



December 8, 2021

Submitted via eplanning.blm.gov

Bureau of Land Management
Montana / Dakotas State Office
5001 Southgate Drive
Billings, MT 59101

Re: Environmental Assessment of the Proposed Oil and Natural Gas Lease Sale

Dear Sir/Madam:

Western Energy Alliance submits these comments on the Bureau of Land Management (BLM) Montana/Dakotas State Office's environmental assessment (EA) of the proposed 2022 First Quarter competitive oil and natural gas lease sale. The Alliance urges BLM to proceed with the planned sale expeditiously.

Western Energy Alliance represents 200 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fourteen employees.

The Mineral Leasing Act mandates that BLM shall hold oil and natural gas lease sales "for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary."¹ Despite this mandate, BLM canceled all oil and natural gas lease sales that were or should have been scheduled for 2021, in violation of statutory obligations. BLM's announcement of proposed lease sales in the first quarter of 2022 is a welcome change, and BLM must proceed with finalizing its environmental analysis and scheduling the sale as soon as possible.

The Alliance provides these comments to strengthen and clarify the Draft EA to ensure that BLM presents the analyses in proper context and in a defensible manner that better informs agency decision-making and avoids creating confusion for the reviewing public.

Greenhouse Gas Emissions Analysis

As a general matter, the Draft 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 the agency's discretion. The technical data that BLM relies upon and

¹ 30 U.S.C. § 226(b).

presents in the Draft EA is comprehensive and is more than sufficient to satisfy the National Environmental Policy Act (NEPA) for purposes of informing BLM decision-making at the leasing stage of the federal onshore oil and gas program.

BLM's decision to issue an EA rather than a more comprehensive environmental impact statement (EIS) was correct and consistent with NEPA and legal precedent. However, as we discuss below, BLM overstates the costs and underestimates the benefits of leasing the parcels evaluated in the EA. BLM should update its analysis and issue a Finding of No Significant Impact (FONSI).

BLM's analysis of the environmental impacts of leasing under either Alternative B – Proposed Action and Alternative C – Defer Six Parcels for Resource Concerns makes clear there will be no significant environmental impacts under either option, so an environmental impact statement (EIS) is unnecessary. BLM conducted a thorough greenhouse gas (GHG) emissions analysis, and Table 12 compares projected emissions from leasing under the Proposed Action to total U.S. annual GHG emissions. On average, estimated emissions from development on these parcels would represent less than 0.001% of total U.S. emissions, and less than 0.01% of emissions from U.S. federal oil and natural gas production – an entirely insignificant portion.

The data presented in the Draft EA demonstrates that GHG emissions from production are not significant, particularly in comparison to GHG emissions from end use combustion. This fact is evident when comparing the data presented within the EA and in Tables ES-1, 5-3 and 5-6 of the [2020 BLM Specialist Report on GHGs and Climate, which the Draft EA tiers to and relies upon](#).

The Draft 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 and halting federal lease sales will not avoid these indirect emissions. There is no data to support a presumption that deferring these federal leases will result in a 100% decrease in downstream emissions. The EA should also explain that since the same amount of oil will be consumed regardless of where it is produced, emissions from oil and natural gas combustion will occur regardless of whether this federal lease sale occurs.

Moreover, the Draft EA should be revised to include the EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2019, published in 2021, to better provide accurate context for estimated direct emissions. This recent EPA report details:

- Total U.S. 2019 GHG emissions were 6,558 MMTCO₂e;
- 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 281.3 MMTCO₂e. See EPA Inventory Table

3-37 at p. 3-72 and Table 3-62 at p. 3-91; and

- Only 4.3% of U.S. GHG emissions come from petroleum and natural gas systems.

Therefore, on a national level, direct emissions from petroleum and natural gas systems are not significant. Even more so, direct emissions from federal oil and natural gas production are an even smaller subset of domestic oil and gas production, and less significant. The Draft EA should include this data and explanation to inform the public more fully regarding these projected impacts.

The Draft EA should also expressly explain that Congress did not grant to BLM the jurisdiction to regulate downstream end uses and combustion, and that that NEPA does not require an agency to analyze the environmental impacts of actions that are outside the agency's jurisdiction. *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004).

The Draft EA should be revised to explain that BLM's calculations continually err on the side of over-inclusion and are likely significantly overstated, for several reasons. First, the EA assumes that each of the leases offered at sale will be purchased, fully developed, and produce substantial oil and natural gas. Historically, however, only approximately 50% of leased acreage proves to be productive, as not all leases are developed and not all development leads to producing wells.² BLM should thus update its analysis in Section 3.6.2 – Greenhouse Gases and Climate Change to reflect this discount, which will further reduce the potential GHG contributions to overall U.S. emissions.

Another reason BLM's calculations are overstated is the speculative nature of evaluating downstream emissions as part of a cumulative analysis. As BLM acknowledges in the EA, "the amount of oil or gas that may be produced if the offered parcels are developed is unknown" and "while the BLM has no authority to direct or regulate the end-use of the products, for this analysis, the BLM assumes all produced oil or gas will be combusted (such as for domestic heating or energy production).

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 this lease sale will almost assuredly be even smaller than the negligible amounts calculated in Table 3.23.

The Draft EA explains that "EIA studies regarding short-term 'supply disruptions' suggest that reducing domestic supply (in the near-term under the current supply / demand scenario) would lead to the import of more oil and natural gas from other countries,

² See [Supplemental Environmental Assessment for the May 2015–August 2016 Sold and Issued Leases](#), DOI-BLM-WY-0000-2019-0007-EA, at 17.

including countries with lower environmental and emission control standards than the United States.” This narrative supports two fundamental points: (1) lost production will be replaced by other sources, and (2) the replacement will have higher GHG emissions.

BLM should expand this existing narrative in the Draft EA to provide the public with more complete information about the national and global markets for oil and natural gas commodities, and market displacement and replacement, including the fact that both direct and indirect emissions will be replaced by other sources, even if BLM does not offer or issue leases from this sale.

The Draft EA should be revised to explain further that the market for oil and natural gas commodities is global. Production is diversified across the nation and world, with only a fraction of production in the state, national or global markets originating from federal lands or federal minerals. Approving or disapproving the sale of these federal leases would not affect downstream GHG emissions in any meaningful or significant manner because the global market will provide substitute supplies, such as from Russia or other OPEC countries that, unlike the United States, do not have robust regulatory programs and environmental protections to ensure they produce oil and natural gas in an environmentally responsible manner.

BLM should include an explanation of these national and global market factors in the EA and explain that the agency’s ability to influence consumption of oil and gas by increasing or decreasing supply is marginal at best.

Additionally, the amount of oil and natural gas produced from these leases will merely displace electricity generation sources that would otherwise occur elsewhere in the U.S. or in foreign countries, including coal production. Given the strict regulations that govern development on BLM lands compared to other oil and natural gas fields, and the benefits of replacing coal with natural gas as an electrical source, these wells will potentially *reduce* future total GHG emissions. BLM failed to account for these benefits in the EA, so we urge BLM to update its analysis and recognize the already minimal amount of emissions contributions overstates the potential impacts.

Finally, we note that the BLM Montana-Dakotas State Office’s analysis of GHG emissions in this EA, while likely overstated, is consistent with the template used by other state offices in their analyses of pending lease sales. When courts have found deficiencies with BLM lease sale EAs in recent years, one of the factors supporting the rulings has been the differing approaches to calculating emissions taken by various state offices. We appreciate that BLM is beginning to apply a consistent template across the states as it will ensure the final environmental analyses are upheld by the courts.

Taken together, it’s clear that the Proposed Action will have no significant impact on greenhouse gas emissions, so a FONSI is appropriate and should be issued with the edits suggested above.

Social Cost of Carbon and Greenhouse Gases

Another issue with the EA is in the application of the social cost of greenhouse gases (SCGHG) to individual lease sales. BLM is not under any legal requirement to utilize the SCGHG in environmental analyses, as we make clear below, and in fact it is not a tool that provides any meaningful information to either the public or the decision-maker at this scale. BLM should remove this analysis from its FONSI.

The use of SCGHG 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 so many subjective variables that can be manipulated and advocated for to inflate the estimated costs for carbon emitting activities. These manipulations can include changing relevant timeframes, adjusting discount rates, including risks, minimizing the social benefits of domestic natural gas and oil, and arbitrarily calibrating other data inputs. Thus, the outcome of a SCGHG 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 SCGHG calculations may instead become a new strawman and focus for improper usage that goes far beyond the purposes of NEPA, such as justification to advance energy policy priorities or imposing compensatory requirements on lessees to implement such policies.

The SCGHG calculation was developed as a tool to measure the potential costs and benefits of agency rulemakings. It has been utilized solely in this manner by previous administrations, but it appears the Biden Administration now supports its application to individual environmental reviews to inform federal land management decisions, like this EA. 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 permit approvals typically have at most a de minimis impact on climate change and GHG emissions, so applying the SCGHG does nothing to better inform agency decision-making through the National Environmental Policy Act (NEPA) process.

Courts have consistently upheld this approach to social cost of carbon calculations. The District Court of New Mexico recently held the following regarding Bureau of Land Management (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”

BLM explained why it chose not to apply the SCC protocol. It further noted in one report that applying the SCC protocol is “**challenging because [the SCC protocol] is intended to model effects at a global scale on the welfare of future generations caused by additional carbon emission occurring in the present.**” (AR at 006618) (emphasis added). The methods that BLM used satisfy NEPA, and therefore, it did not err in avoiding the SCC protocol.³

Similarly, the 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. See, e.g. AR8920–23; AR12993–98. 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,” AR2827, and that the range provided by WildEarth’s comments and protests “represents a 4,000% difference in potential [social cost of carbon] estimates.” AR12520; see also AR1986 (estimating that “[u]sing 2015 social cost of carbon values, the costs to society of the federal fossil fuel leasing program is between \$18 and \$177 billion per year”). **BLM reasonably determined that a 4,000 percent range in potential costs would be “less than helpful in informing the public and the decisionmaker.”** AR12520; see also AR19285 (“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.’”)

Accordingly, 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). (emphasis added)⁴

Taken together, these rulings make clear that applying the SCGHG calculation to project specific NEPA documents will provide no useful information for BLM. 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.

³ *WildEarth Guardians v. Bernhardt*, Case 1:19-cv-00505-RB-SCY

⁴ *WildEarth Guardians v. Zinke*, Case 1:16-cv-01724-RC

Table 17 demonstrates clearly why the SCGHG tool is not appropriate in this EA. The actual cost per ton of emissions has fluctuated wildly over time, as different administrations apply differing inputs and discount rates for the SCGHG tool. The Biden Administration has proposed, but not yet finalized, a regulation that would dramatically increase the cost per ton compared to the previous administration. In the EA, BLM examines emissions across various discount rates that provide cost estimates ranging from \$11.445 million to more than \$131 million. 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. As noted in the ruling from the District Court of DC, this simply provides no useful information to BLM's decision-making.

Importantly, as noted above, failing to offer these parcels for lease will have no impact on domestic demand for oil and natural gas. Instead, production will likely be replaced by increased imports from a nation that doesn't have the robust regulatory protections enjoyed in the United States. As a result, instead of demand being met by domestic production, oil and natural gas would now be shipped and transported thousands of miles to reach its ultimate destination, generating even more GHG emissions. By looking at emissions in a vacuum, BLM has failed to consider the relative costs and benefits of domestic versus foreign production.

Furthermore, the SCGHG tool as used here also completely fails to account for any social benefits that would follow from production on the leases. For example, development of affordable energy resources has vast and broadly applicable benefits for improving quality of life for the public beyond a simple calculation of the estimated benefits to public health and the environment. 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.

If oil and natural gas development is curtailed in America, economic growth and public health would suffer immediately. In the absence of an alternative that does everything oil and natural gas do (home heating, transportation, industrial energy, electricity generation, electronic components, petrochemicals, etc.), restricting production is not a wise policy.

Oil and natural gas not only keep people warm in the winter and cool in the summer, get them to school and work to better their lives, and power all facets of the economy, but put food on the table, medicines in the cabinet, and deliver clean drinking water to the tap. Providing more oil and natural gas to less developed countries will bring those benefits to the billion people without sufficient energy and help lift them out of poverty. Finally, domestic production has national security implications, as it contributes to a reliable supply chain and less reliance on foreign countries.

BLM's calculation of SCGHG ignores these important benefits, meaning it is fundamentally flawed and provides no useful information for BLM's analysis of one individual lease sale that will have de minimis impacts on global supply and demand and GHG emissions. Section 3.3.5 – Monetized Impacts from GHG Emissions should be removed from the EA and the FONSI.

Conclusion

Western Energy Alliance is pleased BLM plans to comply with its statutory mandate to hold quarterly lease sales in 2022 after a year in which it failed to do so. We urge BLM to issue a finding of no significant impact for the parcels evaluated in this EA after updating Section 3.3.3 and removing Section 3.3.5, per our comments above. Please do not hesitate to reach out to me with any questions.

Sincerely,



Tripp Parks
Vice President of Government Affairs