March 17, 2025

Attention—Oil and Gas Litigated Leases EIS
Janna Simonson, Project Lead
BLM Headquarters, Division of Fluid Minerals
301 Dinosaur Trail
Santa Fe, New Mexico 87508

Re: Industry Comments on BLM's Intent to Prepare an Environmental Impact Statement for the Oil and Gas Leasing Decisions in Seven States from February 2015 to December 2020 - DOI-BLM-HQ-3100-2023-0001-EA

Dear Ms. Simonson:

The Independent Petroleum Association of New Mexico, Montana Petroleum Association, New Mexico Oil and Gas Association, North Dakota Petroleum Counsel, Utah Petroleum Association, Petroleum Association of Wyoming, and the Utah Petroleum Association (collectively, the Associations) submit these comments on the Bureau of Land Management's "Notice of Intent to Prepare an Environmental Impact Statement for the Oil and Gas Leasing Decisions in Seven States from February 2015 to December 2020." 90 Federal Register 4779 (January 16, 2025).

Executive Summary. The Associations oppose preparation of an Environmental Impact Statement (EIS) for the 74 individual lease sale decisions because BLM's extensive prior analyses under NEPA did not identify any significant impact or new information that would alter BLM's original leasing decisions or otherwise trigger the need for BLM to prepare an EIS under NEPA. The Associations appreciate and support BLM's prior work 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, DOI-BLM-HQ-3100-2023-0001-EA, (Supplemental EA). The Supplemental EA provides detailed technical information and analyses regarding the potential effects of greenhouse gas (GHG) emissions in response to several lawsuits challenging BLM leasing decisions associated with the leases considered in the Supplemental EA. The Associations urge BLM to issue a Finding of No Significant Impact (FONSI) and separate Decision Records affirming the leasing decisions within each state.

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 oppose 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.

The North Dakota Petroleum Council is a trade association that represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region.

The Petroleum Association of Wyoming (PAW) represents companies involved in all aspects of responsible oil and natural gas development in Wyoming, including upstream production, oilfield services, midstream processing, pipeline transportation and essential work such as legal services, accounting, consulting and more.

The Utah Petroleum Association (UPA) is a statewide oil and gas trade association established in 1958 representing companies involved in all aspects of Utah's oil and gas industry. UPA members range from independent producers to midstream and service providers, to major oil and natural gas companies widely recognized as industry leaders responsible for driving technology advancement resulting in environmental and efficiency gains.

I. Comments

There is no legal, technical, or factual basis for BLM to prepare an Environmental Impact Statement under NEPA for the Leasing Decisions. BLM complied with NEPA and BLM's statutory mandates imposed by Congress under the Federal Land Policy and Management Act (FLPMA) and Mineral Leasing Act in conducting the Supplemental EA, which is legally defensible under relevant legal precedent.

A. An EIS is Not Legally Warranted under NEPA

1. Legal Framework

Under the governing legal standard articulated by the U.S. Supreme Court, 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." *See Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 374 (1989). The Supreme Court has not interpreted NEPA to require a federal agency to supplement a NEPA document "every time new information comes to light." *Colorado Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1177 (10th Cir. 1999) (quoting *Marsh*, 490 U.S. at 373). Indeed, "to require otherwise would render agency decision-making intractable, always awaiting updated information only to find the new information outdated by the time a decision is made." *Marsh*, 490 U.S. at 373.

Similarly, the legal standard governing judicial review of an agency's decision not to prepare an EIS is well established. An agency must prepare an EIS only 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 at 257. When determining whether an action is "significant" for NEPA purposes, BLM is only obligated to consider the impacts from the federal agency action under review. *See Wyo. Outdoor Council v. U.S. Army Corps of Eng'rs*, 351 F. Supp. 2d 1232, 1247 (D. Wyo. 2005).

Further, NEPA is not a paperwork exercise. The purpose of NEPA is to meaningly inform the agency regarding its decision. If additional analysis is done for analysis's sake—not to inform the agency—the purposes of NEPA are not being met. *See* DOT v. Public Citizen, 541 U.S. 752, 768-769.

In furtherance of the purpose of meaningful analysis, NEPA gives agencies the authority to tier NEPA documents, which allows for the incorporation by reference of prior environmental analyses. Tiering is particularly appropriate for a multi-staged federal program such as the federal onshore oil and gas program. *Ctr. for Biological Diversity v. Interior*, 563 F.3d 466, 474 (D.C. Cir. 2009) (explaining that NEPA allows an agency to utilize a tiered approach when preparing EAs "[w]hen faced with a multi-stage, pyramidic program such as the Leasing Program at issue here.").

2. An EIS is Not Required Under the Law and Governing Legal Precedent

The legal standard for BLM to conduct an EIS is not triggered for the leasing decisions analyzed in BLM's Supplemental EA because BLM has not identified a significant impact.

Courts have historically looked at "significance" of environmental impacts through the lens of "context and intensity." *WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237, 257 (D.D.C. 2020). Critics of previous NEPA analyses have attacked agency NEPA analyses as qualifying as "intense" where the potential effects on the human environment are "highly uncertain." *Id.* However, as the U.S. District Court in the District of Columbia found in evaluating BLM's 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 at 258 (emphasis added).

As discussed in further detail below, the NOI is not legally or factually supported as BLM has identified no significant new information, BLM's Supplemental EA provides the comprehensive hard look at potential greenhouse gas impacts required under governing law and is thus legally defensible.

(1) No Significant, New Information. BLM has not identified any new significant information raised in the Supplemental EA or the NOI to prepare an EIS, or otherwise that would alter BLM's original leasing decisions to offer parcels for lease or trigger the need for BLM to prepare an EIS under the governing legal standard.

BLM's Supplemental EA appropriately tiered to prior EISs and technical documents. *See* Supplemental EA at 8 (tiering to RMP EISs), *id.* at 12-13 (incorporating the BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends (BLM 2022)).

A recent 2024 EPA report supports BLM's determination that no significant impacts warrant preparation of an EIS. EPA's 2024 published report titled "Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2022," expressly states that, "[t]otal gross U.S. emissions decreased by 3.0% from 1990 to 2022, down from a high of 15.2 percent above 1990 levels in 2007." Executive Summary, Section 2 at ES-4 (2024) (emphasis added). EPA's 2024 report further explains that net emissions have decreased by 16.7 percent from 2005 levels. *Id.* (emphasis added). EPA reported that aggregate fossil fuel combustion in the United States, including non-federal coal, oil, and natural gas. "Between 1990 and 2022, CO_2 emissions from fossil fuel combustion decreased by 1.1 percent; emissions decreased by 18.2 percent (1,044.7 MMT CO_2 Eq.) from 2005 levels; and from 2021 to 2022, these emissions increased by 1.0 percent (45.1 MMT CO2 Eq.). *Id.* ES-9.

Similarly, BLM's recent "2023 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends" (BLM Report), published August 22, 2024, documents only a 1.0 percent increase in estimated annual GHG emissions from federal fossil fuel production, including coal in 2023, compared to BLM's prior report in 2022. *Compare* total estimated emissions from BLM authorized development detailed in Tables ES-1 from the 2022 and 2023 BLM Reports. Moreover, estimated emissions from potential new leases decreased from 2022 to 2023 by approximately 0.85%. *Compare* Tables ES-3 from 2022 and 2023 BLM Reports.

(2) Comprehensive GHG Analyses. In the Supplemental EA, BLM conducted a robust analysis of GHG emissions to supplement its prior NEPA documents for the subject leasing decisions. *See, e.g.,* Supplemental EA at Section 3.1 (greenhouse gas emissions and climate change); *id.* at Table 4 (direct and indirect GHG emissions for subject leases, and comparative low and high emissions estimates for each state); *id.* at Table 5 (comparison of lease sale annual emissions to other sources); *id.* at Section 3.1.3 (analyses of monetized impacts from GHG emissions and related emissions estimates for various development scenarios).

(3) Legally Defensible. BLM's existing NEPA analyses are legally defensible, and in full compliance with the parameters provided by the court in previous challenges to the NEPA documents that supported prior BLM lease sales in Wyoming. *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41 (D.D.C. 2019); *WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237 (D.D.C. 2020). In so doing, BLM complied with the "hard look" standard for its NEPA analysis

Moreover, BLM used the same court-endorsed framework and methodology for analyzing GHGs and climate for leasing decisions in the Supplemental EA that it used for the six lease sales it conducted in 2022. That methodology, and the EAs that BLM relied on for its 2022 leasing decisions, were recently upheld by a federal court in Washington D.C. *See Dakota Resource Council, et al., v. U.S. Department of the Interior, et al.,* 2024 U.S. Dist. Lexis 51013, Case No. 22-cv-1853 (D.D.C. March 22, 2024) (Judge Cooper). In that case, the court rejected plaintiffs' challenges to BLM's thorough and fact-based analysis and affirmed BLM's EAs and the underlying for the lease sales at issue. *Id.* Therefore, BLM can issue a FONSI on the same basis that the court upheld in this case for each state in which BLM supplemented a leasing decision through additional analysis.

B. The Biden Administration's Arbitrary, Last-Minute Decision to Issue a Notice of Intent to Conduct an EIS is Not Supported by BLM's Governing Statutes, Case Law, or Historic Practice

1. The Supplemental EA and a FONSI are Consistent with BLM's Statutory Mandates

a. FLPMA and the Mineral Leasing Act

It is important to put the proposed NOI into the context of BLM's organic statute and statutory mandates from Congress. FLPMA identifies minerals as one of the "principal or major uses" of public lands. 43 U.S.C. § 1702(l). FLPMA contains an express declaration of congressional policy that BLM manage public lands "in a manner which recognizes the Nation's need for domestic sources of minerals, [and other commodities] from the public lands…." 43 U.S.C. § 1701(a)(12).

The Mineral Leasing Act (MLA) requires 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 C.F.R. § 3120.1-2(a). Significantly, Congress has not authorized or empowered BLM to establish a national energy or climate policy. While some members of the public may wish to see BLM, sua sponte, limit the production of oil or natural gas as part of an overall strategy to curtail the use of fossil fuels, the agency has no Congressional mandate to do so. Agencies may act only within the bounds of their enabling statutes. As explained by the U.S. Supreme Court, "an 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).

Moreover, Congress has not directed BLM to restrict the nation's supply of fossil fuels. Instead, Congress has directed BLM, under FLPMA, BLM's organic statute, to lease the nation's oil and natural gas resources for development and to manage public lands under principles of

multiple use and sustained yield, with oil and gas resources being identified as a principle and major use of federal lands. 43 U.S.C. § 1732(a).

b. NEPA Compliance for the Federal Onshore Oil and Gas Program

For more than 25 years, BLM has historically utilized Environmental Assessments to comply with NEPA and inform agency decision-making for quarterly lease sales. This long-established approach is legally appropriate and in full compliance with NEPA and governing legal precedent.

Courts have recognized that the three stages of the federal oil and gas program (planning, leasing, and development) necessarily involve a correspondingly sequential NEPA analysis by BLM in which the nature and specificity of impacts at each step in BLM's approval process are analyzed at the time when the impacts from those decisions are best understood and can most accurately be quantified.

Ina case involving NEPA analysis of an onshore oil and gas lease sale in Alaska, the Ninth Circuit held that development-level analysis at the leasing stage is not required. The court explained that oil and natural gas projects "generally entail separate stages of leasing, exploration and development. At the earliest stage, the leasing stage we have before us, there is no way of knowing what plans for development, if any, may eventually materialize." *N. Alaska Envtl. Ctr. v. Kempthorne*, 457 F.3d 969, 977 (9th Cir. 2006) (*NAEC*).

The *NAEC* court correctly noted that "[a]ny later plan for actual exploration by lessees will be subject to a period of review before being accepted, rejected, or modified by the Secretary." *Id*.; *see also Park Cty. Res. Council v. Dep't of Agric*., 817 F.2d 609, 624 (10th Cir. 1987), *overruled on other grounds by Los Ranchos de Albuquerque v. Marsh*, 956 F.2d 970 (10th Cir. 1992) ("When BLM is considering a mere leasing proposal, it has no idea whether development activities will ever occur, let alone where they might occur in the lease area. When a [drilling permit] is submitted, BLM then has a concrete, site-specific proposal before it and a more useful environmental appraisal can be undertaken.").

At bottom, 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). Accordingly, 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).

Affirming BLM's prior leasing decisions through the previously issued EA is consistent with BLM's long-standing practice, the law governing the level of NEPA analysis required at each stage of oil and gas development, and compliant with NEPA and BLM's statutory mandates regarding land use planning imposed by Congress under FLPMA and the Mineral Leasing Act.

C. BLM Took a Hard Look at GHG Emissions in the 2022 Supplemental EA in Full Compliance with NEPA

A decision to affirm BLM's leasing decisions via BLM's Supplemental EA complies fully with NEPA and thoroughly describes the affected environment and analyzes GHG emissions. The methods used to estimate GHG emissions and potential effects on climate are reasonable and entirely within BLM's discretion. The Supplemental EA relies upon studies and analyses utilized by BLM to provide context for its analysis of GHG emissions and their effects on climate.

BLM reasonably tiered to and relied upon analyses contained in the applicable EISs for the underlying federal land use plans; rationally explained that conducting speculative analyses of climate impacts would not meaningly inform the public or the agency regarding the decision to be made; provided reasonable qualitative analyses; and disclosed foreseeable impacts to the extent feasible. BLM's approach fully satisfied NEPA's requirements and its governing rule of reason.

1. BLM Used a Reasonable Approach to Analyze GHG Emissions

BLM thoroughly analyzed both reasonably foreseeable greenhouse gas emissions and climate impacts in its Supplemental NEPA. In fact, BLM leaned into this important issue and provided the most detailed and comprehensive analysis of GHG emissions and potential effects on climate ever performed for a federal onshore oil and natural gas lease sale, in full compliance with the parameters provided by the court in previous challenges. *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41 (D.D.C. 2019); *WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237 (D.D.C. 2020). In so doing, BLM complied with the "hard look" standard for its NEPA analysis.

At its very essence, global climate change is necessarily a cumulative issue that involves emission sources from a wide range of human activities (*e.g.*, agriculture, mining, electricity generation, transportation, energy consumption) across the entire world. As BLM explained in the Supplemental EA, forecasting and predicting potential effects on climate from discrete agency actions, such as federal onshore oil and gas lease sales, does not meaningly inform agency action, given the absence of any scientific models to do so. *See, e.g.*, Supplemental EA at Section 3.1.1. at 13.

Still, despite this known limitation on modeling and analyses, BLM provided a court-endorsed, rational method to estimate climate effects from GHG emissions and presented detailed analyses in to inform its decision-making and provide context to the public, as required by NEPA.

2. BLM's Analysis of Climate Effects Complied Fully with NEPA

In the Supplemental EA, after quantifying reasonably foreseeable GHG emissions to the extent practicable, BLM compared these emissions with other existing and reasonably foreseeable future emissions from federal oil and natural gas development. *See, e.g.*, Supplemental EA at Section 3.1, Section 3.1.4 (cumulative impacts), Appendix B (Greenhouse Gas Emission Estimates by lease sale), and Appendix C (social cost of GHG estimates by lease sale). BLM also provided a comparative analysis of total estimated emissions from fossil fuels at the global, national, and state scales. *See* Supplemental EA at Section 3.1.1.

BLM provided a robust cumulative impacts analysis. *See* Supplemental EA at Section 3.1.4. For these analyses, BLM relied extensively upon its comprehensive programmatic greenhouse gas inventory and climate trend report, which BLM has updated annually and used extensively for the past 4 years. *See* BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends (2022); Supplemental EA, Section 3.1. This report includes a comprehensive comparative analysis of emissions at state and nation-wide levels, providing context for emissions compared to other sources of emissions under BLM's management.

3. BLM's Methodologies to Evaluate and Provide Context to Potential Climate Impacts form GHG Emissions are Reasonable and Legally Defensible

Importantly, federal courts in the U.S. Court of Appeals for the D.C. Circuit have upheld and endorsed BLM's methodology for evaluating GHG emissions and potential climate impacts using a comparative approach to give context to the scale of emissions from the proposed agency action being analyzed when compared to state-wide and nation-wide emissions. *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309-10 (D.C. Cir. 2013; *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77 (D.D.C. 2019).

BLM's lease sale analyses for GHGs and climate has been most recently upheld by a federal court in Washington D.C. in 2024. In adjudicating a legal challenge to BLM's lease sales in 6 states in 2022, the court affirmed BLM's GHG methodology and NEPA analyses. *See Dakota Resource Council, et al., v. U.S. Department of the Interior, et al.,* 2024 U.S. Dist. Lexis 51013, Case No. 22-cv-1853 (D.D.C. March 22, 2024) (Judge Cooper).

BLM's NEPA framework for the 2022 lease sales follows the template that BLM employed for the Supplemental EA.

D. The Associations Support BLM Affirming its Previous Leasing Decisions

BLM's stated purpose and need for the Supplemental EA is straightforward and frames the narrowly tailored use of the Supplemental EA to inform 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 urges BLM to affirm its prior leasing decisions for the reasons provided below.

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

As discussed above, the analyses in the Supplemental EA support affirming BLM's prior leasing decisions. There is no legal basis for more extended analysis, just for the sake of more NEPA analysis. Indeed, speculative analyses based on unreliable methods and data only expose BLM to further litigation risk. *See WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237, 255 (discussing that BLM did not need to conduct a carbon budget to comply with NEPA, but since BLM discussed the carbon budget, it should have more thoroughly explained its decision not to conduct a carbon budget.) GHG emissions are well understood, and BLM's analyses in the

Supplemental EA far exceed the requirements of NEPA. BLM's decision not to prepare an EIS for other lease sales has been affirmed in federal court, particularly after BLM conducted a thorough supplemental NEPA analysis in its EA.

Similarly, here, the 2022 Supplemental EA has forecasted GHG emissions in an even more comprehensive manner, and more than adequately summarized those risks, including the effects presented in BLM's GHG Annual Report that the Supplemental EA relied upon extensively and incorporated by reference. An EIS is not required.

2. Further Delay will Significantly Impact Development of Adjacent Federal, State- and Privately Owned Leases

The earliest lease sales considered in the Supplemental EA were issued in 2015. Therefore, these leaseholders have endured delays for over ten years—the entire term of their original leases. BLM completed and issued for public comment its Supplemental EA in November of 2022, and closed the comment period December 27, 2022. BLM did not act on the Draft Supplemental EA for two years, instead issuing on January 16, 2025 (four days prior to the new administration) the present Notice of Intent to further delay a decision.

A decision to require preparation of an EIS and to further delay finalizing the supplemental 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 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. In other words, additional environmental impacts will occur if the Leasing Decisions continue to be delayed. Accordingly, efficient finalization of the Supplemental EA and issuance of Decisions Records is entirely appropriate.

3. NEPA's Dual Purpose of Public Participation and Informed Decision-making is Not Served by the EIS

Again, the statutory purpose of NEPA is to involve the public and to inform the agency about the environmental impacts of its decisions. To truly foster informed decision-making, there is necessarily a limit to the amount of analysis that an agency can perform.

To the contrary, opponents of development will always prefer more analysis. Additional analysis (whether or not helpful to the agency or the public in analyzing the decision before the agency) benefits opponents in at least two ways. First, it necessarily causes delay, as analysis requires the agency to devote extensive resources. Second, it causes uncertainty, as each additional

analysis leaves the agency open to a legal challenge that the targeted analysis did not meet the ever-changing "hard look" analysis sufficient to past judicial muster. Opponents of development know that they do not need to win every legal battle to prevail in the war of attrition.

BLM's thorough analysis of the reasonably foreseeable greenhouse gas and climate impacts in its Supplemental EA adequately informed both the public and the agency regarding BLM's decision of whether or not to affirm its previous leasing decisions. An EIS will not provide any further meaningful information to the public or BLM regarding the decision to be made but will expose BLM to further litigation risk. *See Dakota Res. Council v. United States DOI*, No. 22-cv-1853 (CRC), 2024 U.S. Dist. LEXIS 51013, at *74 (D.D.C. Mar. 22, 2024) (noting that NEPA does not require an agency to conduct an EIS if in doing so would just repeat the analysis and conclusion it reached in the EA).

E. Lack of Legal Authority to Regulate Greenhouse Gas Emissions

The Associations agree with BLM's statements and explanations in the Supplemental EA that it does not have legal or jurisdictional authority to regulate GHGs 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. *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 ground 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 Applications for Permit to Drill (APD), but it cannot categorically prevent the production or combustion of fossil fuel and cannot act on any information it compiles regarding downstream emissions.

Moreover, as detailed by the U.S. Supreme Court, 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). Only Congress may establish national energy or climate policy, and Congress has not authorized or empowered BLM to establish national energy or climate policy. Unlike FERC, which has the authority and 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 legal discretion to refuse to lease oil and natural gas resources or deny an APD based on downstream combustion emissions.

Furthermore, Congress has not directed BLM to restrict the nation's supply of fossil fuels. Instead, in BLM's organic statute, FLPMA, Congress identified oil and natural gas development as a principal use of federal lands and directed BLM to manage public lands under principles of multiple use and sustained yield. 43 U.S.C. § 1732(a) and directed BLM to conduct quarterly oil and gas lease sales under the Mineral Leasing Act.

F. BLM Should Issue State-Specific FONSIs and Decision Records for the Lease Sales

BLM should issue individual decision records for lease sales based upon specific resource areas within individual states. Aggregation of BLM's individual decisions to approve its previous leasing decisions is inconsistent with BLM's previous practices and exposes it to significant litigation risk.

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.

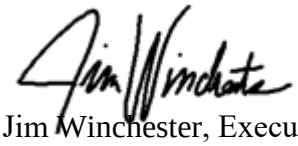
This state-level organization will also ensure that decisions that are recurrent and particular to a specific resource area, such as oil and natural gas leasing, are handled by the parties closest to and most familiar with that area. *See, e.g.*, *Landis v. Watt*, 510 Supp. 178, 180 (D. Idaho 1980) (acknowledging 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* Mineral Leasing Act, 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).

II. Conclusion

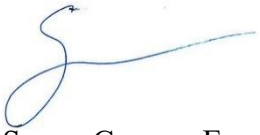
The Associations appreciate BLM's diligent work and analyses in the Supplemental EA. An EIS is not required under the law, and nothing has been identified that would require promulgation of an EIS. We urge BLM to finalize a Finding of No Significant Impact and proceed with affirming the leasing decisions.

Thank you for your time and consideration. Please do not hesitate to contact us with any questions.

Sincerely,

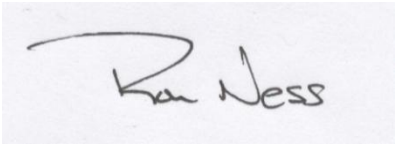


Jim Winchester, Executive Director
Independent Petroleum Association of New Mexico

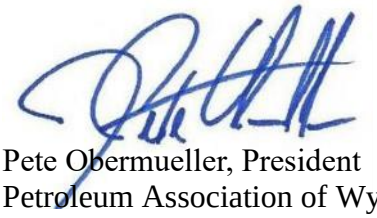


Sonny Capece, Executive Director
Montana Petroleum Association

Missi Currier, President and CEO
New Mexico Oil & Gas Association



Ron Ness, President
North Dakota Petroleum Council



Pete Obermueller, President
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Rikki Hrenko-Browning, President
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