WESTERN ENERGY **ALLIANCE**

MONTANA PETROLEUM ASSOCIATION

Submitted via eplanning.blm.gov

October 13, 2025

State Director Sonya Germann
Bureau of Land Management
Montana-Dakotas State Office
5001 Southgate Drive
Billings, MT 59101

RE: Montana State Office Supplemental Environmental Assessment Analysis for Greenhouse Gas Emissions and Groundwater Related to Oil and Gas Leasing in the Montana-Dakotas from December 2016 to September 2020; Supplemental Environmental Assessment DOI-BLM-MT-0000-2025-0007-EA

Dear State Director Germann:

Western Energy Alliance (the Alliance) submits these comments on the Bureau of Land Management's (BLM) Supplemental Environmental Assessment Analysis for Greenhouse Gas Emissions and Groundwater Related to Oil and Gas Leasing in the Montana-Dakotas (Draft EA) from December 2016 to September 2020 in accordance with 43 C.F.R. § 3120.42(b).

The Alliance represents member companies operating in the Montana-Dakotas, who are most directly and substantially impacted by BLM's decision-making for the Draft EA. Our members have a profound interest in pursuing orderly development and achieving maximum recovery of oil and natural gas, while attaining the highest environmental benefit, including protection of groundwater resources.

The Draft EA is consistent with the requirements of the court orders issued in *WildEarth Guardians v. Haaland (D.D.C. No. 20-cv-0056)* and *Western Watersheds Project et al. v. Haaland* (D. Id. No. 1:18-cv-00187), *(*the Court's Orders). Alliance disputes the plaintiffs' allegations in those matters that BLM's previous decisions did not comply with NEPA and FLPMA but appreciates the opportunity to comment on BLM's additional analysis and agrees that the Draft EA and a decision to adopt the Proposed Action conform with NEPA and FLPMA.

In submitting these comments, the Alliance incorporates any comments submitted on the underlying analyses.

General Overview of Comments

BLM complied with the NEPA in conducting additional analysis regarding the impacts of the decision on greenhouse gases, Greater Sage Grouse (GrSG), and groundwater resources. BLM's Draft EA thoroughly analyzes the additional considerations requested by the Court. It relies on technical data, and its conclusions are reasonable and within BLM's discretion. The Alliance urges BLM to proceed with issuance of a Finding of No Significant Impact expeditiously and to select a modified version of the GrSG Habitat Alternative Proposed Action to affirm BLM's decision.

Comments

A. Governing NEPA Law

BLM is correct that the Supreme Court confirmed BLM's NEPA obligations do not include a duty to conduct speculative and unhelpful analyses of potential effects of downstream actions that may produce emissions, including the transportation, processing, and refining of oil and gas produced from federal minerals. Nor is BLM required to conduct an analysis of the "cumulative effects" of its leasing decisions.

BLM "possesses no regulatory authority" over the midstream transportation, downstream processing, or end-use combustion of oil and gas produced on federal lands. *Seven County. Infrastructure Coal. v. Eagle County.*, 145 S. Ct.

1497, 1516 (2025). These intervening processes are "separate in time or place" from production, and "[o]ther agencies possess authority to regulate those separate projects and their environmental effects." *Id*. BLM has no regulatory authority over what happens to oil and gas once it leaves BLM land, and the midstream, downstream, and end-use environmental effects of such oil and gas are so attenuated from oil and gas production on the 32 subject leases to "break[] the chain of proximate causation." *Id*.

Although GHG emissions may be a "foreseeable" effect of oil and gas leasing, "that does not mean that those effects are relevant to the agency's decision-making process or that it is reasonable to hold the agency responsible for those effects." *Id*. BLM is therefore not required to analyze downstream GHG emissions or the environmental impacts therefrom. Case law that suggests otherwise is subject to *Seven County's* "course correction." *Id*. at 1510, 1514. NEPA therefore does not require BLM to consider the climate effects of emissions with only an attenuated causal relationship to oil and gas production on federally managed land.

To the extent that CEQ regulations previously obligated BLM to conduct "cumulative" effects analysis under NEPA, that is no longer the case. Cases supporting this obligation relied on CEQ regulations that are no longer in force. *See, e.g., Diné CARE v. Bernhardt,* 923 F.3d 831, 851 (10th Cir. 2019); 90 Fed. Reg. 10,610. Thus, while the Alliance supports BLM's analysis, it disputes that such analysis is required under NEPA.

B. The Draft EA Complies with BLM's Duty under NEPA Regarding Reasonably Foreseeable Impacts on Greenhouse Gases

The Draft EA thoroughly analyzes cumulative impacts of greenhouse gas emissions from reasonably foreseeable BLM lease sales in the state, region, and nation. BLM explained that the incremental contribution to global GHG from land management actions cannot be accurately translated into potential effects on global climate change or localized effects in the area specific to the transaction. Therefore, BLM reasonably utilized GHG emissions as a proxy for assessing climate impacts. In BLM's Specialist Report, incorporated by reference, BLM quantified and compared potential emissions at the global, national, and State scales over 5 years, and analyzed additional information on baseline conditions through State, national, and global GHG emissions. It also calculated max and average year emissions for the leasing decisions in each state, and life of lease emissions. It then provided context for those emissions by comparing them to other activities that generate GHG emissions, and to emissions at State and national scales.

As a court in D.C. has already recognized (re: the 2021 Specialist Report), the Specialist Report is a "detailed document evaluating the 'cumulative emissions from [federal] fossil fuel authorizations on a state and national level.' The Specialist Report opens with a panoramic snapshot of climate change and its anticipated impacts on the global and local levels. It then proceeds to estimate total emissions from all reasonably foreseeable development on federal land, breaking down those projections on a State-by-State basis and comparing them to total State, national, and global emissions." *Dakota Res. Council v. United States DOI*, No. 22-cv-1853 (CRC), 2024 U.S. Dist. LEXIS 51013, at *37-38 (D.D.C. Mar. 22, 2024) (internal citations omitted). As that Court concluded, "[t]his fulsome treatment satisfies BLM's obligation to analyze the cumulative impact of the lease sales." *Id.* at *38. Similarly, here, BLM satisfied its obligation to consider the reasonably foreseeable effects of the leasing decisions on greenhouse gas emissions.

Although it is not necessary to comply with NEPA, as part of a settlement agreement, BLM also conducted a Social Cost of Carbon analysis based on withdrawn guidance. BLM prepared estimates for Montana, North Dakota, and South Dakota. While BLM's analysis is within its discretion, BLM has previously acknowledged that there are no established thresholds for NEPA analysis to contextualize the quantifiable greenhouse gas emissions or social cost of an action in terms of the action's effect on the climate, incrementally or otherwise. Further, there is no scientific data in the record that would allow BLM, in the absence of an agency carbon budget or similar standard, to evaluate the significance of the greenhouse gas emissions from this proposed lease sale. Thus, the Alliance requests that BLM not rely on this analysis when issuing its final decision. Similarly, BLM's conclusion that carbon budgets are not useful for BLM's decision-making at the leasing stage is factually sound, reasonable, and within BLM's significant discretion.

C. The Draft EA Complies with BLM's Duty under NEPA Regarding Reasonably Foreseeable Impacts While Considering Current GrSG Data and BLM's Draft EA Complies with FLPMA by Considering a Third Alternative

Although the Alliance disputes that BLM's initial analysis was insufficient under NEPA, the Draft EA complies with the *WWP* Court's order regarding additional analysis of the impacts of the leasing decision on GrSG and well-exceeds BLM's obligations under NEPA.

The *WWP* Court order directed BLM to: (1) address site-specific impacts to GrSG, (2) further analyze baseline conditions and cumulative effects on GrSG, and (3) to analyze a third-alternative deferring parcels in priority habitat management areas (PHMA), or explain why such analysis was unnecessary. BLM complied with this order by overlaying the proposed leases on designated habitat and assessing, on a site-specific basis: surface management authority, existing disturbance, lek location (including whether there were leks within 3.1 and 5 miles) and GrSG Assessment Category. BLM also undertook a site-specific assessment of the applicable lease stipulations to evaluate reasonably foreseeable effects on GrSG considering application of those stipulations.

Consistent with these governing land use plans, BLM complied with the Court's order by explaining that BLM adequately analyzed GrSG impacts. BLM also considered a Proposed Action Alternative, applying a detailed screening process that would not affirm 8 leases that fell into certain categories according to the applicable GrSG prioritization criteria. Thus, BLM complied with governing Court orders and its legal obligations regarding NEPA.

While the Alliance disputes the Ninth Circuit's conclusion in *Mont. Wildlife Fed'n v. Haaland* regarding BLM's compliance with its own management objective, the Alliance understands that BLM faces litigation risk in selecting the Proposed Action.

Thus, the Alliance encourages BLM to select a modified version of the Greater Sage Grouse alternative, and only not affirm parcels that contain priority habitat management areas. All the leases are designated as "open" to oil and gas leasing, are consistent with the governing land use plans, and contain stipulations sufficient to protect GrSG. However, deferring parcels within PHMA in the GrSG Alternative will make BLM's decision more legally defensible.

D. BLM Complied with BLM's Duty Under NEPA to Consider Reasonably Foreseeable Impacts to Groundwater Resources

The Alliance disputes that BLM had any obligation to conduct additional analysis of groundwater resources. However, BLM's Draft EA provides a thorough analysis of reasonably foreseeable impacts to groundwater, surface water, water quality, and water quantity as a result of the leasing decisions. BLM grouped its analysis into four sections, separately analyzing the Middle Bakken, Cedar Creek, Northern Bakken, and Southern Areas. Its analysis reasonably informs its decision to offer the parcels for lease.

Conclusion

Based on the Draft EA, the Alliance requests that BLM select a Modified Proposed Action to affirm the leasing decisions, as described in section C, above. Finally, to minimize litigation risk, BLM should provide at least 30 days for the public to file a protest. *See W. Watersheds Project v. Zinke*, 441 F.Supp. 3d 1042 (D. Idaho 2020); *Mont. Wildlife Fed'n v. Haaland*, 127 F.4th 1, 52 (9th Cir. 2025).

Thank you for your time and consideration. Please do not hesitate to reach out to me with any questions.

Sincerely,

Melissa Simpson
President
Western Energy Alliance

Sonny Capece
Executive Director
Montana Petroleum Association