



Submitted via eplanning.blm.gov

November 26, 2024

State Director Jon Raby

Bureau of Land Management
Nevada State Office
1340 Financial Boulevard
Reno, NV 89502

RE: BLM Nevada's First Quarter 2025 Oil and Natural Gas Lease Sale Draft EA and FONSI, DOI-BLM-NV-B000-2024-0003-EA

Dear State Director Raby:

Western Energy Alliance (the Alliance) submits these comments on the Bureau of Land Management's (BLM) draft Environmental Assessment (draft EA) and Finding of No Significant Impact (draft FONSI) for the Nevada first quarter 2025 oil and natural gas lease sale in accordance with 43 C.F.R. § 3120.42(b).

Working with a vibrant membership base for over 50 years, Western Energy Alliance stands as a credible leader, advocate, and champion of independent oil and natural gas companies in the West. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. Most independent producers are small businesses, with an average of fourteen employees.

General Overview of Comments

BLM opened its draft EA and FONSI for comments from October 29 until November 28, 2024. The draft EA identified 12 nominated parcels covering 23,202.36 acres in aggregate to offer for sale, consistent with the scoping phase. In total, 25 horizontal wells are estimated to be produced on the leases over the next 10 years, resulting in a total surface disturbance ranging between 67-100 acres. See draft EA at 15.

The Alliance has identified several areas of concern in the draft EA. First, BLM needs to offer more in-depth analysis on the lease screening criteria, including presuming "high" preference for nominated parcels. Second, BLM misapplies National Environmental Policy Act (NEPA) case precedent in the draft FONSI. Third, BLM's draft EA fails to conduct a legally sufficient socioeconomic analysis under NEPA. Fourth, BLM failed to analyze the benefits of leasing and development. Finally, the draft EA fails to analyze the compounding effects of deferrals and offering of minimal acreage amounts under its Inflation Reduction Act (IRA) obligations. In

summary, BLM's draft EA for the Nevada first quarter 2025 oil and natural gas lease sale is arbitrary and capricious under the Administrative Procedure Act (APA).

Comments

A. The Draft EA Needs to Better Explain BLM's Lease Preference Process and Decision-Making, and Presume "High" Preference for Industry Nominated Parcels

The draft EA offers no Modified Proposed Action and provides insufficient explanation of the lease preference analyses, as required by BLM's 2024 Lease and Leasing Rules. This omission violates BLM's obligations under NEPA, APA, the Federal Land Policy and Management Act (FLPMA), the Mineral Leasing Act (MLA), and its implementing regulations. The draft EA needs to be revised to disclose BLM's lease preference process, analysis, and decision making as applied. Without such analysis detail, BLM's actions are arbitrary and capricious under APA.

BLM should presume a high preference value for each industry-nominated parcel by default. Especially with the new expression of interest (EOI) fee that requires a substantial upfront investment, companies only nominate parcels they believe have market value and the potential for exploration and development. Such parcels' value to interested parties is "high," as demonstrated by the very act of nomination.

BLM preference criteria (1) and (5) relate to oil and natural gas development and potential, while criteria (2), (3), and (4) relate to non-oil-and-natural-gas factors. See draft EA Appendix K. Thus, the criteria inherently place an imbalanced emphasis on non-oil-and-natural-gas factors, making the review more of a barrier for development than a leasing procedure. As such, BLM should demonstrate that on balance, as opposed to a single preference value factor, a parcel qualifies for "low" or "high" based on an accounting of all factors equally, with the default being a "high" preference for leasing.

Each of the 12 nominated parcels were scored by BLM as having a "low" preference for leasing due to the lack of proximity to existing development, presence of sensitive species and habitat, the presence of cultural resources, incompatible uses, and low potential for future development. See draft EA Appendix K. However, BLM correctly determined that existing stipulations and conditions of approval (COAs) offered sufficient protection and moved the parcels forward for leasing. *Id.* BLM should consider a different preference value for parcels that score "low" in one or more criteria when adequate safeguards are present.

B. The Draft FONSI Incorrectly Enlarges BLM’s Discretionary Legal Authority and Obligations for Leasing and Misapplies Recent Legal Precedent on Informed Leasing Decisions

The draft FONSI states an entirely incorrect interpretation of the legal holding in *Wilderness Society v. Department of the Interior* in stating that “BLM must consider the effects of its onshore oil and gas lease sales on GHG emissions and climate change, and the [MLA] provides the Secretary of the Interior with discretion to tailor those sales—including which parcels are offered for sale and the terms of leases—in light of climate effects.” *Wilderness Society v. Department of the Interior*, No. 22-cv-1871 (CRC), U.S. Dist. LEXIS 51011, at *91-92 (D.D.C. Mar. 22, 2024). The Alliance participated in the companion case, and also in the remedy phase of this case.

In this decision, the court actually stated that BLM must only explain how its GHG analysis, performed under NEPA, informed its leasing decisions under the modified proposed action. See draft FONSI at 5. The court decision provides no legal support for BLM’s statement in the draft FONSI that the MLA provides the Secretary or BLM with discretion to “tailor” its obligations to offer parcels available for lease based on NEPA analysis.

Congress did not grant BLM the authority to regulate GHGs or climate or otherwise promulgate and impose a national climate policy. Congress prioritized development of U.S. oil and natural gas resources in MLA and FLPMA. In FLPMA, Congress identifies “mineral exploration and production” as one of the “principal or major uses” of public lands. 43 U.S.C. § 1702(I). 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).

NEPA only requires agencies to consider the “reasonably foreseeable” environmental effects of a proposed agency action, as recently reinforced by the “Building United States Infrastructure through Limited Delays and Efficient Reviews” Act (BUILDER). *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 744 (1983). BUILDER effectively codified that an agency’s NEPA analysis need only consider environmental effects with “a reasonably close causal relationship” to the agency action and can safely ignore far downstream potentialities in another agency’s lane. *Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 770 (2004).

C. BLM Failed to Conduct a Legally Sufficient Socioeconomic Analysis and to Analyze the Benefits of Oil and Natural Gas Leasing and Development While Arbitrarily Focusing Primarily on Renewable Energy Benefits

Under both NEPA and FLPMA, BLM is required to integrate social science and economic information in the preparation of informed, sustainable decisions. Specifically, Section 202 of

FLPMA requires BLM to integrate “physical, biological, economic, and other sciences” in developing land-use plans, 43 U.S.C. § 1712, and BLM’s program level decision-making must conform to those plans. Similarly, Section 102 of NEPA requires federal agencies to ensure “the integrated use of the natural and social sciences . . . in planning and decision making.” 42 U.S.C. § 4332.

NEPA’s implementing regulations include the requirement that BLM consider and analyze economic and social effects. NEPA regulations state that federal agencies “shall . . . identify environmental effects and values in adequate detail so the decision maker can appropriately consider such effects and values alongside economic and technical analyses.” 40 C.F.R. § 1501.2(b)(2); *see also* 40 C.F.R. § 1508.1(i)(4) (“Effects include ecological . . . aesthetic, historic, cultural, economic, social, or health”); *Id.* (“Effects may also include those resulting from actions which may have both *beneficial* and adverse effects, even if on balance the agency believes that the effects will be beneficial.”); *see also* 40 C.F.R. § 1502.16(b) (“when the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss these effects on the human environment”).

As the U.S. Court of Appeals for the D.C. Circuit recently held, BLM cannot perform a one-sided cost-benefit analysis. It must look at the costs and benefits from both perspectives, including the perspective of benefits to local economies from leasing and development, and benefits to local, state, and federal budgets from increased revenue of leasing and development. *See Interstate Nat. Gas Ass’n of Am. v. PHMSA*, 114 F.4th 744 (D.C. Cir. Aug. 19, 2024). As the D.C. Circuit court explained, the agency must provide a “reasoned determination that the benefits . . . justify the costs.” *Id.* at 748.

D. BLM Failed to Disclose and Analyze the Benefits of Leasing and Development, Violating NEPA and FLPMA

BLM arbitrarily analyzes the benefits of future renewable energy but does not similarly analyze constraints to renewable energy expansion from minimal oil and natural gas lease offerings, nor does it present the benefits of oil and natural gas. *See* draft EA at 30-35. These significant omissions render the draft EA legally untenable and are arbitrary and capricious in violation of APA.

When an agency’s cost-benefit analysis is unsupported by the record (*e.g.*, considers only one side or fails to consider oil and natural gas in whole) and fails to demonstrate “a reasoned determination,” based on the weight of both costs and benefits, the implications posed by the agency are improperly supported and the agency action cannot legally stand. *See Interstate Nat. Gas Ass’n of Am.*, 114 F.4th 744.

For the draft EA to be legally viable under NEPA, a cost-benefit analysis must include not only environmental impacts but also adequate consideration of the economic benefits of utilizing natural gas, as required by 40 C.F.R. § 1502.22; *see also Interstate Nat. Gas Ass'n of Am.*, 114 F.4th 744. Relevant factors, including economic considerations, should be clearly identified and explained, covering both the proposed impacts and benefits of the leasing action rather than focusing solely on perceived negative impacts.

BLM must update the draft EA to analyze potential benefits of oil and natural gas, not just those from renewable energy. BLM cannot capriciously choose to analyze one form of energy and not another in contravention of its multiple use mandate under FLPMA. This capricious decision violates NEPA, FLPMA, APA, and Section 50265 of IRA.

Socioeconomics. The draft EA does not sufficiently analyze and disclose to the public the full suite of benefits of oil and natural gas leasing and development in its socio-economic impacts analysis in violation of NEPA. Considering that the state of Nevada retains 49 percent of lease sale proceeds, the draft EA needs to be revised and updated to include a legally sufficient cost-benefit analysis to provide an accurate picture of the socio-economic benefits of leasing and developing Nevada's oil and natural gas resources. *See* draft EA at 64.

Environmental Justice. The draft EA does not disclose and analyze the benefits that flow to Environmental Justice (EJ) communities in the form of local jobs and revenue from local oil and natural gas development. *See* draft EA 66-67. Resultingly, the draft EA needs to provide further analysis on leasing and its support of local employment, income, and public revenue for surrounding EJ communities.

Emissions Reductions. The draft states that "the majority of GHG emissions resulting from federal fossil fuel authorizations occur outside of BLM's authority and control." *See* draft EA at 35. The draft EA misinforms the public through a one-sided analysis that focuses on the benefits of renewable energy for GHG emissions reductions, while skirting the same benefits of natural gas. *See, e.g.,* draft EA Section 3.5.2. BLM needs to more definitively explain the benefits of natural gas for GHG emissions reductions, and BLM's failure to analyze the direct and indirect benefits of leasing and development of American oil and natural gas violates NEPA. *Interstate Nat. Gas Ass'n of Am.*, 114 F.4th 744.

Natural Gas Benefits. The draft EA fails to quantify and disclose the beneficial effects of leasing federal oil and natural gas resources. In the latest GHG inventory, EPA highlights that new total U.S. GHG emissions are 17% below 2005 levels, mostly due to a shift to natural gas and renewable energy in the electric power sector.¹ Coal-to-gas switching was the largest driver

¹ [Data Highlights: Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2022](#), EPA, April 2024, p. 1.

behind GHG reductions in the United States in 2023.² Still, BLM asserts that “renewable energy will be the fastest growing U.S. energy source as electricity generation shifts to using more renewable sources,” and ignores the decrease in net emissions largely attributable to natural gas. See draft EA at 33.

Further, the Energy Information Administration (EIA) shows that fuel switching to natural gas has provided 61% of the GHG reductions in the electricity sector (653 million metric tons of carbon dioxide equivalent MMT CO₂ Eq), whereas wind and solar energy have provided only 39% reductions (416 MMT CO₂ Eq).³ The draft EA and the referenced 2022 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends need to cite to EPA’s updated 2022 GHG inventory and EIA data and present this information to the public in its analysis.⁴

Minimum Parcels Offered and Minimum BLM Review. BLM must review and offer all parcels nominated by industry through the EOI process or provide full disclosure as to why it has not done so. Since January 2024, BLM has offered or will offer the majority of the parcels, 43 of 47, nominated through the EOI process. The four parcels not offered were not available for leasing due to a state land exchange. BLM should continue leasing nominated parcels at this rate, doing so fulfills the intent and requirements of MLA and FLPMA.⁵ However, this information is not readily available in the draft EA. BLM should disclose this information to the public.

MLA requires the Department of the Interior to hold competitive oil and natural gas lease sales “at least quarterly” to promote responsible development of this nation’s energy resources, 30 U.S.C. § 181, and requires BLM to conduct quarterly competitive oil and natural gas lease sales for lands that are eligible and available for leasing. 30 U.S.C. § 181 et seq.; 43 C.F.R. § 3120.12(a).

Under FLPMA, Congress identified “mineral exploration and production” 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).

Congress prioritized the leasing and development of America’s abundant oil and natural gas resources in MLA and identified development as one of the principle uses of public lands under

² [Global CO₂ Emissions in 2023](#), International Energy Agency (IEA), February 2024, p. 14.

³ [U.S. Energy-Related Carbon Dioxide Emissions, 2023—Report Appendix and Methodology](#), EIA, April 2024, p. 11.

⁴ [EPA \(2024\) Inventory of U.S. Greenhouse Gas Emissions and Sinks: *Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2022*](#), EPA, April 2024.

⁵ <https://nflss.blm.gov/s/applications?tabset-ff6b3=2>, NFLSS.

FLPMA. BLM's decision to not offer additional parcels for lease contradicts the purpose of MLA and FLPMA.

To provide a legally viable Lease Sale EA and Decision Record, BLM needs to update the draft EA to disclose information and data to the public regarding whether eligible parcels were not offered and why. Failure to do so results in a violation of NEPA and contravenes MLA and FLPMA. BLM's proposed leasing decision and draft EA is arbitrary, capricious, and an abuse of discretion in violation of APA.

E. The Draft EA Fails to Analyze the Cumulative Effects of BLM's Minimal Lease Acreage Offerings and Deferrals

As explained in the draft EA at page 13 and incorporated by reference, IRA includes a provision that ties the amount of oil and natural gas acreage BLM offers to whether BLM can issue rights-of-way (ROW) for wind or solar energy projects. IRA states "the Secretary may not issue a [ROW] for wind or solar energy development on Federal land unless (A) an onshore lease sale has been held during the 120-day period ending on the date of the issuance of the [ROW] for wind or solar energy development; and the sum total of acres offered for lease in onshore lease sales during the 1-year period ending on the date of the issuance of the [ROW] for wind or solar energy development is not less than the lesser of (i) 2,000,000 acres; and (ii) 50 percent of the acreage for which expressions of interest have been submitted for lease sales during that period" Section 50265, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

To comply with Section 50265 of IRA on an annual basis, BLM must offer either a total of 2,000,000 acres or 50% of the acreage nominated through EOIs, whichever is lesser, for sale through the competitive lease sale process. BLM's failure to analyze the cumulative effects of deferred or unreviewed but eligible parcels and its small lease acreage offerings violate NEPA, IRA, and APA.

The draft EA fails to disclose deferred EOIs since the implementation of Section 50265 of IRA and analyze whether BLM is in compliance with IRA. The draft EA fails to identify how many EOIs have been terminated or deferred on a cumulative basis prior to 2025. BLM cannot piecemeal and segregate its analysis by only analyzing EOIs received recently. BLM's statutory obligations under both NEPA and IRA are broader, and must be disclosed and analyzed in the draft EA.

BLM failed to analyze and inform the public on the percentage of lease acreage offered for sale compared to the aggregate of all EOIs that have been long pending and deferred by BLM. BLM must inform the public of deferrals dating back at least six years (statute of limitations). Policies since January 21, 2021, when BLM started severely restricting oil and natural gas

Nevada 1Q 2025 Lease Sale Draft EA

November 26, 2024

Page 8 of 8

leasing, have resulted in significant EOI decreases, lease parcel deferrals, inaction on EOIs, and a significant reduction in lease parcels offered for sale.

BLM is applying an overly narrow timeframe from which it selects EOIs, only considering acres submitted within individual three-month increments and offering acreage seemingly at random during future lease sales. Additionally, BLM neither discloses acreage amounts from all EOIs submitted nor does BLM offer any of the millions of acres nominated prior to the enactment of IRA. As a result of arbitrary internal agency restrictions, the recent amount of acreage offered has reached historic lows.

The draft EA fails to analyze and disclose aggregate deferred or unoffered eligible acreage in terms of lost federal and state revenues. BLM must provide this information to the public and failure to do so is arbitrary and capricious and violates APA.

BLM failed to analyze, forecast, or even address whether the minimum amount of oil and natural gas leases BLM is offering in the second quarter sale will adversely impact BLM's ability to meet its statutory requirements under IRA. In turn, nominal lease offerings for renewable energy project ROWs on federal lands stand to be negatively impacted.

BLM has failed to analyze and disclose whether the lease parcels being offered in Nevada, when considered cumulatively with those in other states, are sufficient to meet its IRA statutory leasing obligations. The omission of this analysis in the draft EA makes it difficult to assess whether BLM will be able to meet its statutory IRA requirements in 2025, or whether it has ever met them to date. BLM is obligated to analyze and disclose this information to the public.

BLM's draft EA and proposed leasing decision violates NEPA, FLPMA, MLA, IRA, and APA. The Alliance urges BLM to fix these significant legal deficiencies for the first quarter 2025 Nevada lease sale and for future lease sales. Thank you for your consideration of our comments.

Sincerely,



Kathleen M. Sgamma
President