sale.

In March 2021, U.S. Geological Survey (USGS) researchers released a report that provides one of the most comprehensive population trend modeling efforts ever undertaken for Sage-Grouse. *See* PETER S. COATES ET AL., RANGE-WIDE GREATER SAGE-GROUSE HIERARCHICAL MONITORING FRAMEWORK: IMPLICATIONS FOR DEFINING POPULATION BOUNDARIES, TREND ESTIMATION, AND A TARGETED ANNUAL WARNING SYSTEM (March 2021) [Exs. 5a & 5b], <https://doi.org/10.3133/ofr20201154>. The report reveals that since 1966, sage-grouse populations have declined about 80% range-wide. *See id.* at 3. Since 2002, range-wide populations have declined 37%. *See id.* Also, 78% of leks have a greater than 50% probability of extirpation in the next 56 years. *See id.* at 52, 90. In September 2022, the USGS and other federal agencies released a report that found 1.3 million acres of habitat are transitioning each year from largely intact sagebrush sites to less functioning sagebrush habitat. *See* KEVIN DOHERTY ET AL., A SAGEBRUSH CONSERVATION DESIGN TO PROACTIVELY RESTORE AMERICA’S SAGEBRUSH BIOME: U.S. GEOLOGICAL SURVEY OPEN-FILE REPORT 2022–1081, 28 (Sept. 2022) [Ex. 6], <https://pubs.usgs.gov/of/2022/1081/ofr20221081.pdf>.

The science makes clear that the BLM’s focus must be to “stop the bleeding” on sage-grouse population losses. *See Wilderness Soc’y*, 2024 WL 1241906, at \*15. The BLM must conduct a proper analysis of effects to the sage-grouse for this lease sale. The failure to properly analyze and consider deferral of parcels in sage-grouse habitat would constitute a failure to consider a reasonable modified leasing alternative that would advance the purpose and need of the sale.

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

The BLM is obligated through FLPMA, NEPA, and its own regulations to analyze the impacts of leasing parcels that overlap big game habitat and designate as low preference for leasing and defer parcels in those areas. The agency’s regulations require it to 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). FLPMA also contains a multiple use and sustained yield mandate to make “the most judicious use of the land for some or all of these resources” and to avoid unnecessary or undue degradation. 43 U.S.C. § 7102(c) & 1732(b).

NEPA directs the agency to “insure the integrated use of the natural and social sciences . . . in planning and decision-making,” 42 U.S.C. § 4332(A), and requires the agency to take a hard look at impacts to wildlife habitat across a range of reasonable alternatives and utilizing an accurate environmental baseline, *see Wilderness Soc’y v. U.S. Dep’t of Interior*, No. 22-CV-1871 (CRC), 2024 WL 3443754, at \*4 (D.D.C. July 16, 2024) (“The Bureau, of course, cannot perform the ‘hard look’ NEPA demands while turning a blind eye to intervening scientific data that casts doubt on the rosier outlook that once prevailed. It instead must bring this new data into full view.”).

Despite these requirements, the Draft EA does not recommend deferral of any parcels due to overlap with big game migratory habitat or crucial winter range.

The below proposed parcels overlap critical big game habitat, with 64 parcels in crucial winter range, 15 in modeled migration corridors, and 8 in documented migratory habitats, as documented by the United States Geological Survey (USGS).<sup>21</sup>

- 1. The BLM should designate the following parcels as low preference and defer them from this lease sale because they overlap with crucial winter range.**

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<sup>21</sup> The USGS’s Corridor Mapping team has documented and published route data on migrations for 39 big game herds in Wyoming. *See* U.S. GEOLOGICAL SURVEY, UNGULATE MIGRATIONS OF THE WEST VOLS. 1–5 (Dec. 2023) [Exs. 7a–7v], <https://pubs.usgs.gov/publication/sir20205101> [hereinafter USGS UNGULATE MIGRATIONS]. The State of Wyoming has only modeled corridors from route data for five migratory herds. Throughout our comments, we will use “migratory habitats” to refer to the 39 documented migrations and will use “migration corridors” to refer only to the small subset that have been modeled through statistical analysis.

With respect to the below 64 parcels<sup>22</sup> that overlap with crucial winter range, the BLM should designate them as low preference for leasing and defer them from this lease sale:

- WY-2026-09-2400 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2403 (Mule Deer)
- WY-2026-09-2404 (Elk, Mule Deer, and Pronghorn Antelope)
- WY-2026-09-2405 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2411 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2412 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2413 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2416 (Mule Deer)
- WY-2026-09-2422 (Elk)
- WY-2026-09-2424 (Elk and Mule Deer)
- WY-2026-09-2426 (Elk and Mule Deer)
- WY-2026-09-2428 (Elk)
- WY-2026-09-2429 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2438 (Pronghorn Antelope)
- WY-2026-09-2439 (Pronghorn Antelope)
- WY-2026-09-2440 (Pronghorn Antelope)
- WY-2026-09-2444 (Pronghorn Antelope)
- WY-2026-09-2445 (Pronghorn Antelope)
- WY-2026-09-2449 (Pronghorn Antelope)
- WY-2026-09-2485 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2486 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2490 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2497 (Pronghorn Antelope)
- WY-2026-09-2498 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2616 (Mule Deer)
- WY-2026-09-2624 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2625 (Pronghorn Antelope)
- WY-2026-09-2627 (Mule Deer)
- WY-2026-09-2630 (Mule Deer and Pronghorn Antelope)
- WY-2026-09-2656 (Elk and Pronghorn Antelope)
- WY-2026-09-2662 (Pronghorn Antelope)
- WY-2026-09-2665 (Pronghorn Antelope)

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<sup>22</sup> Some of these parcels have been proposed for deferral under Alternative 3 for reasons other than their overlap with crucial winter range. We encourage the BLM to move forward with its proposed Alternative 3 deferrals, in addition to the remaining above-listed deferrals.

WY-2026-09-2666 (Pronghorn Antelope)  
WY-2026-09-2667 (Mule Deer and Pronghorn Antelope)  
WY-2026-09-2668 (Pronghorn Antelope)  
WY-2026-09-2669 (Pronghorn Antelope)  
WY-2026-09-2670 (Mule Deer)  
WY-2026-09-2673 (Mule Deer and Pronghorn Antelope)  
WY-2026-09-2676 (Mule Deer and Pronghorn Antelope)  
WY-2026-09-2679 (Pronghorn Antelope)  
WY-2026-09-2680 (Mule Deer)  
WY-2026-09-2683 (Mule Deer)  
WY-2026-09-2684 (Mule Deer)  
WY-2026-09-2685 (Mule Deer)  
WY-2026-09-2696 (Pronghorn Antelope)  
WY-2026-09-2697 (Pronghorn Antelope)  
WY-2026-09-2705 (Mule Deer)  
WY-2026-09-2706 (Elk)  
WY-2026-09-2708 (Elk)  
WY-2026-09-2728 (Elk)  
WY-2026-09-2812 (Pronghorn Antelope)  
WY-2026-09-7497 (Mule Deer and Pronghorn Antelope)  
WY-2026-09-7498 (Elk and Mule Deer)  
WY-2026-09-7500 (Mule Deer and Pronghorn Antelope)  
WY-2026-09-7525 (Mule Deer and Pronghorn Antelope)  
WY-2026-09-7530 (Mule Deer)  
WY-2026-09-7531 (Mule Deer and Pronghorn Antelope)  
WY-2026-09-7532 (Mule Deer and Pronghorn Antelope)  
WY-2026-09-7541 (Mule Deer)  
WY-2026-09-7546 (Pronghorn Antelope)  
WY-2026-09-7573 (Mule Deer)  
WY-2026-09-7577 (Pronghorn Antelope)  
WY-2026-09-7582 (Mule Deer)  
WY-2026-09-7583 (Pronghorn Antelope)

The BLM fails to thoroughly analyze the impacts to big game of leasing in crucial winter range. The Draft EA generally describes negative impacts of oil and gas development within crucial winter range and lists the number of parcels that occur within range for various species. The BLM defers further analysis, stating that “[a]t the lease sale stage, it is unknown where, or if, development would occur in any nominated leases that overlap with [crucial winter range]; as specific types and locations of development are proposed, their specific effects would be

analyzed and addressed in detail at the time of proposed lease development.” DRAFT EA at 63. After explicitly deferring analysis, the BLM then concludes without any support that “[o]ffering leases in [crucial winter range] is not expected to result in new impacts to [crucial winter range] in relation to habitat, human presence, noise and [invasive non-native species] beyond those identified in the base RMPs and narrative cited above.” *Id.* at 64. The Draft EA goes on to state that “general habitat disturbance could lead to incremental and cumulative habitat fragmentation, activity, and increased noise levels across the landscape. To mitigate these potential impacts and ensure proper functioning habitat from potential surface disturbance, human presence, noise, and [invasive non-native species] there are multiple . . . stipulations . . . . In addition, other species’ . . . stipulations are also expected to help further reduce disturbance on crucial winter ranges that overlap areas with other special species.” *Id.* at 64–65. Mitigation, however, is different from avoidance. Moreover, reliance on stipulations designed to protect other species in the hopes that these stipulations will protect big game is a nonsensical and patchwork approach to species protection, particularly given that these stipulations will only apply where there happens to be overlapping habitat.

The BLM must thoroughly analyze the impacts to big game of leasing in crucial winter range. Research makes clear that oil and gas development in big game winter ranges can have substantial negative effects, including habitat avoidance and population declines. *See e.g.*, Hall Sawyer et al., *Mule Deer and Energy Development—Long Term Trends of Habituation and Abundance*, 23 GLOB. CHANGE BIOLOGY 4521, 4521–29 (Apr. 4, 2017) [Ex. 8], <https://onlinelibrary.wiley.com/doi/10.1111/gcb.13711> (analyzing 17 years of telemetry data in western Wyoming 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. 9], <https://conbio.onlinelibrary.wiley.com/doi/10.1111/csp2.83> (analyzing winter range residency behaviors of pronghorn antelope in the southern Greater Yellowstone Ecosystem in Wyoming 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. 10], <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 in south-central Wyoming) Extensive leasing in crucial winter range has significant adverse impacts on

Wyoming's big game herds.

**2. The BLM should designate the following parcels as low preference and defer them from this lease sale because they overlap with migratory habitats.**

With respect to the below 15 parcels<sup>23</sup> that overlap with modeled migration corridors, the BLM should designate them as low preference for leasing and defer them from this lease sale:

WY-2026-09-2400 (Baggs Mule Deer)  
WY-2026-09-2403 (Baggs Mule Deer)  
WY-2026-09-2405 (Baggs Mule Deer)  
WY-2026-09-2411 (Baggs Mule Deer)  
WY-2026-09-2416 (Baggs Mule Deer)  
WY-2026-09-2422 (Baggs Mule Deer)  
WY-2026-09-2424 (Baggs Mule Deer)  
WY-2026-09-2426 (Baggs Mule Deer)  
WY-2026-09-2428 (Baggs Mule Deer)  
WY-2026-09-2485 (Baggs Mule Deer)  
WY-2026-09-2486 (Baggs Mule Deer)  
WY-2026-09-2630 (Baggs Mule Deer)  
WY-2026-09-7497 (Baggs Mule Deer)  
WY-2026-09-7525 (Baggs Mule Deer)  
WY-2026-09-2656 (Sublette Pronghorn)

With respect to the below 8 parcels<sup>24</sup> that overlap with migratory habitats documented by the USGS, the BLM should designate them as low preference for leasing and defer them from this lease sale:

WY-2026-09-2679 (Bitter Creek Pronghorn)  
WY-2026-09-7563 (Bitter Creek Pronghorn)  
WY-2026-09-7568 (Bitter Creek Pronghorn)  
WY-2026-09-2647 (Bitter Creek Pronghorn)

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<sup>23</sup> Some of these parcels have been proposed for deferral under Alternative 3 for reasons other than their overlap with migration corridors. We encourage the BLM to move forward with its proposed Alternative 3 deferrals, in addition to the remaining above-listed deferrals.

<sup>24</sup> Some of these parcels have been proposed for deferral under Alternative 3 for reasons other than their overlap with migratory habitat. We encourage the BLM to move forward with its proposed Alternative 3 deferrals, in addition to the remaining above-listed deferrals.

WY-2026-09-7581 (Bitter Creek Pronghorn)  
WY-2026-09-2422 (Baggs Pronghorn)  
WY-2026-09-2628 (Sheep Mountain Mule Deer)  
WY-2026-09-7520 (Sheep Mountain Mule Deer)

The analysis in this lease sale is inadequate to support a decision to lease because the underlying RMPs for all of these known migratory habitats—including modeled corridors and documented routes—except one are out of date with current research documenting the locations of these migrations and the known, negative impacts of oil and gas development on migrating big game. FLPMA requires the BLM to maintain an accurate inventory of public lands resources and values including wildlife habitat. 43 U.S.C. § 1711(a). The land plans that govern most of these documented migrations (the 2024 Rock Springs RMP, the 2008 Pinedale RMP and the 2008 Rawlins RMP) do not include inventories of these migrations. The lack of accurate inventories of these habitats and ensuing lack of analysis of the impacts of leasing them means that the BLM cannot rely on those RMPs for the underlying analysis that tiers to this leasing decision. The only RMP in Wyoming that has included a known migration corridor in its inventory and analysis is the Rock Springs RMP from 2024, which recognizes the Sublette Mule Deer migration corridor (which is not implicated in this lease sale). However, even that RMP inappropriately ignores other documented migratory habitats in the planning area, including one pertinent to this lease sale, the Bitter Creek Pronghorn migratory habitat. Until these RMPs are updated to include accurate inventories of the known migratory habitats in their planning area and sufficiently analyze the impacts of oil and gas leasing on these critical habitats, the BLM must defer leasing these parcels.

The Draft EA falls woefully short of adequately analyzing the impacts of the proposed leases on big game migratory habitats. This failure is both a violation of NEPA and of the agency’s substantive obligation to provide a sustained yield of wildlife species and avoid unnecessary and undue degradation under FLPMA.

The Draft EA acknowledges that seasonal migratory habitat—and particularly stopover habitat within migration corridors—are vital to maintaining big game populations. *See* Draft EA at 58–60 (citing Wyo. Game & Fish Dep’t, *Ungulate Migration Corridor Strategy* (Revised Jan. 28, 2019), <https://wgfd.wyo.gov/media/13364/download?inline>). Despite recognizing the importance of these corridors, the BLM’s analysis of impacts to big game migratory habitat is inadequate for several reasons.

The BLM’s assertion that an evaluation of impacts to migratory habitats may be limited to those formally designated by the State is arbitrary and capricious. *See* DRAFT EA at 65 (noting the overlap with the “Baggs formally designated mule deer migratory corridors” and stating that “there are no pronghorn or elk formally designated migratory corridors,” and therefore limiting

analysis to mule deer). The fact that migration corridors have not yet been modeled by state or federal agencies for these known migratory habitats, and that the ensuing corridors have not been designated through the Governor’s formal process, does not mean the habitat does not exist on the ground and does not excuse the BLM from studying and disclosing the impacts on it. As discussed above, beyond the three formally designated corridors, numerous well-documented big game migratory habitats exist in Wyoming. *See* discussion *supra* n.21; USGS Ungulate Migrations. And many of the parcels proposed for leasing intersect with these migratory habitats. *See* list *supra* p. 30–31. The BLM cannot shirk its obligation to study and disclose impacts to these undeniably critical habitat areas for highly valued big game species on grounds that they have not been designated under a State administrative process.

Moreover, the BLM’s analysis of impacts to state-designated mule deer migration corridors falls far short of what is required. The Draft EA estimates “0.09% of [mule deer] migratory corridor disturbance” and an “indirect overlap to designated [mule deer] migratory corridor of 22.4%.” DRAFT EA at 68. Notwithstanding the fact that this is a substantial impact, the Draft EA then concludes without any support that “[o]ffering leases in designated migratory corridors is not expected to result in new impacts in relation to habitat, human presence, noise and [invasive non-native species] beyond those identified in the base RMPs and narrative cited above.” *Id.* The BLM goes on to state that while “potential indirect effects of avoidance to the Baggs migratory corridor . . . may cause incremental negative impacts to the functionality of the corridor, . . . TLS stipulations and mitigation plans would be put in place to sufficiently protect the continued functionality of the migratory corridor and not cause the big game species to avoid or leave portions of the designated corridor during migration periods.” *Id.* This statement showcases a fundamental misunderstanding of research about migrating mule deer and gas fields, further underscoring the agency’s lack of any sincere analysis of impacts. Timing stipulations—i.e., limiting human presence/construction during migration—are not adequate to address harm to mule deer. The 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, spending less time foraging in the corridor and getting ahead of springtime green-up forage, leading to poorer nutritional outcomes and population decline. Teal B. Wyckoff et al., *Evaluating the Influence of Energy and Residential Development on the Migratory Behavior of Mule Deer*, 9 *Ecosphere* 1 (Feb. 23, 2018) [Ex. 11], <https://esajournals.onlinelibrary.wiley.com/doi/10.1002/ecs2.2113>; Ellen O. Aikens et al., *Industrial Energy Development Decouples Ungulate Migration from the Green Wave*, 6 *Nature Ecology & Evolution* 1733, 1733–39 (2022) [Ex. 12]. In other words, it is not enough for the agency to say that it will not operate the drilling rig during a migration because the deer will continue to react to the development even when it is not an active use and long after it has been constructed. This statement from the agency is further problematic insofar as it assumes that the BLM can impose stipulations and mitigation measures later in the leasing process, without

addressing the potential limitations that the 2025 Reconciliation Act imposes on the agency to do so. *See* discussion *supra* Section IV.<sup>25</sup>

In addition to violating the agency's FLPMA and NEPA duties with this inadequate analysis, the agency is also acting inconsistently with the governing RMPs, which indicate that impacts to big game migratory habitats—not limited to State-designated corridors—*will* be evaluated and mitigated when projects are proposed. *See, e.g.*, BLM PINEDALE FIELD OFFICE, PINEDALE RESOURCE MANAGEMENT PLAN DIRECTOR'S PROTEST RESOLUTION REPORT, 52–53 (Nov. 2008) (“Each proposed project that could impact big game migration will be evaluated on its own merits and mitigation applied, if necessary to maintain the integrity of big game migration across the planning area.”); RAWLINS FIELD OFFICE, RECORD OF DECISION AND APPROVED RAWLINS RESOURCE MANAGEMENT PLAN, 2-53 (Dec. 2008) (“Surface disturbing and disruptive activities will be managed, on a case-by-case basis, in identified big game migration and transitional ranges to maintain their integrity and function for big game species in these areas.”).

Disturbingly, the BLM disclaims an obligation to assess the impacts of the proposed sale on big game habitat and migratory habitat because those impacts “are accounted for in the individual field office RMPs.” DRAFT EA at 68. But this is simply not true. In fact, as explained above, rather than analyzing the impacts of potential leasing on big game migratory habitat and making a finding that such leasing will not cause unnecessary or undue degradation of migratory habitat, the relevant RMPs defer that analysis to the leasing or APD stage. *See* discussion *supra* Section IV.b. The BLM has not addressed whether it retains discretion, in the wake of the 2025 Reconciliation Act, to require additional restrictions or conditions on development through the conservation plans contemplated in the stipulation. Nor has the BLM demonstrated that these undefined, future conservation plans will satisfy the agency's FLPMA obligations. Outside of the designated Sublette Mule Deer migration corridor, the Rock Springs RMP does not “account[] for” other documented big game migrations. This sort of “shell-game” NEPA analysis is arbitrary and capricious. *See, e.g., High Country Conservation Advocs. v. U.S. Forest Serv.*, 52 F. Supp. 1174, 1199 (D. Colo. 2014) (holding BLM erred in attempting to tier a site-specific EA to an EIS that “explicitly postpones site-specific analysis until later proposals”).

In addition to the two studies cited above that document significant impacts from oil and gas development on migrating big game, there are several others that demonstrate the importance of migratory habitat to big game species. 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

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<sup>25</sup> In addition to failing to address migratory habitats in Wyoming, the BLM failed to consider impacts on cross-state-line migratory habitats as part of its analysis.

J. of Animal Ecology 450, 450–60 (2019) [Ex. 13], <https://doi.org/10.1111/1365-2656.12926>. And 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*, 799–808 (Feb. 2, 2026) [Ex. 14].

\* \* \* \*

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

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

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

- d. 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 21 parcels<sup>26</sup> identified in the BLM’s Reasonable Foreseeable Development Scenario as having low potential and being further than 5 miles from producing wells, the BLM should defer them from this lease sale:

WY-2026-09-2406  
 WY-2026-09-2422  
 WY-2026-09-2428  
 WY-2026-09-2438  
 WY-2026-09-2439  
 WY-2026-09-2440  
 WY-2026-09-2444  
 WY-2026-09-2445  
 WY-2026-09-2484  
 WY-2026-09-2494  
 WY-2026-09-2495  
 WY-2026-09-2517  
 WY-2026-09-2613  
 WY-2026-09-2627  
 WY-2026-09-2680  
 WY-2026-09-2683  
 WY-2026-09-2732  
 WY-2026-09-2798  
 WY-2026-09-7500

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<sup>26</sup> Some of these parcels have been proposed for deferral under Alternative 3 for reasons other than their low development potential. We encourage the BLM to move forward with its proposed Alternative 3 deferrals, in addition to the remaining above-listed deferrals.

WY-2026-09-7533

WY-2026-09-7535

In the BLM's Environmental Assessment, it states that none of the proposed parcels have a low preference for leasing based on development potential. DRAFT EA at 16. The BLM references a “development potential map created by BLM specialists” to support this, but does not make that information available to the public. *See id.* The BLM does not adequately explain its conclusion, which appears to be inconsistent with the information from the BLM’s Reasonable Foreseeable Development Scenario, according to which the above-listed 21 parcels have low development potential.

- e. 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 BLM should analyze and defer the following 3 parcels that overlap with ACECs:

WY-2026-09-2424 (Sand Hills/JO Ranch ACEC)

WY-2026-09-2426 (Sand Hills/JO Ranch ACEC)

WY-2026-09-7540 (Pumpkin Buttes ACEC)

The BLM should also analyze for deferral the following 14 parcels<sup>27</sup> offered that overlap with Special Management Areas (SMA)/ACECs:

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<sup>27</sup> Some of these parcels have been proposed for deferral under Alternative 3 for reasons other than their overlap with SMAs/ACECs. We encourage the BLM to move forward with its proposed Alternative 3 deferrals, in addition to the remaining above-listed deferrals.

WY-2026-09-2416 (Historic Trails ACEC)  
 WY-2026-09-2428 (Jeb Canyon ACEC)  
 WY-2026-09-2429 (Red Rim-Daley SMA/ACEC)  
 WY-2026-09-2439 (Red Rim-Daley SMA/ACEC)  
 WY-2026-09-2440 (Red Rim-Daley SMA/ACEC)  
 WY-2026-09-2449 (Historic Trails ACEC)  
 WY-2026-09-2485 (Historic Trails ACEC)  
 WY-2026-09-2486 (Historic Trails ACEC)  
 WY-2026-09-2493 (Chain Lakes SMA/ACEC)  
 WY-2026-09-2497 (Historic Trails ACEC)  
 WY-2026-09-2630 (Historic Trails ACEC)  
 WY-2026-09-2662 (Historic Trails ACEC)  
 WY-2026-09-7498 (Historic Trails ACEC, Jeb Canyon ACEC)  
 WY-2026-09-7500 (Red Rim-Daley SMA/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.

**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 EA fails 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.<sup>28</sup> The BLM must ensure it fully considers not only the GHG emissions from

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<sup>28</sup> *See, e.g., 350 Mont. v. Haaland*, 50 F.4th 1254, 1266–70 (9th Cir. 2022); *Vecinos para el Bienestar de la Comunidad Costera v. Fed. Energy Regul. Comm’n*, 6 F.4th 1321, 1329–30 (D.C. Cir. 2021); *Sierra Club v. Fed. Energy Regul. Comm’n*, 867 F.3d at 1371–75 (requiring quantification of indirect greenhouse gas emissions); *Ctr. for Biological Diversity v. Nat’l Highway Transp. Safety Admin.*, 538 F.3d 1172, 1215–16 (9th Cir. 2008) (requiring assessment of the cumulative impacts of climate change); *WildEarth Guardians v. BLM*, 870 F.3d 1222, 1236–38 (10th Cir. 2017); *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 550 (8th Cir. 2003); *Wilderness Soc’y*, 2024 WL 1241906, at \*24 (explaining that the BLM cannot “overlook[] what is widely regarded as the most pressing environmental threat facing the world today”); *WildEarth Guardians*, 368 F. Supp. 3d at 63, 67–77 (invalidating nine BLM NEPA analyses in support of oil and gas lease sales because “BLM did not take a hard look at drilling-related and downstream [greenhouse gas] emissions from the leased parcels and, it failed to sufficiently compare those emissions to regional and national emissions”).

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

prospective wells drilled on the leases sold at this lease sale—and the climate change impacts of those GHG emissions—but also the impacts of other federal lease sales in the state, region, and nation, as well as impacts from GHG emissions from non-Federal sources. The BLM must consider GHG emissions in the aggregate along with other foreseeable emissions. Such analysis is necessary to meet the cumulative impacts demands of NEPA.

The indirect and cumulative impacts must be given meaningful context, including within carbon budgets, rather than being simply dismissed as insignificant compared to national or global total GHG emissions. *See, e.g., WildEarth Guardians*, 368 F. Supp. 3d at 77. “Without establishing the baseline conditions . . . there is simply no way to determine what effect the proposed [action] will have on the environment and, consequently, no way to comply with NEPA.” *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988). Excluding climate change effects from the environmental baseline ignores the reality that the impacts of proposed actions must be evaluated based on the already deteriorating, climate-impacted state of the resources, ecosystems, human communities, and structures that will be affected. The BLM’s climate effects analysis “must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum.” *Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 342 (D.C. Cir. 2002).<sup>29</sup>

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* DRAFT EA at 27, 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.

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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.

<sup>29</sup> *See also Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 973–74 (9th Cir. 2006) (holding agency’s cumulative impacts analysis insufficient based on failure to discuss other mining projects in the region); *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”))).

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.<sup>30</sup>

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. 15], [https://eplanning.blm.gov/public\\_projects/2036015/200638053/20126874/251026854/20241016\\_DOI%20SC\\_GHG%20Info%20Memo.pdf](https://eplanning.blm.gov/public_projects/2036015/200638053/20126874/251026854/20241016_DOI%20SC_GHG%20Info%20Memo.pdf) (directing the BLM to “adopt the EPA’s 2023 estimates of the Social Cost of Greenhouse Gases (SC-GHG) as the best available science (as of September 30, 2024)”). In a final Environmental Assessment (EA) for the Quarter 1 2025 New Mexico Oil and Gas Lease Sale, the BLM explicitly stated that it was rescinding its October 16, 2024, memorandum. *See* BLM, CARLSBAD FIELD OFFICE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT at 88, QUARTER 1 (2025). 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 EA makes 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

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<sup>30</sup> *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 Advocates 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”).

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 EA does, 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* DRAFT EA at 72–73. 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.<sup>31</sup> It is therefore arbitrary and capricious for the BLM to justify this 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

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<sup>31</sup> *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 Advocates 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”).

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 EA fails 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. 16], [https://eplanning.blm.gov/public\\_projects/2015538/200495187/20062621/250068803/Exhibit%20119-%20PSE%20WY%20Report%20May%202022%20Final.pdf](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. 17], [https://eplanning.blm.gov/public\\_projects/nepa/87551/136880/167234/Earthjustice\\_Protest\\_1-12-2018.pdf](https://eplanning.blm.gov/public_projects/nepa/87551/136880/167234/Earthjustice_Protest_1-12-2018.pdf) (Exhibit D to David Katz and Jack and Bonnie Martinell’s protest of the March 13, 2018, BLM Montana-Dakotas oil and gas lease sales). The BLM’s groundwater analysis must 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 EA does not provide adequate analysis of its measures to protect all usable water zones. The BLM continues to insert boilerplate language about risks to groundwater generally if wells are not properly constructed, without providing any information specific to the potential impacts of these lease sales. *See DRAFT EA* at 39–41. Instead, the BLM defers this analysis, stating that “[o]nce a lease is issued and the lessee submits an APD, the proposed well-bore and site-specific casing, cementing and mud program will be reviewed, and the proposal’s adequacy in protecting and/or isolating usable will be determined at that time, as part of the APD review process.” *Id.* at 43. But there is ample information 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.

The BLM then provides a general description of the regulatory framework for oil and gas well construction, without providing any insight into how and whether those regulations adequately protect the groundwater at issue here. *See id.* at 42. For shallow fracturing, the EA also falls 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.

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

The Draft EA barely touches on methane, except to reference existing regulations that aim to reduce harmful methane emissions. *See* DRAFT EA at 36. 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. 18], [https://blogs.edf.org/energyexchange/files/2023/01/EMBARGOED\\_EDF-TCS\\_Public\\_Lands\\_Analysis.pdf](https://blogs.edf.org/energyexchange/files/2023/01/EMBARGOED_EDF-TCS_Public_Lands_Analysis.pdf). 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. 19]. 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. 20], <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. 21] - <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. 22], <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 EA does not once even mention “environmental justice.” Courts have repeatedly held that agencies must take a hard look at environmental justice pursuant to NEPA.<sup>32</sup> 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 fails to properly evaluate mitigation measures.**

NEPA requires the BLM to include a discussion of possible mitigation measures in an EA.<sup>33</sup> *See WildEarth Guardians v. U.S. Fish & Wildlife Serv.*, 784 F.3d 677, 698 (10th Cir. 2015) (ruling that an EA must “explore mitigation measures where it acknowledges the possibility that the agency action will cause environmental harm”). 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.

**VII. The BLM must follow Forest Service leasing consent procedures.**

With respect to the proposed parcels that overlap with U.S. Forest Service lands, the BLM must provide the Forest Service with the opportunity to review and withdraw leasing consent per the leasing consent procedures. *See* 36 C.F.R. § 228.103(e).

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<sup>32</sup> *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).

<sup>33</sup> For a discussion of the 2025 Reconciliation Act’s bearing on the agency’s obligation to explore mitigation measures, see discussion *supra* Section IV.

With the respect to the below 5 parcels that appear to overlap with Forest Service Inventoried Roadless Areas (IRAs), the BLM should address whether these parcels do indeed overlap with IRAs, and if they do, the BLM must provide the Forest Service with the opportunity to withdraw leasing consent:

WY-2026-09-2677 (Cow Creek)  
WY-2026-09-2678 (Cow Creek)  
WY-2026-09-2708 (H A Divide)  
WY-2026-09-2801 (Cow Creek)  
WY-2026-09-7575 (Cow Creek)

Likewise, with respect to the below 6 parcels that overlap with Thunder Basin National Grasslands, the BLM must provide the Forest Service with the opportunity to withdraw leasing consent:

WY-2026-09-2631  
WY-2026-09-2587  
WY-2026-09-2588  
WY-2026-09-2589  
WY-2026-09-2801  
WY-2026-09-6985

It is particularly important that the Forest Service be provided with the opportunity to review its leasing consent availability decisions given that much of the oil and gas leasing analysis was conducted over twenty years ago. *See* USDA FOREST SERVICE DOUGLAS RANGER DISTRICT, OIL AND GAS LEASING ON THE THUNDER BASIN NATIONAL GRASSLANDS (July 1992); USDA FOREST SERVICE, FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE NORTHERN GREAT PLAINS MANAGEMENT PLANS REVISION, 3-104 (May 2001) (incorporating the 1992 oil and gas leasing analysis as part of the larger planning document); USDA FOREST SERVICE ROCKY MOUNTAIN REGION, AVAILABLE LANDS OIL AND GAS LEASING WEST OF WYODAK COAL OUTCROP: RECORD OF DECISION, WESTERN PORTION OF THE THUNDER BASIN NATIONAL GRASSLAND (Aug. 2006) (deciding on an alternative from the 2001 environmental analysis for lands west of the Wyodak coal outcrop line); USDA FOREST SERVICE, THUNDER BASIN NATIONAL GRASSLAND 2020 PLAN AMENDMENT FINAL ENVIRONMENTAL IMPACT STATEMENT, 1, 77 (May 2020) (updating environmental analysis related to prairie dog impacts only, and noting that the resulting decision has no impact on the oil and gas program other than the development of new stipulations for prairie dog management). This environmental analysis is severely outdated; neither the 1992 oil and gas leasing analysis nor the 2001 incorporation of that analysis

into the land management plan account for any impacts from climate change or greenhouse gases, for example.

Specifically, the BLM must provide the Forest Service with an opportunity to review—and it must be shown that the Forest Service has reviewed—its prior leasing consent decisions to ensure that (1) the leasing of these lands was adequately addressed in a NEPA document and is consistent with the applicable land management plan; and (2) the NSO and other stipulations adopted in the prior leasing decision remain adequate and are applied here. 36 C.F.R. § 228.103(e)(1). Or, if there is significant new information or a circumstance requiring additional environmental review, the Forest Service must withdraw its prior consent, *id.* § 228.103(e)(2), and notify the BLM of its new decision, *id.* § 228.103(e)(3).

### **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 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 Wyoming Bureau of Land  
Management Third Quarter 2026 Competitive Oil & Gas Lease Sale (DOI-BLM-  
WY-0000-2026-0002-EA).**

<u>Appendix</u>	<u>Exhibit No.</u>	<u>Title/Description</u>
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	THE WILDERNESS SOCIETY, RE: PROTEST OF GREATER SAGE-GROUSE RANGEWIDE PLANNING: PROPOSED RESOURCE MANAGEMENT PLAN AMENDMENT AND FINAL ENVIRONMENTAL IMPACT STATEMENT (DEC. 16, 2024)
A	4	EARTHJUSTICE, RE: COMMENTS ON PROPOSED CHANGES TO GREATER SAGE-GROUSE RMP AMENDMENTS (OCT. 2, 2025)
B	5a	PETER S. COATES ET AL., RANGE-WIDE GREATER SAGE-GROUSE HIERARCHICAL MONITORING FRAMEWORK: IMPLICATIONS FOR DEFINING POPULATION BOUNDARIES, TREND ESTIMATION, AND A TARGETED ANNUAL WARNING SYSTEM (March 2021) (Part 1)
B	5b	PETER S. COATES ET AL., RANGE-WIDE GREATER SAGE-GROUSE HIERARCHICAL MONITORING FRAMEWORK: IMPLICATIONS FOR DEFINING POPULATION BOUNDARIES, TREND ESTIMATION, AND A TARGETED ANNUAL WARNING SYSTEM (March 2021) (Part 2)
C	6	KEVIN DOHERTY ET AL., A SAGEBRUSH CONSERVATION DESIGN TO PROACTIVELY RESTORE AMERICA’S SAGEBRUSH BIOME: U.S. GEOLOGICAL SURVEY OPEN-FILE REPORT 2022–1081 (Sept. 2022)
D	7a-7v	U.S. GEOLOGICAL SURVEY, UNGULATE MIGRATIONS OF THE WEST VOLS. 1–5 (Dec. 2023), <a href="https://pubs.usgs.gov/publication/sir20205101">https://pubs.usgs.gov/publication/sir20205101</a>
E	8	Hall Sawyer et al., <i>Mule Deer and Energy Development—Long Term Trends of Habituation and Abundance</i> , 23 GLOB. CHANGE BIOLOGY 4521 (Nov. 2017)
E	9	Hall Sawyer et al., <i>Long-Term Effects of Energy Development on Winter Distribution and Residency of Pronghorn in the Greater Yellowstone Ecosystem</i> 1 CONSERVATION SCI. & PRACTICE. (July 2, 2019)

E	10	Adele K. Reinking et al., <i>Across Scales, Pronghorn Select Sagebrush, Avoid Fences, and Show Negative Responses to Anthropogenic Features in Winter</i> , 10 ECOSPHERE 1 (May 2019)
E	11	Teal B. Wyckoff et al., <i>Evaluating the Influence of Energy and Residential Development on the Migratory Behavior of Mule Deer</i> , 9 ECOSPHERE 1 (Feb. 23, 2018)
E	12	Ellen O. Aikens et al., <i>Industrial Energy Development Decouples Ungulate Migration from the Green Wave</i> , 6 NATURE ECOLOGY & EVOLUTION 1733 (2022)
E	13	Hall Sawyer, et al. <i>Migratory Plasticity Is Not Ubiquitous Among Large Herbivores</i> , 88 J. OF ANIMAL ECOLOGY 450 (2019)
E	14	Anna C. Ortega et al., <i>Foraging Benefits Promote Fitness in Migratory Mule Deer</i> , 36 CURRENT BIOLOGY 799, 799-808 (Feb. 2, 2026)
E	15	U.S. DEP'T OF THE INTERIOR, INFORMATIONAL MEMORANDUM ON DOI COMPARISON OF AVAILABLE ESTIMATES OF SOCIAL COST OF GREENHOUSE GASES (SC-GHG) (Oct. 16, 2024)
E	16	REBECCA TISHERMAN ET AL., EXAMINATION OF GROUNDWATER RESOURCES IN AREAS OF WYOMING PROPOSED FOR THE JUNE 2022 BLM LEASE SALE (May 11, 2022)
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