

Submitted via eplanning.blm.gov

October 17, 2025

Acting State Director Kris Kirby

Bureau of Land Management
Wyoming State Office
5353 Yellowstone Road
Cheyenne, WY 82009

**RE: Wyoming State Office Supplemental EA for WildEarth Guardians (WEG) and Western Watersheds Project (WWP); Supplemental Environmental Assessment
DOI-BLM-WY-0000-2025-0004-EA**

Dear Acting State Director Kirby:

Western Energy Alliance (the Alliance) submits these comments on the Bureau of Land Management's (BLM) draft Environmental Assessment (Draft EA) for the Supplemental EA for WildEarth Guardians (WEG) and Western Watersheds Project (WWP) Supplemental Environmental Assessment in accordance with 43 C.F.R. § 3120.42(b).

The Alliance represents member companies operating in Wyoming, 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. Industry members have invested hundreds of millions of dollars in the subject lease sales, and the litigation over these leases has tied up their investments for nearly ten years.

The Alliance disagrees that the initial EAs for the challenged lease sales did not comply with the National Environmental Policy Act (NEPA). However, the Alliance appreciates the opportunity to comment on BLM's additional analysis and agrees that it conforms with the D.C. District Court and the Idaho District Court's orders, as well as BLM's obligations under NEPA.

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In submitting these comments, the Alliance incorporates its original comments on the original lease sale EAs.

General Overview of Comments

BLM complied with the Court's orders to complete additional analysis regarding the reasonably foreseeable impacts of the decision on greenhouse gases and Greater Sage Grouse (GrSG). It also proactively provides additional NEPA analyses on big game and water resources to address issues raised in other lease sale litigation challenging leasing decisions in Wyoming. BLM's assessment thoroughly analyzes the additional considerations requested by the Court. It relies on technical data, and its conclusions are reasonable and within BLM's discretion.

Request to Adopt a Modified Alternative 3: The Alliance urges BLM to proceed with issuance of a FONSI and to select a Modified Alternative 3 to defer a limited number of lease parcels to ensure legal defensibility in light of the Ninth Circuit's decision in *Mont. Wildlife Fed'n v. Haaland*, 127 F.4th 1, 45 (9th Cir. 2025). This modified alternative is explained in detail in Section F below.

Comments

A. Proper Scope of Analysis Post-Seven County Infrastructure

BLM is correct that the Supreme Court confirmed that 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.*



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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 analyses are required under NEPA.

B. The Draft EA Complies with the D.C. Court’s Order to Complete Additional Analysis Regarding Cumulative Impacts of Greenhouse Gases

The Draft EA exceeds BLM’s duty to analyze the reasonably foreseeable environmental effects of the alternatives on air quality and greenhouse gas emissions by relying on, and incorporating the 2023 Air Resource Monitoring Report, the 2023 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends (Specialist Report), and National Emissions Inventory. Draft EA at 23-25. BLM calculated the estimated emissions from the Proposed Action using the BLM Lease Sale Emissions Tool and contextualized those emissions by comparing those to modeled emissions that have been shown to have a definitive or quantifiable contribution to cumulative GHG levels. Draft EA at 23-25, 27. It placed the GHG emissions into context using the EPA GHG equivalency calculator to express the potential average year GHG emissions from the subject leases in equivalencies such as the number of gasoline-fueled passenger vehicles and home electricity use over a year. Draft EA at 29.

The Draft EA thoroughly addresses the D.C. Court’s direction to analyze cumulative impacts of greenhouse gas emissions from reasonably foreseeable BLM lease sales in the state, region, and nation by incorporating by reference the 2023 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends (Specialist Report). See Draft EA at 25, 30-31.

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.

Further, the Draft EA reasonably explains that carbon budgets are not helpful to BLM’s analysis of its decision to offer parcels for lease because no federal agency has established a carbon budget, and there is no consensus on how to allocate global budgets to individual nations. It also appropriately relies on the Specialist Report’s conclusions regarding the same. Draft EA at 25, Specialist Report at Section 9.1.

C. BLM Complied with NEPA Regarding Additional Analysis of Groundwater Resources

The Alliance disputes that BLM had any obligation to conduct additional analysis of groundwater resources, or that studies cited by interest groups raise “credible evidence” regarding enforcement of state, federal, and local well construction regulations.

BLM provided context for the Tisherman study’s conclusions while also clarifying that BLM is not aware of any reported actual impacts to usable water zones related to the wells referenced in that study. Nor has any party provided any evidence of any compromised water sources.

BLM explained the conclusions of the Tisherman study considering BLM’s regulatory framework and actual operations in Wyoming. BLM also thoroughly explained the state and federal regulations and drilling approval procedures, including pre-and post-groundwater monitoring and testing requirements, mechanical integrity testing, and how they are adequate to protect groundwater resources.

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The Alliance states that although the Tisherman study is correct that many wells in the Powder River Basin have long sections of uncemented wellbore adjacent to freshwater aquifers, the study's conclusion that "existing federal wells in the Powder River Basin are not protecting usable water" is unequivocally false.

Onshore Order No. 2 requires that wells be designed to "protect and/or isolate all usable water zones." Contrary to the Tisherman study's assertions, cement casing is not the only method for compliance with federal and state regulations. In practice, industry has attained protection of freshwater zones in the Powder River Basin with carefully engineered and monitored drilling practices that use cement appropriately where needed, in connection with other protections and mitigation measures, which BLM acknowledges.

Finally, although not necessary to comply with NEPA, BLM analyzed groundwater resources in the vicinity of the leases in this EA and concluded that future wells on those leases were not expected to produce from zones that contain usable water sources or that are being used as a source of drinking water or for agricultural resources. Thus, BLM's analysis more than satisfies its obligations under NEPA.

D. The Draft EA Complies with the Court's Order Regarding Additional Analysis of Impacts to GrSG by Addressing Site-Specific Analysis, Baseline Conditions, Cumulative Effects, and Analyzing 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) analyze a third-alternative deferring parcels in PHMA or explain why such analysis was unnecessary. *W. Watersheds Project v. Bernhardt*, 543 F. Supp. 3d 958, 996-97 (D. Idaho 2021). BLM complied with this order by addressing site-specific potential impacts to GrSG, further reviewing cumulative effects on GrSG from development on federal and non-federal lands, and providing a third alternative deferring parcels in both PHMA and GHMA.

Consistent with these governing land use plans, BLM thoroughly explained its exhaustive analysis of GrSG impacts, including by:

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- Categorizing all lease parcels as containing PHMA, GHMA, or non-habitat.
- Identifying any leases within 1, 2, 3, 4, and 5.28 miles of an active or occupied GrSG lek.
- Identifying any leases within 1, 2, 3, 4, and 5.28 miles of PHMAs.
- Identifying any leases within the Wyoming Game and Fish Department 2021-2022 Greater Sage Grouse Job Completion Report Local Working Group Areas.
- Identifying each lease within the Wyoming Game and Fish Department 2023-24 Greater Sage Grouse Job Completion Report Local Working Group Areas and discussing the GrSG population trends for each LWGA.
- Analyzing each parcel offered in relation to that lease's location and proximity to important habitat (including priority habitat and connectivity areas), existing leks, existing energy development or other human disturbance, and applicability of existing mitigation measures.
- Analyzing and discussing the sufficiency of mitigation measures, including timing and NSO stipulations to mitigate any GrSG impacts.
- Considering a Modified Proposed Action, Alternative 3, applying a detailed screening process that would not affirm 248 leases in PHMAs and fifty-four leases in GHMA based on the GrSG prioritization screening process.

Draft EA at 45-55.

Thus, BLM complied with governing Court orders regarding NEPA.

Requested Action: The Alliance requests that BLM's final EA acknowledge that BLM is required to manage public lands under the principles of multiple use and sustained yield, in accordance with applicable land use plans. BLM is also required to offer, not later than 18 months after receiving an expression of interest, all parcels that the Secretary determines are open to oil and gas leasing under the governing land use plan. 30 U.S.C. § 226(a)(1). Therefore, BLM cannot, through this Draft EA, effectively close lands to leasing that are otherwise designated as open in the underlying RMP.

Requested Action: The Alliance requests that, in addition to addressing potential negative impacts to GrSG habitat from development, that BLM acknowledge the benefits of the oil and gas industry's mitigation and reclamation projects, and the improvements to GrSG habitat that industry provides. For instance, reclaimed well pads have been shown to hold

significantly higher amounts of insects than old-growth sagebrush stands, providing pollination, biodiversity, nutrient cycling, and soil decomposition. Further insects are the primary source of protein for 96% of juvenile, terrestrial birds and in non-winter months, insects and forbs are an important part of GrSG diet.¹

The 2015 resource management plan amendments specifically address any potential negative impacts from development within 4 miles of a lek through the use of timing and surface use stipulations, and the incorporation of mitigation measures. Industry provides valuable resources to habitat improvement projects, especially in areas hit by wildfire, that can benefit GrSG. Alliance members are leaders in their communities, developing and implementing best management practices for the benefit of the GrSG and other species that rely on the sagebrush sea. BLM should revise the Draft EA to include these reasonably foreseeable effects.

E. BLM Complied with NEPA Regarding Additional Analysis of Large Game by Reasonably Forecasting the Effects of the Leasing Decision on These Species

BLM adequately addressed reasonably foreseeable impacts to Big Game Herd Units, Antelope, Mule Deer, Elk, and Designated Migration Corridors.

BLM used its Reasonably Foreseeable Development estimates to forecast how these lease sales will affect big game habitat. BLM fully complied with the Court order by estimating the acreage of potential habitat that could be impacted by potential surface disturbance from on-lease development. It also discussed mitigation measures, including stipulations, and how BLM would decrease potential impacts through implementation of those measures.

BLM then calculated the disturbance percentages and indirect impact percentages of habitat that the leases could reasonably expect to impact. Therefore, BLM adequately analyzed, and reasonably concluded, that potential

¹Curran, M.F., Allison, J., Robinson, T.J., Robertson, B.L., Knudson, A.H., Bott, B.M., Bower, S. and Saleh, B.M., 2024. Insect Abundance and Richness Response to Ecological Reclamation on Well Pads 5–12 Years into Succession in a Semi-Arid Natural Gas Field. *Diversity*, 16(6), p.324; Curran, M.F., Sorenson, J.R., Craft, Z.A., Crow, T.M., Robinson, T.J. and Stahl, P.D., 2022. Ecological Restoration Practices within a Semi-arid Natural Gas Field Improve Insect Abundance and Diversity during Early and Late Growing Season. *Animals*, 13(1), p.134.

effects to Large Game from affirming the leasing decisions will not be significant.

F. BLM Should Utilize a Modified Version of Alternative 3 That Both Complies with the 9th Circuit Decision While Simultaneously Preserving Lease Parcels Necessary for Development

Requested Action: Based on the Draft EA, the Alliance requests that BLM select a modified Alternative 3 to affirm the majority of the leasing decisions while simultaneously complying with the Ninth Circuit's interpretation of the 2015 GrSG Plan as requiring "in some manner, the government must take an affirmative role in encouraging oil and gas leasing in non-sage-grouse habitat." *Mont. Wildlife*, 127 F.4th at 45. Thus, the Alliance requests that BLM adopt a Modified Version of Alternative 3 that: (1) would affirm its decision in Alternative 2 to offer all parcels in the May 2015 through September 2017 BLM oil and gas lease sales; (2) affirm all leases in the September 2018, March 2019, and March 2020 lease sales that are (a) in close proximity to existing production, (b) within a federal unit, communitization agreement, or a state approved drilling spacing unit (DSU), (c) currently producing, or (d) held by production. BLM should defer parcels from the September 2018, March 2019, and March 2020 lease sales on its "not affirm" list in Alternative 3 that do not meet these criteria.

In 2018, multiple NGOs, including Montana Wildlife Federation (MWF), filed a federal lawsuit challenging multiple BLM leasing decisions. MWF's complaint alleged that a December 27, 2017, Instruction Memorandum (IM 2018-026) and any leasing decisions that followed that guidance violated FLPMA because BLM failed to comply with its objective to "prioritize" development of oil and gas parcels outside of preferred GrSG habitat.

Prior to December 2017, BLM had a regular policy of deferring some number of parcels from each BLM Wyoming oil and gas lease sales with the express purpose of prioritizing oil and gas leasing and development to protect important GrSG habitat. See, e.g. June 22, 2017 FONSI DOI-BLM-WY-D040-2016-0188-EA, p. 2 (deferring 40 whole parcels and portions of 6 additional parcels out of the 75 nominated parcels to "prioritize oil and gas leasing and development in a manner that minimizes resource conflicts in order to protect important GSG habitat. . . ."); Feb. 6, 2017 Decision Record DOI-BLM-WY-P000-2016-0001-EA (noting BLM's decision to defer 27% of the nominated parcels from the High Plains District and Wind River Bighorn Basin District sales combined). MWF

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alleged that BLM's decision not to defer parcels in sales starting in December of 2017 conflicted with the 2015 Greater Sage Grouse management plans.

MWF's claims regarding December 2017 and later lease sales were eventually upheld by the Ninth Circuit. *Mont. Wildlife*, 127 F.4th at 45. Although Congress has since amended the Mineral Leasing Act that undermines one's bases for the Ninth Circuit's decision, BLM should consider the litigation risk of deciding not to defer any parcels from December 2017 and later lease sales. In addition to the risk of lease cancellation, continued litigation results in a continued business uncertainty for leaseholders, such as many Alliance members, who have invested millions of dollars that have already been tied up for nearly ten years.

Requested Action: Therefore, for decisions based on the 2015 Wyoming Greater Sage Grouse Plan Amendments, the Alliance requests that BLM select an alternative that explains BLM's decision making in light of the Ninth Circuit's direction that BLM "take an affirmative role in encouraging oil and gas leasing in non-sage-grouse habitat." *Mont. Wildlife*, 127 F.4th at 45. The Alliance does not believe that Alternative 2 provides an adequate explanation of BLM's decision in light of this case.

However, as currently written, BLM's Alternative 3 fails to consistently apply BLM's own prioritization criteria and ignores BLM's previous efforts to meet the 2015 GrSG Plan Amendment's prioritization objective. As BLM acknowledges, for lease sale EAs completed prior to December of 2017, BLM has already complied with the Ninth Circuit's directive and MWF plaintiffs' preferred prioritization method—deferral of parcels in priority habitat. Draft EA at 46; see *a/so*, e.g., June 22, 2017, FONSI DOI-BLM-WY-D040-2016-0188-EA, p. 2. Thus, BLM has already deferred parcels from pre-December 2017 lease sales. Further deferrals of parcels from these lease sales are inconsistent with BLM's governing land use plans, its multi-use mandate, and the Mineral Leasing Act.

Further, BLM's Alternative 3 does not conform to the governing land use plans or BLM's stated prioritization method. For example, BLM's proposed Alternative 3 includes a decision to "not affirm" multiple parcels that are producing, held by production, or within a designated federal unit, communitization agreement, or state-approved DSU. Compare Draft EA Table 4 with Table 19 and 20. Not affirming parcels that are already producing or are held by existing development (e.g. WYW185125, WYW185590, WYW185682, and WYW187422) is not likely to meet BLM's objective to guide development to disfavored habitat as development has already occurred. Nor is it consistent with BLM's intent to

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“encourage new development in areas already impacted by development factors.” Draft EA at 116.

In fact, a decision to “not affirm” producing leases, leases held by production, leases in federal units, federal communitization units, and state-approved DSUs would likely cause additional surface disturbance in the short term, as operators either have to undertake operations to shut-in existing wells, or develop additional wells on private, state, or non-impacted federal leases in the area to continue to meet their unit or lease obligations. Thus, BLM’s decision not to affirm parcels with existing production (or that are held by existing production) will not meet the prioritization objective of encouraging development outside of habitat.

Further, a policy of affirming parcels with existing production should also extend to any parcel that has already been allocated to a federal unit or communitization agreement for the same reasons. See, e.g., WYW188797. BLM’s own prioritization method confirms parcels within existing units, those at risk of drainage from contiguous development, and those near existing production are not priorities for deferral. Draft EA at 116.

Therefore, to the extent BLM determines FLPMA requires deferral of leases from this sale, BLM should affirm parcels in existing units, producing leases, and leases that are held by production. The same reasoning applies to leases within state-approved DSUs. By not affirming leases within a state-approved DSU, BLM increases the risk of amplifying depletion from off-set DSUs.

Requested Action: Finally, to minimize litigation risk, BLM should provide at least 30 days for the public to file a protest to a final decision, and for impacted leaseholders to address BLM’s decisions not-to-affirm particular leases with site-specific information in support of a BLM decision to affirm.

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Conclusion

Thank you for your time and consideration. The Alliance appreciates BLM's thorough analysis, and the ability to provide comments.

Please do not hesitate to reach out to me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'MS', with a long, sweeping horizontal line extending to the right.

**Melissa Simpson
President
Western Energy Alliance**