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Submitted via eplanning.blm.gov

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Re: Comments on the Supplemental Environmental Assessment Analysis for Greenhouse Gas Emissions Related to Oil and Gas Leasing in Seven States from February 2015 to December 2020; Environmental Assessment DOI-BLM-WO-3100-2023-0001-EA

Dear Ms. Culver and Ms. Simonsen:

Western Energy Alliance, the American Petroleum Institute, Independent Petroleum Association of New Mexico, Montana Petroleum Association, and New Mexico Oil and Gas Association (the Associations) appreciate BLM's work on the Supplemental Environmental Assessment Analysis for Greenhouse Gas Emissions Related to Oil and Gas Leasing (Supplemental EA), which provides detailed technical information regarding greenhouse gas (GHG) emissions in response to several lawsuits challenging BLM leasing decisions associated with the leases considered in the Supplemental EA.

Western Energy Alliance represents 200 member companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. The Alliance represents independent oil and gas producers, the majority of which are small businesses with an average of fourteen employees. Alliance members hold many of the federal leases analyzed in the Supplemental EA.

The American Petroleum Institute (API) represents all segments of America's oil and natural gas industry which supports more than 11 million US jobs and is backed by a growing grassroots movement of millions of Americans. Our approximately 600 members produce, process, and distribute the majority of the nation's energy, and participate in API Energy Excellence®, which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 800 standards to enhance operational and environmental safety, efficiency, and sustainability. API member companies have a direct interest

in the BLM regulations, as they hold valid existing leases and are interested in future oil and natural gas leasing, exploration, and production activities in areas that will be directly affected by the BLM's management decisions. These companies are also dedicated to meeting environmental requirements, while economically developing and supplying affordable energy to consumers.

Independent Petroleum Association of New Mexico (IPANM) advances and preserves the interests of independent oil and gas producers while educating the public to the importance of oil and gas to the state and all our lives. In the spirit of that tradition, IPANM continues to grow and provide the services that protect, defend, and promote the industry that is the very foundation of our way of life. Our members are proud, independent, loyal, and hardworking.

The Montana Petroleum Association (MPA) represents over 150-member companies involved in all aspects of the oil and natural gas industry. MPA's members include producers, refiners, suppliers, pipeline operators, and transporters, as well as service and supply companies that support all segments of the industry and employ a great number of people in our great state. MPA works with elected officials, business groups, regulatory boards and agencies to promote policies which incentivize revenue generating resource production and opposes rules and regulations which hamper opportunities for future oil.

The New Mexico Oil & Gas Association (NMOGA) is a coalition of oil and natural gas companies, individuals, and stakeholders dedicated to promoting the safe and environmentally responsible development of oil and natural gas resources in New Mexico. Representing over 1,000 members, NMOGA works with elected officials, community leaders, industry experts, and the general public, to advocate for responsible oil and natural gas policies and increase public understanding of industry operations and contributions to the state.

I. Overview

The Supplemental EA thoroughly describes the affected environment and evaluates and quantifies direct, indirect, and cumulative GHG emissions in great detail. It builds on the original analyses of GHG emissions and climate change contained in the governing Resource Management Plans (RMPs), prior lease sale environmental assessments (EAs) and related supplements, and BLM's 2021 GHG inventory report. The methods used to estimate the direct, indirect, and cumulative GHG emissions are reasonable and within the agency's discretion.

The technical data contained in the Supplemental EA is among the most comprehensive GHG analyses the Associations have seen and is more than sufficient to satisfy NEPA for purposes of informing BLM decision-making at the leasing stage of the federal onshore oil and natural gas program.

We support this analysis and believe BLM has provided a robust response that goes above and beyond its statutory requirements and governing legal precedent. The Associations urge BLM to issue a Finding of No Significant Impact (FONSI) and proceed with affirming the associated leasing decisions.

The Associations provide these comments to strengthen and clarify the Supplemental EA to ensure that BLM presents the analyses in proper context and in a defensible manner that better informs agency decision-making and provides clarity to the reviewing public.

II. Comments

A. The Associations Support BLM Affirming its Previous Leasing Decisions

The Associations support BLM's explanation of the purpose of the Supplemental EA as it relates to informing BLM's decision-making: "The Decision Record associated with this EA will decide, based on this supplemental EA pertaining to the analysis of GHG emissions, whether to affirm previous leasing decisions from the February 2015 to December 2020 lease sales for the subject leases." Supplemental EA at 8. The Associations urge BLM to affirm its prior leasing decisions for the reasons provided below.

1. BLM's Supplemental Analyses Support Affirming its Prior Leasing Decisions.

The analyses in the Supplemental EA support BLM affirming its prior leasing decisions. BLM conducted a robust analysis of greenhouse gas emissions to supplement its prior NEPA documents for the subject lease sales and has also tiered to analyses in underlying federal land use plans, as well as relied upon and incorporated by reference numerous additional technical documents.

The Supplemental EA does not identify any significant, new information that would alter BLM's original leasing decisions or otherwise trigger the need for BLM to prepare an Environmental Impact Statement. *See Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 374 (1989) (explaining that NEPA supplementation is only required "if the new information is sufficient to show [the proposed action] will affect the quality of the human environment in a significant manner or to a significant extent not already considered.").

Moreover, affirming the prior leasing decisions would comply with both NEPA and BLM's multiple use management mandate under the Federal Land Policy and Management Act (FLPMA). NEPA is a procedural statute that does not mandate particular results. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council*,

Inc., 435 U.S. 519 (1978); 40 C.F.R. § 1500.1. NEPA “does not require agencies to elevate environmental concerns over other appropriate considerations.” *Citizens’ Comm. to Save Our Canyons v. U.S. States Forest Serv.*, 297 F.3d 1012, 1022 (10th Cir. 2002). Indeed, BLM may not prioritize environmental concerns at the expense of the federal onshore leasing program, or operators and the development of their valid existing lease rights.

2. Proper Scope of BLM’s Purpose and Need Statement.

The Associations support the purpose and need statement for the Supplemental EA as confined to supplementing the analysis of GHG emissions in the NEPA documentation prepared or referenced in connection with offering the subject leases for competitive sale. The Associations urge BLM to retain this scope and not expand it to include other resources.

In determining the scope of the NEPA analysis, an agency must take into account the needs and goals of the parties involved. *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 73 (D.C. Cir. 2011).

The purpose and need for this Supplemental EA is to comply with court remand decisions requiring additional analysis. Supplemental EA at 5. Importantly, the purpose is not to conduct an analysis to render judgment on the BLM onshore oil and gas program under the Mineral Leasing Act and BLM’s management under its multiple use management mandate from Congress under FLPMA.

Requested Revision: To provide proper statutory context, in the purpose and need section of the Supplemental EA, BLM should also restate the purpose and need for the BLM onshore oil and gas program and its obligations under the Mineral Leasing Act (MLA) and related federal statutes.

The purpose and need for the competitive oil and gas lease sale program is established by the MLA, FLPMA, and the Federal Onshore Oil and Gas Leasing Reform Act. The purpose of the competitive oil and gas lease sale program is to make mineral resources available for disposal and to encourage development of mineral resources to meet national, regional, and local energy needs. Continued sale and issuance of lease parcels in conformance with the approved RMPs would allow for continued production of oil and gas owned by the United States.

3. Impact on Adjacent Federal, State- and Privately-Owned Leases

A decision to overturn or further delay leasing decisions would have significant adverse consequences for lessees, the owners of adjacent minerals and surface interests, impacted state and local governments, and BLM. To most efficiently develop leased minerals and comply with applicable state oil and gas commission well spacing rules and related regulations, a company must have access

to contiguous mineral acreage. In the event lease sales are voided and leases cancelled, there will be numerous instances where there will be gaps in leased mineral acreage that will impede and significantly delay development of non-federal leases as well as valid existing federal leases.

As a result, to access these lease minerals and private property rights, there would necessarily be an increase in surface disturbance and associated impacts if companies are required to construct additional well pads to access their minerals while avoiding the unleased federal tracts.

Moreover, voiding the lease sales and cancelling the sold leases would have a significant impact on state and local governments. Oil and gas leasing generates revenues for state and local governments “through the bonus bids paid at lease auctions and annual rents collected on leased parcels.” *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 84 n.35 (D.D.C. 2019); *Mont. Wildlife Fed’n v. Bernhardt*, No. CV-18-69-GF-BMM, 2020 U.S. Dist. LEXIS 259502, at *9 (D. Mont. Aug. 25, 2020) (noting lease cancellation would withhold public funds in the millions of dollars, potentially affecting funds for public school children, and services provided to the elderly and disabled).

4. BLM Cannot Unilaterally Cancel Leases Held by Production.

Significantly, BLM cannot unilaterally cancel leases that are held by production. Under the MLA, Congress has recognized that the only appropriate method to cancel a federal oil and gas lease with a well capable of production of oil and gas is a proceeding in the U.S. District Court in which the leases are located. 30 U.S.C. § 188; 43 C.F.R. § 3108.3.

In other words, when a federal oil and gas lease contains existing oil and gas production, it may only be cancelled via a judicial action brought by the United States against the lessee of the lease in the district in which the lease is located. *See* 30 U.S.C. § 188. Thus, Congress enumerated a single way to cancel a producing lease, validly issued, and that is through Section 188, not in a supplemental NEPA document.

This is especially true for BLM’s New Mexico September and December 2017 and September 2018 leases analyzed in this assessment. These leases are not included in the Contreras settlement nor involved in any current litigation. In fact, these leases were challenged in the New Mexico District Court which found the GHG NEPA analysis was sufficient, and the appeal of this ruling was withdrawn with prejudice. Thus, these leases are not subject to consideration of changes to the Decision Record.

B. BLM Needs to Structure the Decision Records Pragmatically

Comment: BLM should organize its decision records for lease sales based upon individual resource areas within individual states and by year. BLM should not aggregate lease sale decisions involving more than one state into a single decision.

BLM prepared the Supplemental EA to decide whether to affirm previous leasing decisions made by various state BLM offices in consultation with the relevant field office or offices for each leasing decision. Thus, such decisions should be made by the corresponding state office that made the original decision. This will also ensure that decisions that are recurrent and particular to a specific resource area, such as oil and gas leasing, are handled by the parties closest to and most familiar with that area. *See, e.g., Landis v. Watt*, 510 Supp. 178, 180 (D. Idaho 1980) (acknowledging Congress’s intent, in the federal venue statute, that decisions and review of decisions relating to oil and gas leases be made in the district in which those assets are located); *see also* 30 U.S.C. 188 (noting Secretary may cancel lease only through an appropriate proceeding in the U.S. district court for the district in which the property is located).

Comment: In the Supplemental EA, BLM states it “may determine that additional NEPA analysis is necessary for other resource issues for selected groups of the subject leases. In those instances, BLM will prepare separate NEPA documents before making decisions about the leases.” Table 1 - Limited Scope of Analysis at page 9.

BLM should separate these categories of leases, if any, to address efficiently, and not stall out decisions for the leases that do not require additional NEPA analysis for other resource issues to ensure timely and efficient decision making. 40 C.F.R. § 1500.1(b)

Requested Action: Lease parcels that require additional NEPA analysis for other resource values should be grouped by resource area from individual states and placed on individual NEPA and decision-tracks. BLM should tier to and rely upon existing NEPA documents and related technical materials to the extent possible. The scope of review should be confined to determining whether there is significant new information that would change the impacts analyses contained in the underlying lease sale EAs and related governing RMPs and EISs.

C. Limitations on BLM’s Authority to Regulate Greenhouse Gas Emissions

Comment: The Associations agree with BLM’s statements and explanations in the Supplemental EA that it does not have legal or jurisdictional authority to regulate greenhouse gases or otherwise use the NEPA process to promulgate a national climate policy. *See, e.g.,* Supplemental EA at 27 (“*The majority of GHG*

emissions resulting from federal fossil fuel authorizations occur outside of the BLM's authority and control.”).

BLM's statements on its limited jurisdiction are supported by ample legal precedent. The United States Supreme Court has made clear that NEPA does not require an agency to analyze the environmental impacts of actions that are outside the agency's jurisdiction in *Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004).

The U.S. Court of Appeals for the D.C. Circuit applied this principle in *Sierra Club (Freeport) v. FERC* where it held that FERC's decision to increase the production capacity of a liquefied natural gas terminal was not a legally relevant cause of pollution that may result from increased LNG exports, and therefore FERC could omit the pollution impacts from its NEPA analysis. 827 F.3d 59, 68 (D.C. Cir. 2016).

The D.C. Circuit further clarified in *Sierra Club II* that NEPA requires agencies to evaluate only those environmental impacts that the agency may “consider when regulating in its proper sphere,” and not environmental impacts upon which the agency would be forbidden from relying as a justification for its decision. *Sierra Club II v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017). In *Sierra Club II*, the court held that Congress instructed FERC to consider the “public convenience and necessity” for a pipeline and authorized FERC to deny a pipeline certificate on the grounds that downstream GHG emissions would be too harmful to the environment. *Id.* at 1373. FERC was therefore required under NEPA to evaluate downstream emissions. *Id.*

Public Citizen and the *Sierra Club* cases are controlling here. BLM may impose reasonable environmental mitigation measures within the scope of its statutory authority when it sells oil and gas leases and approves APDs, but it cannot categorically prevent the production or combustion of fossil fuels and cannot act on any information it compiles regarding downstream emissions.

The MLA and FLPMA require BLM to conduct quarterly competitive oil and gas lease sales for lands that are eligible and available for leasing. 30 U.S.C. § 181 *et seq.*; 43 U.S.C. § 1701 *et seq.*; 43 C.F.R. § 3120.1-2(a). Congress has not authorized or empowered BLM to establish national energy or climate policy. While some may wish to see BLM limit the production of oil, gas, and coal as part of an overall strategy to curtail the use of fossil fuels, the agency has no authority to do so.

Unlike FERC, which has the ability to consider downstream environmental impacts when deciding whether to issue a certificate of public convenience and necessity for a pipeline, BLM lacks the statutory authority or discretion to refuse to

lease oil and gas resources or deny an APD based on downstream combustion emissions.

Agencies may act only within the bounds of their enabling statutes. “[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.” *La. Public Serv. Com v. FCC*, 476 U.S. 355, 374 (1986). Congress is responsible for establishing national energy or climate policy and Congress has not directed BLM to restrict the nation’s supply of fossil fuels. Instead, Congress has directed BLM to manage public lands under principles of multiple use and sustained yield under FLPMA, BLM’s organic statute. 43 U.S.C. § 1732(a).

D. An EIS is Not Warranted; an EA and FONSI is Appropriate

Comment: The Supplemental EA demonstrates that preparation of an EIS is not warranted. BLM specifically looked at GHG emissions from leasing the parcels of the subject lease sales and compared those emissions with state, regional, and national emissions.

As detailed in the Supplemental EA, GHG emissions from the leases represent a very small percentage of the GHG emissions resulting from the state and national federal oil and gas production.

An agency must prepare an EIS for a major federal action “significantly affecting” the quality of the human environment. 42 U.S.C. § 4332(C); *WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237, 257 (D.D.C. 2020). As detailed in the Supplemental EA, BLM did not identify any significant impacts. Accordingly, BLM’s Supplemental EA is appropriate

As the U.S. District Court in the District of Columbia found in evaluating the previous 2019 Supplemental Lease Sale EA for Wyoming lease sales: “the uncertainty mentioned in the Supplemental EA with respect to forecasting GHG emissions levels is not of the type that would require an EIS on its own. The risks of GHG emissions are not ‘unique or unknown,’ and the [Supplemental EA] adequately summarized those risks.” *WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237, 258 (D.D.C. 2020).

Similarly, as explained by the U.S. Court of Appeals for the Tenth Circuit:

To require a cumulative EIS contemplating full field development at the leasing stage would thus result in a gross misallocation of resources, ‘would trivialize NEPA and would ‘diminish its utility in providing useful environmental analysis for major federal actions that truly affect the environment.’

Park County Resource Council, Inc. v. Forest Service, 817 F.2d 603, 629 (10th Cir. 1987).

Moreover, BLM prepared, tiered to, and relied upon the EISs for the governing RMPs that contained extensive greenhouse gas analyses. The accompanying EISs analyze the environmental impacts, including GHG impacts, of the RMP's proposed management decisions, including the decision to make parcels available for oil and gas leasing. Supplemental EA at 8.

Where an EIS has been prepared, it is “appropriate” for an agency to “tier[]” “subsequent narrower statements or environmental analyses,” “such as regional . . . or ultimately site-specific statements,” to the broader discussions in an EIS. 40 C.F.R. § 1508.1(ff) (2022). Agencies should tier when doing so would “eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review.” 40 C.F.R. § 1501.11.

In the Supplemental EA, BLM specifically looked at the impact of GHG emissions from leasing the parcels in the context of other state, regional, and national emissions. GHG emissions from the leases in question represent a very small percentage of the GHG emissions resulting from state and national federal oil and gas production. BLM fulfilled its NEPA obligations in the Supplemental EA by considering the environmental effects of GHG emissions and a FONSI is appropriate to summarize the identified risks.

Requested Revision: In section 3.2.2.2 No Action Alternative, BLM notes that “demand for oil and gas is not expected to differ from the projections made by the EIA.” Supplemental EA at page 21.

BLM should more clearly explain that all the estimated social cost of GHG (SC-GHG) emissions thus calculated from pages 21 to 25 likely would be no less under the No Action Alternative—the emissions would simply come from oil and gas production on non-federal leases and other global sources.

Since GHG emissions are eventually mixed in the atmosphere, the No Action and Action alternatives have no significant difference in terms of overall world-wide GHG emissions or SC-GHG estimates. In other words, the potential emissions from Action Alternative are not significant, and this level of insignificance is further underscored when compared to the No Action Alternative. BLM should make this analysis and comparison more explicit in the Supplemental EA, and also ensure it is fully explained in the forthcoming Decision Records and FONSI.

E. BLM's Methodology and Analyses of GHG Emissions are Reasonable

Comment: As a general matter, the Supplemental EA thoroughly describes the affected environment and analyzes direct, indirect, and cumulative greenhouse gas (GHG) emissions in great detail. The methods used to estimate the direct, indirect, and cumulative GHG emissions are reasonable and within BLM's discretion.

BLM reasonably tiered to and relied upon analyses contained in the underlying applicable federal land use plans; reasonably explained its basis for not conducting speculative analyses; provided reasonable qualitative analyses; and disclosed potential impacts to the extent feasible. BLM's approach fully satisfied NEPA and its governing rule of reason, and deference to the agency is particularly appropriate here for complex technical matters stemming from BLM's administration and management of the federal oil and gas program.

The technical data that BLM relies upon and presented in the Supplemental EA is comprehensive and is more than sufficient to satisfy NEPA for purposes of informing BLM decision-making at the leasing stage of the federal onshore oil and gas program.

Requested Revision: BLM should update the Supplemental EA to include the EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2020, published in 2022, to better provide accurate context for estimated direct emissions. This recent EPA report details:

- (1) "Total U.S. emissions have decreased by 7.3% from 1990 to 2020, down from a high of 15.7 percent above 1990 levels in 2007."
- (2) Total gross U.S. GHG emissions were 5,941.4 million metric tons of CO₂ equivalent in 2020. Total U.S. 2019 GHG emissions were 6,558 MMTCO₂e; "Overall, net emissions decreased 10.6 percent from 2019 to 2020, and decreased 21.4 percent from 2005 levels."
- (3) Even based upon 2019 data (pre-Covid), only 4.3% of U.S. GHG emissions come from petroleum and natural gas systems.
- (4) In EPA's report from the prior year, in 2019, total direct emissions of all GHGs (CH₄, CO₂, and N₂O) from petroleum systems (E&P, transportation, and refining) and natural gas systems (E&P, processing, T&S, distribution) were only 281.3 MMTCO₂e. *See* EPA 2021 Inventory Table 3-37 at p. 3-72 and Table 3-62 at p. 3-91.

The Supplemental EA should include this data and explanation to inform the public more fully regarding these projected impacts. Supplemental EA Table 5

details that on a national level, direct emissions from petroleum and natural gas systems are not significant. Even more so, direct emissions from federal oil and gas production are an even smaller subset of domestic oil and gas production, and even less significant. The Supplemental EA should be revised to include this additional explanation and put emissions from federal oil and gas production in proper context.

Requested Revision: Regarding Table 4 of the Supplemental EA (pages 15-16), BLM should explain in the EA how CO₂100 and CO₂20 are calculated given the well-life is estimated as 30 years with 10 years of lease development. If these numbers refer to Global Warming potentials as discussed in BLM's 2020 Annual GHG Report, then Table 3.1 from that report titled Global Warming Potentials should be included in this Supplemental EA to help the public understand the CO₂100 and CO₂20 columns in Table 4.

Requested Revision: Regarding Table 5 of the Supplemental EA, Projected CO₂ emissions over from the potential development of approximately 3600 leases from 74 BLM lease sales (sold over a nearly 6-year period from 2015 thru 2020) contribute on average from low emission and high emission scenarios over the next 40 years 0.247% to 0.847% of all US CO₂ emissions.

These emissions are less than 1% of total CO₂ emissions in the United States on an annual basis and this should be stated and explained in the summary paragraphs (Supplemental EA at 8) in concert with other summary conclusions presented to aid the public in understanding and relating to such a complex numerical analysis.

Requested Revision: The data presented in Table 9 should be reviewed and corrected. The values presented in Table 9 for annual CO₂ emissions from federal lease development (4,618 MT CO₂/yr) should be reviewed as it is almost as high as the total CO₂ emissions for the entire United States (federal and non-federal sources) as reported in Table 3 and in Table 5 (5,981 MT CO₂/yr for all sectors).

F. NEPA Does Not Require Cost Monetization, Social Cost of Carbon Analysis

Comment: The Associations agree with and supports this statement:

“Regarding the use of Social Cost of Carbon or other monetized costs and benefits of GHGs, the 2016 GHG Guidance noted that NEPA does not require monetizing costs and benefits. It also noted that “the weighing of the merits and drawbacks of the various alternatives need not be displayed using a monetary cost-benefit analysis and should not be when there are important qualitative considerations.” Supplemental EA at 21

BLM is not required to perform a social cost of carbon analysis. *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 78 (D.D.C. 2019) (upholding agency decision to decline to apply a social cost of carbon protocol). BLM is not under any legal requirement to utilize the SC-GHG in environmental analyses, and in fact it is not a tool that provides any meaningful information to either the public or the decision-maker at this scale.

Rather, BLM has in the past explained that calculating the social cost of carbon from the combustion of an unknown quantity of produced oil would be “highly speculative” and that a wide range of potential costs would be “less than helpful in informing the public and the decision-maker.” 368 F.Supp.3d at 78-79. That reasoned determination is entitled to deference by a reviewing court. *Id*; see also *Wilderness Workshop*, 342 F. Supp. 3d at 1159-60 (“[BLM] chose not to [apply the social cost of carbon], provided sufficient support in the record to show this, and thus satisfied NEPA in this respect.”); *W. Org. of Res. Councils v. BLM*, No. 16-21-GF-BMM, 2018 U.S. Dist. LEXIS 49635, 2018 WL 1475470, at *14 (D. Mont. Mar. 26, 2018) (“[D]espite the benefits of the social cost of carbon protocol, NEPA does not require a cost-benefit analysis under these circumstances.”).

The social cost of carbon calculation was developed as a tool to measure the potential costs and benefits of agency rulemakings. Federal rulemakings potentially impact the climate and GHG emissions at a scale that allows for a comprehensive evaluation of the potential costs of that regulation. However, individual agency actions such as leasing decisions and permit approvals typically have - at most - a de minimis impact on climate change and GHG emissions, so applying the social cost of carbon analysis does nothing to better inform agency decision-making through the NEPA process.

Further, the use of such calculations presents significant risk to the integrity of NEPA analyses and does not advance NEPA’s goals of promoting informed agency decision-making because there are multiple subjective variables that can be adjusted to inflate the estimated costs for carbon emitting activities.

These adjustments can include subjective changes to relevant timeframes, adjusting discount rates, including or excluding particular risks, minimizing the social benefits of domestic natural gas and oil, and arbitrarily calibrating other data inputs. Thus, the outcome of a SC-GHG analysis will have less to do with the possible environmental impacts of a proposed action than with the assumptions BLM uses to perform the analysis.

As a result, rather than informing agency decision-making, the inclusion of SC-GHG calculations may instead become a new strawman and focus for improper usage that goes far beyond the proper purposes of NEPA, such as justification to advance energy policy priorities or imposing compensatory requirements on lessees to implement such policies.

Courts have consistently upheld this approach to social cost of carbon calculations. The District Court of New Mexico recently held the following regarding BLM environmental reviews:

NEPA does not require “that agencies weigh the economic costs and benefits of a proposed action. To the contrary, 40 C.F.R. § 1502.23 specifically provides that agencies need not do so, and in fact should avoid such comparisons when, as here, the NEPA analysis in question involves important qualitative considerations.” While certain quantitative data needs analyzing, the “regulations preserve ample decision space for federal agencies to use the metrics and methodologies best suited to the issues at hand, consistent with the broad discretion typically afforded to an agency’s choice of methodology”

WildEarth Guardians v. Bernhardt, No. 1:19-cv-00505-RB-SCYY, 2020 U.S. Dist. LEXIS 149785, at *34 (D.N.M. Aug. 18, 2020).

Similarly, the U.S. District Court of the District of Columbia has held:

BLM here provided reasoned explanations for why it declined to use the social cost of carbon protocol. BLM explained that in the context of each lease sale, calculating the social cost of carbon from CO₂ emissions from the combustion of an unknown quantity of produced oil and gas would be highly speculative, and that the range provided by WildEarth's comments and protests represents a 4,000% difference in potential [social cost of carbon] estimates. BLM reasonably determined that a 4,000 percent range in potential costs would be "less than helpful in informing the public and the decision-maker. (While we agree that some level of uncertainty is unavoidable in assessing impacts from complex environmental systems, in this case that uncertainty is compounded by basing any potential [social cost of carbon] estimates on speculative GHG emissions.). That reasoned determination is entitled to deference.

WildEarth Guardians v. Zinke, 368 F. Supp. 3d 41, 78-79 (D.D.C. 2019).

Taken together, these rulings make clear that applying the SC-GHG calculation to NEPA documents will not inform BLM’s decision making or provide relevant information to the public. Instead, the courts make clear that this tool is potentially useful only on a broad scale such as an agency rulemaking that will potentially have a significant impact on global emissions, rather than a de minimis result at the lease sale level.

Tables 7 and 8 of the Supplemental EA demonstrate clearly why the SC-GHG tool is not appropriate in this EA. The actual cost per ton of emissions has fluctuated wildly over time, with the application of differing inputs and discount rates for the SC-GHG tool.

In the Supplemental EA, BLM examines development and operations related emissions across various discount rates that provide cost estimates ranging from \$1.3 billion to nearly \$14 billion. While we dispute these numbers at a fundamental level and believe BLM's numbers are erroneous, the sheer range of the possible costs depending on which discount rate BLM decides to use shows how inaccurate the tool is at the leasing level. These metrics do not serve the purposes of NEPA in terms of informing the public and informing agency decision-making.

Similarly, BLM is not required to analyze GHG emissions under the rubric of a carbon budget. As federal courts have confirmed:

BLM did not act arbitrarily and capriciously in not utilizing the global carbon budget. “[B]ecause current climate science is uncertain (and does not allow for specific linkage between particular GHG emissions and particular climate impacts) . . . evaluating GHG emissions as a percentage of state-wide and nation-wide emissions . . . is a permissible and adequate approach.” *WildEarth Guardians v. BLM*, 8 F. Supp. 3d at 35 (citing *WildEarth Guardians v. Jewell*, 738 F.3d at 309).

Comment: The Associations provide the following requests for revision to correct, clarify and/or better explain the SC-GHG components in the Supplemental EA:

Requested Revision: BLM never states in the in the Supplemental EA the dollar amount used in 2022 as the baseline per ton SC-GHG emitted. This cost per ton value needs to be disclosed—it is assumed the value corresponded to the values in the IWG 2021 Technical Support Document. *See* Supplemental EA at pages 22-24.

Requested Revision: BLM reports SC-GHG values to the nearest \$1000 and utilizes four different discount rates for both Tables 7 and 8. Given the acknowledgement of the uncertainty in estimating emissions, this Supplemental EA should be revised to explain and clarify the presentation of the SC-GHG estimates.

As presented, the Supplemental EA misleads the public into thinking these cost projections are known with a high degree of mathematical precision. BLM should revise this presentation of data to be consistent with long-established scientific uncertainty principles in reporting accuracy and precision. For example, Table 7 total values range \$7 billion to \$80 billion, while Table 8 total values range

from \$25 billion to \$280 billion, and should be reported as such, and in the context that these calculations involve a significant amount of unvalidated assumptions and uncertainty.

G. Cost-Benefit Analysis Integrity Requires Disclosure of Hydrocarbon Benefit

Comment: BLM’s analysis overstates the costs and underestimates the benefits of leasing the parcels evaluated in the Supplemental EA. It fails to take into consideration the significant benefits that oil and natural gas provide to both humanity and the environment, thus causing the costs to be overstated. Countries with greater access to reliable, affordable energy not only have higher standards of living, but also generally better environments and healthier populations. National security implications also need to be addressed in the Supplemental EA, as domestic production contributes to a reliable supply chain and less reliance on foreign countries.

If oil and natural gas development is curtailed in America, economic growth and standards of living could quickly suffer. In the absence of an alternative that does everything oil and natural gas do, restricting production is not wise policy. The burning of fossil fuels produces GHG emissions, but without an alternative that does everything that oil and natural gas reliably do every day, a modern, healthy, secure, and environmentally protective mode of existence is not possible.

Oil and natural gas not only heat and cool homes, provide mobility, and power all facets of the economy, they also help put food on the table and medicine in the cabinet. Without the energy and products that the oil and natural gas industry provide, modern life is not possible.

Increased use of natural gas electricity generation has led to lower levels of CO2 emissions. Fuel switching to natural gas in the electricity sector is the primary reason the United States has reduced more greenhouse gas emissions than any other country since 2005. In its Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2020, published in 2022, EPA states that between 2019 and 2020, emissions from the electric power sector decreased 10.4 percent and that the “decrease in electric power sector emissions was due to a decrease in electricity demand of about 2.5 percent and also reflects the continued shift from coal to less carbon intensive natural gas and renewables.” EPA Inventory at ES-4.

EPA goes on to explain that “[f]or the time period of 1990 through about 2008, the carbon intensity of U.S. energy consumption was fairly constant, as the proportion of fossil fuels used by the individual sectors did not change significantly over that time. Starting in 2008 the carbon intensity has decreased, reflecting the shift from coal to natural gas in the electric power sector during that time period. Per capita energy consumption fluctuated little from 1990 to 2007, but then started

decreasing after 2007 and, in 2020, was approximately 16.5 percent below levels in 1990.” EPA Inventory at 3-36.

With this in mind, BLM’s context evaluation should include these observed reductions in U.S. GHG emissions as a result of the increased use of natural gas in the electric power sector in the United States over the past fifteen plus years.

Requested Revision: Oil and natural gas development and other activities should be considered not only for their potential costs with respect to carbon emissions, but also compared against their potential utility for improving people’s lives, including the ability to drive climate resilience strategies. As such, BLM’s analysis needs to include full consideration of the benefits of leasing the parcels evaluated in the Supplemental EA.

H. Calculations of GHG Emissions are Overestimated

Comment: The Associations agree with BLM’s statements that it lacks the authority to regulate the end use of the oil and natural gas produced and that the assumption that these products are used in the most energy intensive scenario overstates GHG impacts.

“While the BLM has no authority to direct or regulate the end-use of the products, for this analysis, the BLM assumes the most energy-intensive scenario, i.e., that all produced oil or gas will be combusted, since most emissions are derived from domestic heating, transportation, or energy production.” Supplemental EA at 12.

Requested Revision: In the Supplemental EA, BLM should better explain that its calculations for GHG emissions are conservative, i.e., overestimated.

Comment: The Associations agree with the statement in the Supplemental EA that estimating oil and natural gas production volumes and timing creates much uncertainty as not all leases even produce:

“The BLM cannot reasonably determine at the leasing stage the scale of whether, when, and in what manner a particular lease would be explored or developed.” Supplemental EA page 11.

From a legal standpoint, it is well settled that BLM is not required to analyze speculative impacts to comply with NEPA. As the U.S. Supreme Court has held, NEPA does not require the full disclosure of impacts that are remote or speculative. *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 551 (1978).

Requested Revision: The explanation in the Supplemental EA should be expanded to include information regarding BLM’s inability to control—or even know—what the end uses of oil and gas produced on Federal leases will be, in addition to the inability to know if and how the leases will even be developed. These limiting factors underscore that the analysis of downstream uses is uncertain and entirely speculative.

Assuming, as BLM does here, that all leases will be developed and ultimately lead to downstream combustion and future GHG emissions is highly speculative due to many factors including future energy prices, resource supply and demand, regulatory procedures, volume of GHGs vented from processing facilities, and processing and pipeline technologies. Therefore, the actual emissions resulting from these leases will almost assuredly be even smaller than the minimal amounts calculated in Tables 5 and 6 of the Supplemental EA.

The Supplemental EA should be revised to better explain and put into context that even with conservative estimates (i.e., overestimates) used to bridge uncertainty variables, the potential emissions from the leases will be smaller than the insignificant amounts calculated and presented in Tables 5 and 6.

I. Affected Environment; Scope of Analysis

Comment: The Associations agree with the statement in the Supplemental EA that climate change is a global process and that a single land management action cannot be accurately translated into a potential effect on global climate change or any localized effects.

“Climate change is a global process that is affected by the sum total of GHGs in the Earth’s atmosphere. The incremental contribution to global GHGs from a single proposed land management action cannot be accurately translated into its potential effect on global climate change or any localized effects in the area specific to the action.” Supplemental EA at 13

As discussed above, it is well settled that NEPA does not require speculative analysis. *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 551 (1978). Speculative analysis is not useful to the decision maker, practical, or required by NEPA.

Requested Revision: The Supplemental EA should explain in better detail that there are numerous variables impact emissions, making estimation at the lease sale stage highly speculative. At the site-specific level, factors impacting emissions include equipment used, use of emission reduction technology, drilling density, geological formations, development type (horizontal, vertical or directional wells), and hydrocarbon characteristics.

Moreover, future production and downstream emissions are increasingly speculative, as factors that impact emissions include energy prices, resource supply and demand, regulatory procedures, volume of GHGs vented from processing facilities, and processing and pipeline technologies.

J. Global Market Displacement; Oil and Natural Gas Demand to Increase

Comment: The Associations support the following statements in the EA and provides suggested revisions to better explain the complexities of the national and global oil and gas markets, and related issues such as the speculative nature of indirect emissions.

“Although no new GHG emissions associated with new Federal oil and gas development for the subject leases would occur under the No Action Alternative, demand for oil and gas is not expected to differ from the projections made by the EIA, see section 3.1.4. (EIA, 2021)” Supplemental EA at 21.

“Based on recent events both domestically and internationally that have resulted in abrupt changes to the global oil and gas supply, other EIA studies and recent U.S. analyses (associated with weather impacts, etc.) regarding short-term domestic “supply disruptions” or sudden increases in demand suggest that reducing domestic supply (in the near-term under the current supply and demand scenario) would likely lead to the import of more oil and natural gas from other countries, including countries with lower environmental and emission control standards than the United States (EIA, 2021) Recent supply disruptions have resulted in multiple releases from the current U.S. stockpile to meet consumer demand and maintain stable prices.” Supplemental EA at 26.

Requested Revision: The Supplemental EA should be revised to explain and clarify that indirect (combustion) emissions will occur regardless of whether oil and gas is produced from private, federal, or international sources and halting federal lease sales will not avoid these indirect emissions. The market for oil and natural gas is global and these are inelastic commodities. Production is diversified across the nation and world, with only a fraction of production originating on federal lands or federal minerals from the United States.

Requested Revision: The Supplemental EA should be revised to explain that downstream emissions from the combustion of oil and gas are more strongly related to demand than supply. See Supplemental EA at 35-36 (EIA data re global and national demands to increase). As such, any reduction in oil and natural gas produced from Federal leases will likely merely be offset by non-Federal production in the United States, in which the GHG emissions would be similar, or overseas, in

which case the GHG emissions would likely be higher, as there are less regulatory requirements for production and the produced energy would need to be physically transported into the county.

BLM lacks the leverage over national and global petroleum markets to “keep it in the ground” by curtailing supply. Approving or disapproving the leases would not significantly affect downstream GHG emissions because the national and global markets will provide substitute supplies effectively, if not perfectly. BLM should provide this narrative and explanation in the Supplemental EA to minimize future litigation risk.

K. Conclusion

The Associations appreciate BLM’s efforts to complete the Supplemental EA to satisfy the various court challenges associated with these leases. We urge BLM to finalize a FONSI and proceed with affirming the leasing decisions. Please do not hesitate to contact us with any questions.

Sincerely,



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Western Energy Alliance



Amy Emmert, Senior Policy Advisor
American Petroleum Institute



Jim Winchester, Executive Director
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