



April 30, 2018

Hand delivered

U.S. Bureau of Land Management
Colorado State Office
Attn. Gregory Shoop, Acting State Director
2850 Youngfield St.
Lakewood, CO 80215
Fax: (303) 239-3799

Re: Protest of DOI-BLM-CO-N050-2017-0095-DNA – White River, Little Snake, & Kremmling Field Offices, June 7, 2018 Competitive Oil and Gas Lease Sale

Dear Mr. Shoop:

Pursuant to 43 C.F.R. § 3120.1-3, WildEarth Guardians submits the following protest of the U.S. Bureau of Land Management's ("BLM's") decision to approve a determination of NEPA adequacy ("DNA"), DOI-BLM-CO-N050-2017-0095-DNA,¹ in support of its June 7, 2018 competitive oil and gas lease sale for the White River, Little Snake, and Kremmling Field Offices in northwestern Colorado. The agency is proposing to lease 64 publicly-owned mineral parcels comprising 58,693.950 acres in Jackson, Moffat, Rio Blanco, and Routt Counties.

This protest is filed on behalf of WildEarth Guardians and its members. The mailing address to which correspondence regarding this protest should be directed is as follows:

Rebecca Fischer, Climate Guardian
WildEarth Guardians
2590 Walnut Street
Denver, CO 80205

¹ The DNA is available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/86816/142060/174420/DNA_Protest_June2018.pdf.

Guardians protests the following lease parcels:

Lease Serial #	Acres	County	Field Office/ Area
COC78936	263.530	Rio Blanco	White River
COC78937	320.000	Rio Blanco	White River
COC78938	730.050	Rio Blanco	White River
COC78939	160.000	Rio Blanco	White River
COC78940	1437.550	Rio Blanco	White River
COC78941	160.000	Rio Blanco	White River
COC78942	160.000	Jackson	Kremmling
COC78943	357.010	Jackson	Kremmling
COC78944	399.030	Jackson	Kremmling
COC78945	750.960	Jackson	Kremmling
COC78946	1690.290	Jackson	Kremmling
COC78947	160.000	Jackson	Kremmling
COC78948	1273.990	Jackson	Kremmling
COC78949	703.740	Jackson	Kremmling
COC78950	120.000	Jackson	Kremmling
COC78951	754.800	Jackson	Kremmling
COC78952	80.000	Jackson	Kremmling
COC78953	1793.460	Jackson	Kremmling
COC78954	80.000	Jackson	Kremmling
COC78955	81.650	Jackson	Kremmling
COC78956	20.000	Jackson	Kremmling
COC78957	15.000	Jackson	Kremmling
COC78958	40.000	Jackson	Kremmling
COC78959	40.000	Routt	Little Snake
COC78960	1400.180	Routt	Little Snake
COC78961	9.000	Moffat	Little Snake
COC78962	1773.450	Moffat	Little Snake
COC78963	1568.450	Moffat	Little Snake
COC78964	248.510	Moffat	Little Snake
COC78965	759.480	Rio Blanco	White River
COC78966	96.660	Moffat	Little Snake
COC78967	840.000	Rio Blanco	White River
COC78968	112.760	Moffat	Little Snake
COC78969	373.450	Moffat	Little Snake
COC78970	240.000	Moffat	Little Snake
COC78971	240.000	Moffat	Little Snake
COC78972	1040.000	Moffat	Little Snake
COC78973	1587.180	Moffat	Little Snake

COC78974	1600.340	Moffat	White River
COC78975	1432.910	Moffat	White River
COC78976	920.000	Moffat	White River
COC78977	1955.340	Moffat, Rio Blanco	White River
COC78978	880.000	Moffat, Rio Blanco	White River
COC78979	2479.840	Rio Blanco	White River
COC78980	1867.760	Rio Blanco	White River
COC78981	1680.840	Rio Blanco	White River
COC78982	192.970	Rio Blanco	White River
COC78983	1440.000	Rio Blanco	White River
COC78984	1232.390	Rio Blanco	White River
COC78985	718.400	Rio Blanco	White River
COC78986	1270.700	Rio Blanco	White River
COC78987	640.000	Rio Blanco	White River
COC78988	320.000	Rio Blanco	White River
COC78989	1840.400	Moffat	White River
COC78990	1400.000	Rio Blanco	White River
COC78991	1733.480	Rio Blanco	White River
COC78992	1749.800	Rio Blanco	White River
COC78993	2560.000	Rio Blanco	White River
COC78994	1069.730	Rio Blanco	White River
COC78995	2551.760	Moffat	Little Snake
COC78996	1996.160	Moffat	Little Snake
COC78997	1770.000	Moffat	Little Snake
COC78998	1470.950	Moffat	Little Snake
COC78999	40.000	Moffat	Little Snake

INTEREST OF THE PROTESTING PARTIES

WildEarth Guardians is a nonprofit environmental advocacy organization dedicated to protecting the wildlife, wild places, wild rivers, and health of the American West. On behalf of our members, Guardians has an interest in ensuring the BLM fully protects public lands and resources as it conveys the right for the oil and gas industry to develop publicly-owned minerals. More specifically, Guardians has an interest in ensuring the BLM meaningfully and genuinely takes into account the air, water, and climate implications of its oil and gas leasing decisions and objectively and robustly weighs the costs and benefits of authorizing the release of more pollutants known to cause health impacts and greenhouse gas emissions known to contribute to climate change.

As discussed below, WildEarth Guardians requests that the BLM refrain from offering any of the parcels up for lease unless and until it completes its requirements under the National

Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4370h, and regulations promulgated thereunder by the White House Council on Environmental Quality (“CEQ”), 40 C.F.R. §§ 1500–1508.28.

STATEMENT OF REASONS

I. Legal Background

A. Requirements of the National Environmental Policy Act

NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). The law requires federal agencies to fully consider the environmental implications of their actions, taking into account “high quality” information, “accurate scientific analysis,” “expert agency comments,” and “public scrutiny,” prior to making decisions. *Id.* § 1500.1(b). This consideration is meant to “foster excellent action,” resulting in decisions that are well informed and that “protect, restore, and enhance the environment.” *Id.* § 1500.1(c).

To fulfill the goals of NEPA, federal agencies are required to analyze the “effects,” or impacts, of their actions to the human environment prior to undertaking their actions. *Id.* § 1502.16(d). To this end, the agency must analyze the “direct,” “indirect,” and “cumulative” effects of its actions, and assess their significance. *Id.* §§ 1502.16(a), (b), and (d). Direct effects include all impacts that are “caused by the action and occur at the same time and place.” *Id.* § 1508.8(a). Indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8(b). Cumulative effects include the impacts of all past, present, and reasonably foreseeable actions, regardless of what entity or entities undertake the actions. *Id.* § 1508.7.

An agency may prepare an environmental assessment (“EA”) to analyze the effects of its actions and assess the significance of impacts. *See id.* § 1508.9; *see also* 43 C.F.R. § 46.300. Where effects are significant, an agency must prepare an Environmental Impact Statement. *See* 40 C.F.R. § 1502.3. Where impacts are not significant, an agency may issue a Finding of No Significant Impact (“FONSI”) and implement its action. *See id.* § 1508.13; *see also* 43 C.F.R. § 46.325(2).

Within an EA or EIS, the scope of the analysis must include “[c]umulative actions” and “[s]imilar actions.” 40 C.F.R. §§ 1508.25(a)(2) and (3). Cumulative actions include action that, “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” *Id.* § 1508.25(a)(2). Similar actions include actions that, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together.” *Id.* § 1508.25(a)(3). Key indicators of similarities between actions include “common timing or geography.” *Id.*

The BLM has developed a handbook to help the agency comply with NEPA. *See* BLM, NEPA Handbook, H-1790-1 (Jan. 2008), available at https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h179

[0-1.pdf](#). In it, the BLM outlines when the agency can use a DNA to determine NEPA compliance. In general, the BLM must examine whether an existing NEPA document such as the EIS for an RMP “adequately cover[s] a proposed action.” *Id.* at 23. The BLM does this by looking at four factors, including 1) whether the proposed action is “a feature of, or essentially similar to, an alternative analyzed in an existing NEPA document . . . [and] is the project within the same analysis area,” 2) whether “the range of alternatives analyzed in the existing NEPA documents [are] appropriate with respect to the new proposed action, given current environmental concerns, interests, and resource values,” 3) whether “the existing analysis is valid in light of any new information or circumstances (such as rangeland health standard assessments, recent endangered species listings . . .) [including whether] you can reasonably conclude that new information and new circumstances would not substantially change the analysis,” and 4) whether “the direct, indirect, and cumulative effects that would result from the implementation of the new proposed action [are] similar . . . to those analyzed in the existing NEPA document.” *Id.*

B. Requirements of the Federal Land Policy and Management Act

In addition to NEPA, the BLM must comply with the Federal Land Policy and Management Act (“FLPMA”). FLPMA requires that “[t]he Secretary [of the Interior] shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.” 43 U.S.C. § 1712(a).

The BLM fulfills this mandate by developing Resource Management Plans (“RMPs”) for each BLM field office. In general, RMPs must be up-to-date. The BLM’s Land Use Planning Handbook states that, “[RMP] revisions are necessary if monitoring and evaluation findings, new data, new or revised policy, or changes in circumstances indicate that decisions for an entire plan or a major portion of the plan no longer serve as a useful guide for resource management.” BLM Land Use Planning Handbook, H-1610-1, Section VII.C at 46. Furthermore, the Handbook provides that amendments are needed whenever there is a need to “[c]onsider a proposal or action that does not conform to the plan,” “implement new or revised policy that changes land use plan decisions,” “respond to new, intensified, or changed uses on public land,” or “consider significant new information from resource assessments, monitoring, or scientific studies that change land use plan decisions.” *Id.* Section VII.B at 45.

When the BLM issues a new RMP or amends a RMP, the agency must also comply with the requirements of NEPA. *See* 43 C.F.R. §§ 1601.0–6. Thus, the BLM is required to issue an EIS with each RMP. *Id.* Although the BLM may tier its project-level analyses to a broader NEPA document, such as the EIS accompanying the RMP, 43 C.F.R. § 46.140, “[n]othing in the tiering regulations suggests that the existence of a programmatic EIS for a forest plan obviates the need for any future project-specific EIS, without regard to the nature of magnitude of a project.” *Blue Mountains Biodiversity Proj. v. Blackwood*, 161 F.3d 1208, 1215 (9th Cir. 1998). Furthermore, “[a] NEPA document that tiers to another broader NEPA document . . . must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid or address any exceptions.” *Id.* Put another way, “[t]o the extent that any relevant analysis in the broader NEPA document is not sufficiently comprehensive or adequate

to support further decisions, the tiered NEPA document must explain this and provide any necessary analysis.” *Id.* § 46.140(b).

II. The BLM’s Reliance on a DNA for the Lease Sale Violates NEPA.

The 10th Circuit has questioned the BLM’s reliance on DNAs where new information “poses unique environmental concerns” not addressed in an underlying RMP. *Pennaco Energy, Inc. v. U.S. Dep’t of Interior*, 377 F.3d 1147, 1159, 1162 (10th Cir. 2004). Furthermore, courts have held that “DNAs are not themselves documents that may be tiered to NEPA documents, but are used to determine the sufficiency of previously issued NEPA documents.” *Southern Utah Wilderness All. v. Norton*, 457 F.Supp.2d 1253, 1255 (D. Utah 2006).

To support its proposal to lease 64 parcels in the White River, Little Snake, and Kremmling Field Offices and to assess compliance with NEPA, the BLM produced a DNA. The DNA relies entirely on NEPA analyses that accompany the RMPs for each field office including the: 1) the White River Field Office RMP & FEIS, approved in 1996 (“White River RMP/EIS”); 2) the White River RMP Amendment for Oil and Gas, approved in 2015 (“2015 Oil and Gas Amendment”);² 3) the Little Snake RMP & FEIS, approved in 2011, amended in 2015 (“Little Snake RMP/EIS”);³ and the Kremmling RMP & FEIS, approved in 2015 (“Kremmling RMP/EIS”).⁴ DNA at 4–7. The BLM’s DNA also relies on the Final Environmental Assessment for the June 8, 2017 Competitive Oil & Gas Lease Sale.⁵ *Id.* Unfortunately, neither the various field office RMPs/EISs nor the June 2017 EA fully analyze the impacts from leasing the 64 parcels proposed for the June 2018 sale. As a result, the agency fails to meet NEPA’s “hard look” requirement. *Morris v. U.S. Nuclear Regulatory Comm’n*, 598 F.3d 677, 681 (10th Cir. 2010).

A. The BLM Must Analyze Site-Specific, Direct and Indirect Greenhouse Gas Emissions That Will Result from the Proposed Action.

To start, the BLM must analyze the site-specific, direct and indirect greenhouse gas emissions that will result from leasing the June 2018 parcels. *See New Mexico ex rel. Richardson v. U.S. Bureau of Land Mgmt.*, 565 F.3d 683, 718 (10th Cir. 2009) (concluding that the issuance of oil and gas leases without full “no surface occupancy” stipulations in an area with oil and gas exploration was an irretrievable commitment of resources with reasonably foreseeable environmental impacts and thus required “an analysis of the site-specific impacts”). None of the proposed leases have NSO stipulations for the entire parcel, *see generally* DNA, Attachment A,

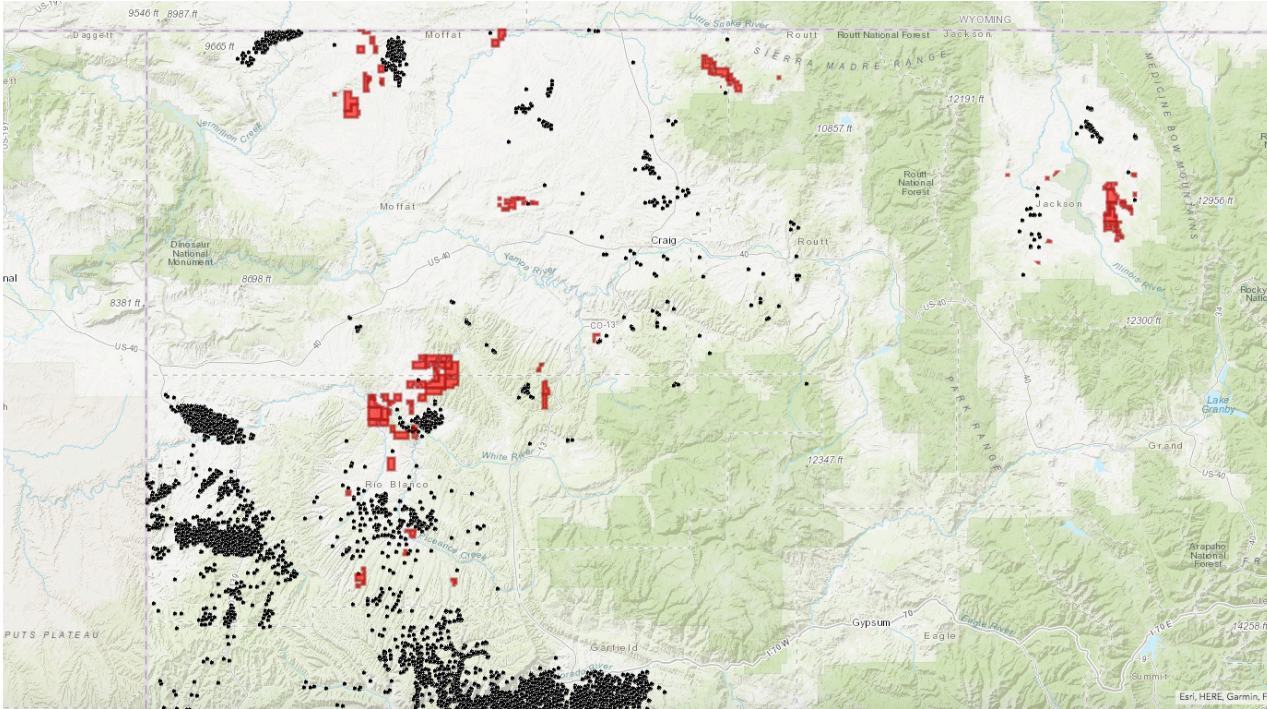
² Both the White River RMP/FEIS and the 2015 Oil and Gas Amendment are available on the BLM’s ePlanning website at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=93027>.

³ The Little Snake RMP/FEIS is available on the BLM’s ePlanning website at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=93687>.

⁴ The Kremmling RMP/FEIS is available on the BLM’s ePlanning website at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=100020>.

⁵ The June 2017 Lease Sale EA is available on the BLM’s ePlanning website at: https://eplanning.blm.gov/epl-front-office/projects/nepa/65253/108824/133143/WRFO_LSFO_KFO_Final_EA_June2017.pdf.

and the leases are in areas that have experienced extensive exploration for oil and gas. Indeed, the leases are surrounded by currently producing wells, as shown by the map below. Thus, emissions are reasonably foreseeable, and the BLM is required to estimate these through a site-specific NEPA analysis.



*The June 2018 lease sale parcels are in red.
The black dots are producing oil and gas wells as of April 2018.*

This argument is further underscored by the fact that BLM routinely calculates and discloses both direct and indirect (downstream) emissions at the leasing stage. For example, in numerous other oil and gas leasing-related NEPA documents, the agency has disclosed such emissions, including, but not limited to:

- In conjunction with a March 2018 proposal to offer oil and gas lease parcels in the Wind River-Bighorn Basin District of Wyoming. In this EA the BLM stated, “the BLM recognizes that GHG emissions are a potential effect of the subsequent fluid mineral exploration and/or development of any leases that are issued. Oil and gas activities may lead to the installation and production of new wells, which may consequently produce an increase in GHG emissions.” BLM, “Environmental Assessment, December 2017 Competitive Oil and Gas Lease Sale,” DOI-BLM-WY-R000-2017-0002-EA at 3-24, previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 1. The BLM then went on to state that “[g]uidelines for estimating project-specific GHG emissions are available (URS Corporation, 2010) . . .” *Id.* at 3-25. The agency then went so far as to actually estimate project-specific emissions *and* indirect emissions from combustion of produced oil and gas from the lease parcels. *Id.* 3-26.

- In conjunction with a December 2017 proposal to offer oil and gas lease parcels in the Vernal Field Office of Utah. In this EA, the BLM explained:

Indirect Downstream GHG emissions are estimated based on an average cumulative production rate of 24,120 barrels of oil, and 421,302 MCF gas over the life of a well, based on the production history for the fields and regions in which the parcels are located. (UDOGM, 2017a). Indirect GHG emissions are also only calculated for carbon dioxide based on combustion of the product. Using the RFD in Appendix D, and an EPA emissions factor of 0.43 Metric tons of CO₂ per Barrel (Administration, 2016), and 0.054717 MT of CO₂ per MCF of gas (EPA, 2017) indirect GHG emissions can be estimated at 33,423.94 metric tons per well. For total assumed emissions, multiply these numbers by the 135 projected wells. Actual GHG emissions may range from zero (assuming no lease parcels sold or developed) to an indeterminate upper range based on realized production rates, control technology, and physical characteristics of any oil produced.

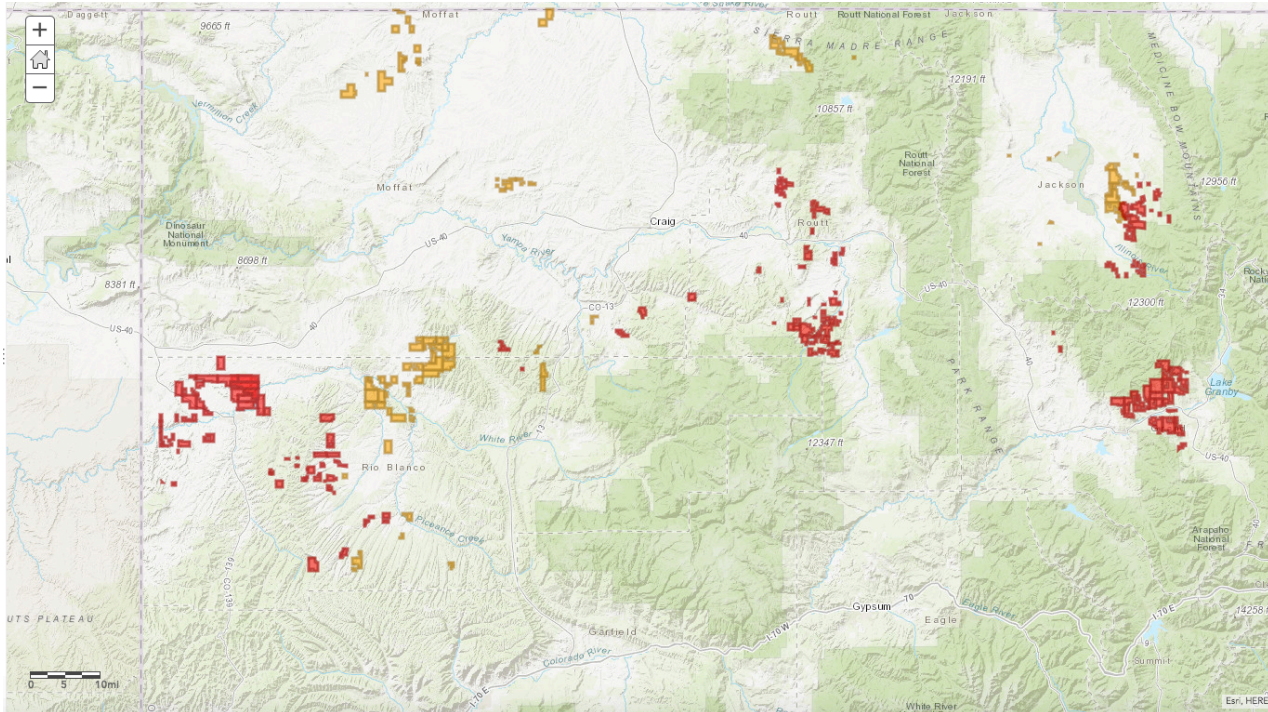
BLM, “Environmental Assessment, December 2017 Competitive Oil and Gas Lease Sale,” EA No. DOI-BLM-UT-G010-2017-0028-EA at 53, previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 2.

Clearly, such calculations are possible and absent such an analysis of direct and indirect emissions, BLM’s approval of the proposed leasing is unsupported and in violation of NEPA.

Furthermore, the BLM cannot rely on the underlying RMPs/EISs to fulfill its NEPA duties. Although the BLM discloses the overall amount of direct greenhouse gas emissions expected to result from oil and gas development across field offices in two of the underlying RMPs/FEISs, *see, e.g.*, White River RMP, Oil & Gas Development Amendment, App’x 5; Kremmling RMP/FEIS at 4-25, the decision in *New Mexico ex rel. Richardson* requires BLM to conduct a site-specific analysis of the 2018 lease parcels, including a calculation of downstream greenhouse gas emissions. 565 F.3d at 718. Additionally, to the extent that the BLM relies on the Little Snake RMP/FEIS, its analysis is doubly flawed because the Little Snake RMP/FEIS does not quantify direct, indirect, or cumulative greenhouse gas emissions *at all*. *See* Little Snake RMP/FEIS at 4-8, 4-230 to 4-231. This is a major shortcoming, because just last month, a federal district court reaffirmed that the BLM must include “an analysis of the environmental consequences of downstream combustion of coal, oil, and gas open to development under each RMP. The specific projections in the RMPs of the amounts of resources to be extracted, and their foreseeable uses, makes such analysis reasonably possible.” *Western Org. of Resource Councils v. U.S. Bureau of Land Mgmt.*, CV 16-21-GF-BMM, 2018 WL 1456624, at *9 (D. Mont. March 23, 2018). And, as shown by the White River and Kremmling RMPs, the BLM itself has recognized that not only is it important to disclose such emissions, it is reasonable to prepare an analysis and assessment of such emissions.

Finally, the BLM’s reliance on the June 2017 EA also does not suffice to meet agency’s NEPA obligations for the June 2018 lease sale. First, NEPA’s tiering regulations do not allow for EA to DNA tiering. *See* 40 C.F.R. § 1502.20. Second, as shown by the map below, the

parcels for the June 2018 are in a significantly different area from the June 2017 parcels. Indeed, the June 2017 lease sale proposed to lease 106 parcels (101,031.2 acres), and the June 2018 sale proposes to lease 64 parcels (58,693.950 acres)—a significant difference.



The June 2018 parcels are in orange, and the June 2017 parcels are in red.

Third, although Guardians appreciates that the BLM included a per well emissions estimate for the White River Field Office parcels in its June 2017 EA (further underscoring that it is indeed possible to do), this analysis is flawed and cannot be carried over to the June 2018 parcels. For example, in response to the preliminary June 2017 EA, the EPA noted that the BLM’s emissions estimates were based on *regional* analyses of greenhouse gas emissions, and “do[] not estimate the direct or indirect GHG emissions *due to the development of the proposed leases.*” Exhibit 1, EA at Attachment F, Response to EPA Comments (emphasis added). EPA recommended instead that the BLM use emissions estimates for the specific lease sale parcels as provided in the last line of Table 3-9 (below), for all of the lease sale parcels and this is what BLM must do here.

Table 3-9: Potential WRFO O&G Emissions (TPY)*

Parameter	PM ₁₀	PM _{2.5}	VOC	NO _x	CO	SO ₂	CO ₂	CH ₄	N ₂ O	HAPs
New Annual Emissions	11.4	3.0	60.4	52.8	39.2	3.6	13,886.8	181.3	0.3	9.2
Year 20 Potential Emissions Total	224.2	59.3	1,193.8	1,042.3	774.5	72.0	274,264.7	3,580.8	5.7	182.3
Fractions – Total Potential Emissions for Lease Parcels / CARMMS Low Scenario 2021	0.57	0.38	0.25	0.38	0.35	0.40	0.24	0.13	0.30	0.26

*“New Annual and Year 20 Potential” emissions developed using CARMMS calculators and potential oil and gas development rates using WRFO RFD, RMPA Alternative E and acreage for WRFO Lease Sale Parcels. Fractions determined by dividing 20-year potential emissions by CARMMS Low Scenario emissions for WRFO Federal O&G (see Table 3-7).

As demonstrated by this table, the BLM has the ability to estimate greenhouse gas emissions for the lease parcels but has chosen not to do so in its June 2018 DNA for some unexplained reason.

In response to these arguments, BLM reiterates that the analyses in the RMPs/FEISs are “comprehensive and sufficient,” and that it will complete an additional NEPA analyses at the APD stage. DNA, Attachment F at 6-7. But, this argument fails to address the very real gap in the Little Snake RMP/EIS which completely omits any calculations of direct, indirect, or cumulative greenhouse gas emissions from oil and gas and the impacts that will result. This argument also ignores the Tenth Circuit’s decision in *New Mexico ex rel. Richardson*, which requires BLM to conduct a site-specific analysis if the leases will allow surface disturbance and impacts are reasonably foreseeable. 565 F.3d at 718. As discussed above, both of these criteria are met here. The BLM cannot ignore this, and because it does, the DNA and proposed lease sale are in violation of NEPA.

BLM also avers that emissions from leasing are not reasonably foreseeable and that given this, “it is appropriate for a NEPA document to *quantify* potential GHG emissions from oil and gas development, and utilize a qualitative analysis to describe and evaluate the potential climate impacts.” DNA, Attachment F at 9 (emphasis added). But, BLM fails to follow its own advice. The Little Snake RMP/EIS does not include a quantification of emissions and the DNA by nature cannot include this. Furthermore, contrary to the BLM’s blanket statement that the June 2017 EA “includes a full write up of the potential climate change associated with future global emissions projections[including] . . . direct, indirect, and downstream (i.e. combustion) emissions projections,” *id.*, the June 2017 EA does not include complete information regarding climate change. *See* June 2017 EA at 43. As the EPA identified in its comments on the draft June 2017 EA, the BLM only calculates direct emissions for the White River FO parcels, and not for the Little Snake or Kremmling parcels. *Id.* Furthermore, the BLM does not actually calculate downstream emissions for the June 2017 parcels, either. *Id.* Instead, the BLM compares the entire state of Colorado’s downstream emissions with totals for federal lands and the entire U.S. *Id.* at 50–51. Thus, the analysis in the June 2017 EA cannot stand in for the BLM’s required NEPA analysis for the June 2018 lease sale.

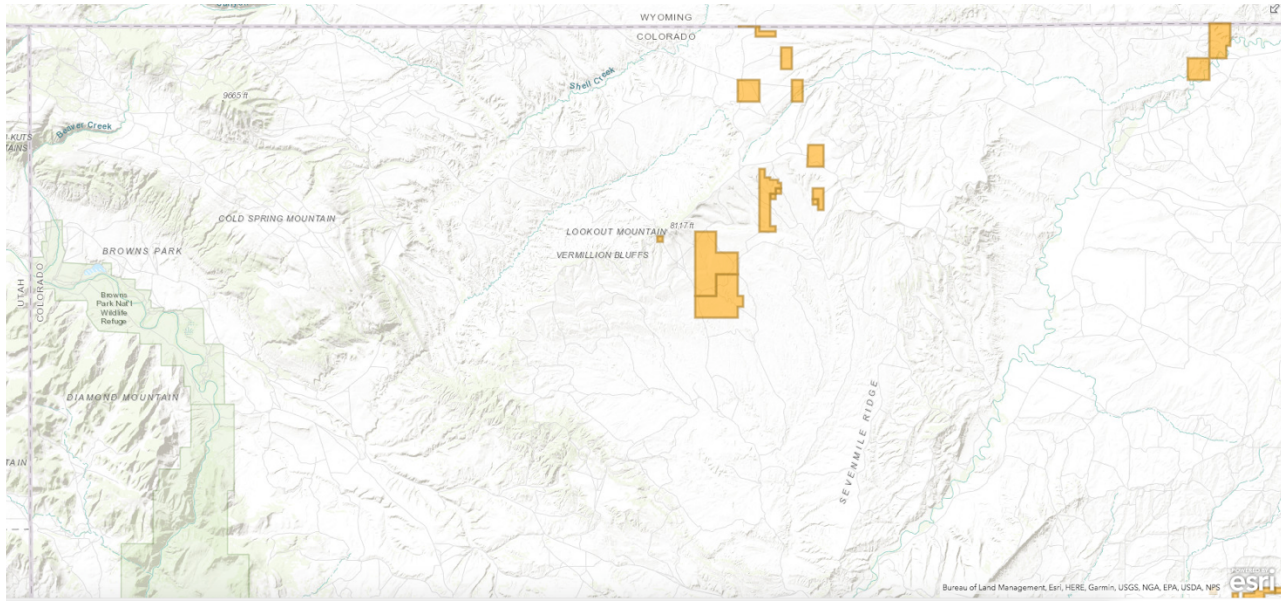
B. The BLM Fails to Analyze a Range of Reasonable Alternatives.

Because the BLM fails to complete a site-specific analysis for the June 2018 lease sale parcels, the BLM also fails to analyze a range of reasonable alternatives for the sale, including a “no leasing” alternative or an alternative that addresses the climate impacts. As the BLM notes, the White River, Little Snake, and Kremmling RMPs/FEIS analyze between four to five management alternatives. DNA at 8–10; *see also* White River RMP/FEIS Oil & Gas Development Amendment at 6–8; Little Snake RMP/FEIS Executive Summary at ES-5 to ES-7; Kremmling RMP/FEIS Executive Summary at ES-6 to ES-7. But, notably, the RMPs/FEISs do not include a “no leasing alternative” for the lease parcels, *id.*, and the BLM admits this. *See, e.g.*, DNA at 4–5.

This approach violates NEPA. *See* 40 C.F.R. § 1502.14(d) (noting that in considering reasonable alternatives, the BLM must “[i]nclude the alternative of no action”). Simply put, because the various RMPs/FEISs do not address this issue and the BLM does not issue an EA, the BLM has never considered an actual “no leasing alternative” in relation to the proposed parcels, in contravention of NEPA. The BLM cannot shirk its duty to consider in detail a range of reasonable alternatives to its proposed leasing, especially a no leasing alternative. Thus, the agency cannot lease the proposed parcels.

In response to this, BLM first argues that the underlying RMPs/EIS provide “a broad analysis of the proposed leases.” DNA, Attachment F at 7. But, this statement actually underscores the argument presented by Guardians—a broad analysis is not enough. The BLM must consider the site-specific impacts of the proposed leasing, including a no leasing alternative for the specific parcels at issue.

The BLM also argues that it considered a range of reasonable alternatives in the June 2017 EA. DNA at 8–9; *see also* DNA, Attachment F at 7. But, as noted above, NEPA’s regulations do not allow for the tiering of a DNA to an EA. *See* 40 C.F.R. § 1502.20. More importantly, the June 2017 parcels are located in different areas, thereby presenting different resource concerns. For example, the sale of different parcels may result in drilling into different formations, which in turn may result in different levels of greenhouse gas emissions or other environmental impacts. In particular, the northernmost parcels in the June 2018 lease sale are approximately 40 miles from any of the nearest parcels in the June 2017 sale and near Browns Park National Wildlife Refuge. Nothing in the June 2017 EA discusses this wildlife refuge, further highlighting that the BLM cannot rely on the June 2017 EA. Because of these differences BLM cannot ensure that the alternatives presented in the June 2017 EA are sufficient.



Browns Park National Wildlife Refuge is located on the left side of the map and approximately 15 miles from the June 2018 parcels in orange.

Because the BLM does not complete an EA or EIS for the lease sale or otherwise calculate potential greenhouse gas emissions from the sale, the agency also fails to consider an alternative that mitigates the impacts of climate change. The analyses in the underlying RMPs/EISs also fail to consider this. As noted above, the Little Snake RMP/EIS has no actual analysis of the impacts of climate change or any calculations regarding emissions that will result. See Little Snake RMP/FEIS at 4-8, 4-230 to 4-231. And, although the other two RMPs/EIS include more information, the BLM still fails to analyze the regional downstream emissions and the site-specific impacts of the lease sale as it has done in the past and as it is required to do so by law.

The need for an alternative that considers a no leasing alternative or an alternative that address the impacts of greenhouse gas emissions is further underscored by the finding in a recently released report on the supply-side climate policies. Exhibit 2, Green, Fergus & Dennis, Richard, *Cutting with Both Arms of the Scissors: The Economic and Political Case for Restrictive Supply-Side Climate Policies*, Climatic Change (2018), available online at <https://link.springer.com/article/10.1007%2Fs10584-018-2162-x>. The report finds “that restrictive supply-side policies are sound in economic theory and widely used in a range of other policy domains . . . [and have] economic (efficiency and effectiveness) and political (feasibility and “feedback”) advantages [over demand-side policies].” Either way, BLM must consider and explain this alternative and a no leasing alternative and cannot do so in a DNA.

C. The BLM Improperly Defers Its Site-Specific Analysis to the Application Permit to Drill Stage.⁶

Throughout the various RMPs/FEISs and the DNA, the BLM claims that future impacts will be analyzed and assessed, and alternatives considered once a potential developer submits a drilling proposal. *See, e.g.*, DNA at 3 (“BLM would perform additional site-specific NEPA analysis before approving an APD or other surface-disturbing activity.”), 16 (“In the event that a lease is sold, additional analysis would be completed prior to the BLM approving any surface-disturbing activity, including an APD”). Although Guardians appreciates that BLM recognized the need for additional analysis at the APD stage, this promise does not absolve the agency of its duty to comply with NEPA at the leasing stage. As numerous courts have held, leasing conveys a right to develop. *See New Mexico ex rel. Richardson v. U.S. Bureau of Land Mgmt.*, 565 F.3d 683, 718 (10th Cir. 2009). Thus, absent any stipulations that provide the agency with authority to constrain and prevent future development to limit greenhouse gas or climate impacts, the BLM has no basis to assert that it is appropriate to wait to conduct its legally-required analysis under NEPA. *Id.* Here, no such stipulations have been proposed, rendering invalid BLM’s proposed approval of the lease sale parcels. *Id.*

Furthermore, the BLM more often than not fails to analyze and assess the impacts of greenhouse gas emissions at the drilling stage. In fact, in the White River, Little Snake, and Kremmling Field Offices, the agency frequently categorically excludes drilling permits from any NEPA analysis, meaning no analysis of environmental impacts even occurs. *See, e.g.*, 114 Oil and Gas Related Activities (102 which involve new wells) Approved through CXs, BLM ePlanning Search for CX’s within the three offices for project during FYs 2016, 2017, & 2018, https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do. Some specific examples of the BLM approving drilling proposals through categorical exclusions where no analysis of greenhouse gas emissions occurred include, but are not limited to:

- Proposed approval of 14 new wells through the expansion of existing well pads in the White River Field Office, APD Extensions for TEP’s 14 New Wells on the Existing RGU 13-36-198 Well Pad, DOI-BLM-CO-N050-2018-003-CX through DOI-BLM-CO-N050-2018-0015-CX;
- Proposed approval of 20 new wells through the expansion of existing well pads in the White River Field Office, APD Extensions for TEP’s Twenty New Wells on the RG 13-13-298 Well Pad - well Federal RG 543-14-298, DOI-BLM-CO-N050-2018-003-CX through DOI-BLM-CO-N050-2018-0015-CX;
- Approval of 1 new well in the Kremmling and White River Field Offices, Sandridge Mallard 0780 1-15H22 APD, DOI-BLM-CO-N050-2017-0094-CX (previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 3);
- Approval of 19 new wells in the White River Field Office, WPX’s 19 New Wells on One New Well Pad (well 31-36-198), DOI-BLM-CO-N050-2016-0023-CX through DOI-BLM-CO-N050-2016-0041-CX (previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 4);

⁶ The BLM fails to address this argument in its response to comments.

- Approval of 21 new wells in the White River Field Office, WPX's 21 New Wells on One New Well Pad (well 514-25-198), DOI-BLM-CO-N050-2016-0002-CX through DOI-BLM-CO-N050-2016-0022-CX (previously attached to Guardians' Jan. 5, 2018 Comments as Exhibit 5).

As these categorical exclusions indicate, unless the BLM actually commits, through the imposition of a stipulation or stipulations, to conduct additional NEPA analysis at the drilling stage, it more often than not does not happen. This means any commitment to address the greenhouse gas emissions generated by development of the proposed leases through subsequent NEPA is, at best, hollow, and at worst, a deliberate attempt to avoid accountability to addressing potentially significant environmental impacts under NEPA.

D. The BLM Fails to Fully Analyze and Assess the Cumulative Impacts of Greenhouse Gas Emissions that Would Result from Issuing the Proposed Lease Parcels.⁷

The BLM also completely ignores the cumulative impacts that will result from past and future lease sales in Colorado and surrounding states. For example, in 2017 and 2018, the BLM has leased or is planning to lease, the following:

- Colorado: On March 9, 2017, the BLM sold 17 parcels covering 16,447.180 acres in southwestern Colorado. See https://eplanning.blm.gov/epl-front-office/projects/nepa/70207/99188/120209/Sale_Results_March2017.pdf. On June 8, 2017, the BLM sold 70 parcels covering 63,268.120 acres in western Colorado. See https://eplanning.blm.gov/epl-front-office/projects/nepa/70241/109218/133789/Sale_Results_June2017.pdf. In December of 2017, the BLM sold 23 parcels covering 22,073.110 acres in western Colorado. See https://eplanning.blm.gov/epl-front-office/projects/nepa/72396/126871/154522/Sale_Results_December_2017.pdf. In March 2018, the BLM sold 4 parcels totaling 1,400 acres. <https://www.blm.gov/press-release/blm-colorado-oil-and-gas-lease-sale-nets-10063>.
- New Mexico, Texas, & Oklahoma: The BLM held a lease sale on June 8, 2017 where it sold 17 parcels (4,230.56 acres), https://eplanning.blm.gov/epl-front-office/projects/nepa/68426/109289/133858/June_8_2017_Sale_Results.pdf. The lease sale scheduled for September 2017 sold 61 parcels (15,331.91 acres). See https://eplanning.blm.gov/epl-front-office/projects/nepa/69506/119984/146392/NM_090717_LeaseSaleResults.pdf. And, for the December 2017 sale, the BLM sold 7 parcels (2,104.15 acres). See https://eplanning.blm.gov/epl-front-office/projects/nepa/80914/126963/154610/Final_Sale_Results_12_07_2017.pdf.
- Utah: On June 13, 2017, the agency sold 8 parcels covering 7,478.990 acres in the Color Country District Office for sale. See

⁷ The BLM fails to address this argument in its response to comments.

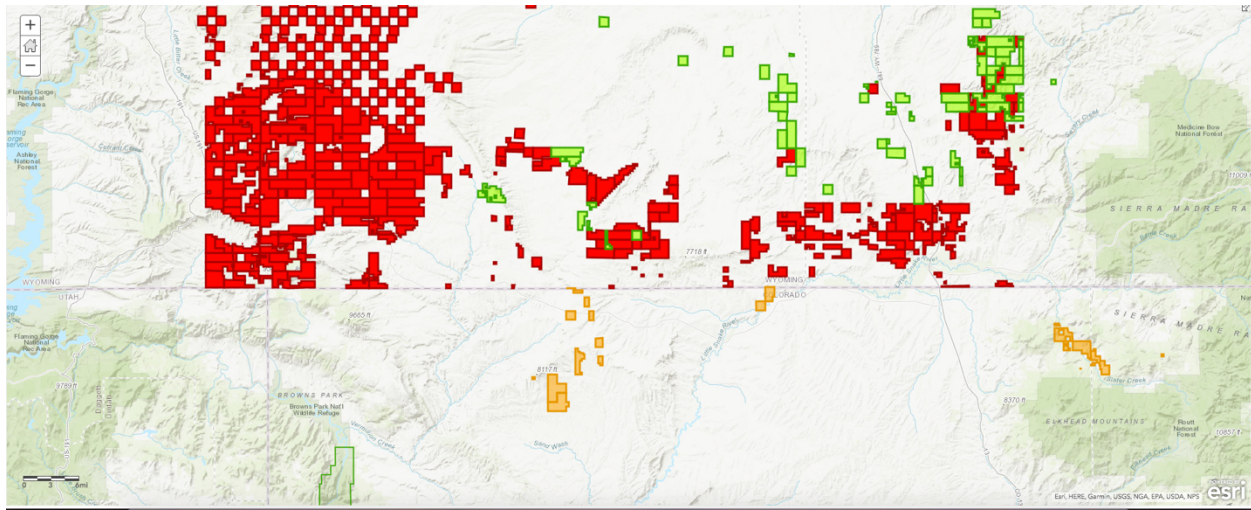
https://www.blm.gov/sites/blm.gov/files/Programs_EnergyandMinerals_OilandGas_Leasing_RegionalLeaseSales_Utah_2017_SaleResults.pdf. In September 2017, the BLM sold three parcels containing 4,101.710 acres in the West Desert District. *See* https://www.blm.gov/sites/blm.gov/files/Programs_OilandGas_Leasing_RegionalLeaseSales_Utah_2017_SALERESULTS.pdf. The agency also sold 49 parcels (53,763.560 acres) at its December 2017 sale. *See* <https://eplanning.blm.gov/epl-front-office/projects/nepa/80165/127348/154996/CompStats.pdf>. And, in March 2018, the BLM sold 43 parcels comprising 51,482.94 acres in the Moab and Monticello Field Offices. <https://eplanning.blm.gov/epl-front-office/projects/nepa/82261/138354/170209/COMPSTATSone.pdf>.

- **Wyoming:** In June 2017, the BLM sold 26 parcels covering 31,924.77 acres in the High Desert District Office. *See* <https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/110941/135810/SALERESULTS.pdf>. In September 2017, BLM sold 127 parcels totaling 106,687 acres in northeastern Wyoming. *See* https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/121307/148154/SALE_RESULTS_3rd_Qtr_2017.v3.pdf. This December, the agency sold 41 parcels (68,818.92 acres) in southwestern Wyoming. *See* <https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/128297/156143/SALERESULTS.pdf>. In March 2018, the BLM sold 152 parcels (151,678.43 acres) in the High Plains and Wind River-Bighorn Basin Districts, https://www.energynet.com/govt_listing.pl?sg=3675. And, in June 2018, the agency is offering 163 parcels (199,298.57 acres) in the High Desert and Wind River-Big Horn Basin Districts. [https://eplanning.blm.gov/epl-front-office/projects/nepa/85072/132080/161176/WY-183Q_Lease_Sale_EA_\(News_Release,_WRBBD,_012318\).pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/85072/132080/161176/WY-183Q_Lease_Sale_EA_(News_Release,_WRBBD,_012318).pdf); https://eplanning.blm.gov/epl-front-office/projects/nepa/85072/131838/160884/18-14_WY-183Q_Lease_Sale_EA_HPDPDF.pdf.

All told, the BLM has leased or is proposing to lease approximately 875 parcels or 858,983.87 acres of publicly-owned land in the states listed above in 2017 and 2018.⁸ Unfortunately, nothing in BLM's DNA or the underlying RMPs/EIS discusses these surrounding lease sales.

⁸ This number includes the proposed leases for the Colorado BLM's September 2018 lease sale.

The BLM's lack of due diligence on this front is particularly alarming because, as shown by the map below, there are a large number of leases parcels from the June and December 2018 sales in Wyoming less than 6 miles from the June 2018 lease sale parcels in Colorado.



The June 2018 Colorado lease parcels are in orange. The June 2018 Wyoming parcels are in green. The December 2018 Wyoming parcels are in red.

The BLM's failure to discuss or acknowledge the lease sales occurring within Colorado and in neighboring Rocky Mountain states is a clear violation of NEPA which renders the DNA and any BLM approval of the lease parcels invalid.

E. The BLM Fails to Analyze the Costs of Reasonably Foreseeable Carbon Emissions Using Well-Accepted, Valid, Credible, GAO-Endorsed, Interagency Methods for Assessing Carbon Costs.

In addition to an incomplete cumulative impacts analysis, the BLM omits a discussion on the social cost of carbon protocol, a valid, well-accepted, credible, and interagency-endorsed method of calculating the costs of greenhouse gas emissions and understanding the potential significance of such emissions. This omission is particularly conspicuous because the BLM touts the economic benefits of oil and gas leasing in the underlying RMPs/EISs. *See* White River RMP/EIS⁹ at 4-59 (“The federal revenue from energy development has been and will continue to be very important to the Area. Amounts paid in 1994 for federal oil and gas royalties include \$1,122,59 to Garfield County, \$2,266,863 to Moffat County, and \$3,740,311 to Rio Blanco County.”); Kremmling RMP/EIS, 3-236 to 3-255; Little Snake RMP/EIS 3-134 to 3-138. Failure to use this best available science in the violates NEPA’s hard look mandate. *See* 40 C.F.R. § 1500.1 (“NEPA procedures must insure that environmental information is available to public

⁹ The FEIS for the White River RMP Oil and Gas Amendment is not available online but from the BLM’s response to protests on the document, it is clear that the agency did not include an analysis of the social cost of carbon while including the economic benefits of production. *See Director’s Protest Resolution Report, White River (Colorado) Oil and Gas Proposed Resource Management Plan Amendment and Final Environmental Impact Statement* at 19 (Aug. 2015), https://www.blm.gov/sites/blm.gov/files/White_River_RMPA_Oil_and_Gas_Protest_Report_%28August_17%2C_2015%29.pdf.

officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.”); *S. Utah Wilderness All. v. U.S. Dep’t of the Interior*, No. 2:13-CV-01060-EJF, 2016 WL 6909036, at *9 (D. Utah Oct. 3, 2016) (holding that BLM’s decision to not to rely on a study with higher well development estimates without explanation violated NEPA’s requirement to use the best available information).

The social cost of carbon protocol for assessing climate impacts is a method for “estimat[ing] the economic damages associated with a small increase in carbon dioxide (CO₂) emissions, conventionally one metric ton, in a given year [and] represents the value of damages avoided for a small emission reduction (i.e. the benefit of a CO₂ reduction).” Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 6, U.S. Environmental Protection Agency (“EPA”), “Fact Sheet: Social Cost of Carbon” (Nov. 2013) at 1, formerly available online at <https://www.epa.gov/climatechange/social-cost-carbon>. The protocol was developed by a working group consisting of several federal agencies.

In 2009, an Interagency Working Group was formed to develop the protocol and issued final estimates of carbon costs in 2010. Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 7, Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866” (Feb. 2010), available online at https://www.epa.gov/sites/production/files/2016-12/documents/scc_tsd_2010.pdf. These estimates were then revised in 2013 by the Interagency Working Group, which at the time consisted of 13 agencies. Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 8, Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866” (May 2013), available online at <https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf>. This report and the social cost of carbon estimates were again revised in 2015. Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 9, Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866” (July 2015). Again, this report and social cost of carbon estimates were revised in 2016. Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 10, Interagency Working Group on Social Cost of Greenhouse Gases, “Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis – Under Executive Order 12866” (Aug. 2016), available online at https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/scc_tsd_final_clean_8_26_16.pdf.

Most recently, as an addendum to previous Technical Support Documents regarding the social cost of carbon, the Department of the Interior joined numerous other agencies in preparing estimates of the social cost of methane and other greenhouse gases. Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 11, Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, “Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866:

Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide” (Aug. 2016).

Depending on the discount rate and the year during which the carbon emissions are produced, the Interagency Working Group estimates the cost of carbon emissions, and therefore the benefits of reducing carbon emissions, to range from \$10 to \$212 per metric ton of carbon dioxide. *See* Chart Below. In one of its more recent update to the Social Cost of Carbon Technical Support Document, the White House’s central estimate was reported to be \$36 per metric ton. Exhibit 11 at 4.

In July 2014, the U.S. Government Accountability Office (“GAO”) confirmed that the Interagency Working Group’s estimates were based on sound procedures and methodology. Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 12, GAO, “Regulatory Impact Analysis, Development of Social Cost of Carbon Estimates,” GAO-14-663 (July 2014), <http://www.gao.gov/assets/670/665016.pdf>.

Year	5% Average	3% Average	2.5% Average	High Impact (95 th Pct at 3%)
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

Most recent social cost of carbon estimates presented by Interagency Working Group on Social Cost of Carbon. The 95th percentile value is meant to represent “higher-than-expected” impacts from climate change. See Exhibit 11.

Although often utilized in the context of agency rulemakings, the protocol has been recommended for use and has been used in project-level decisions. For instance, the EPA recommended that an EIS prepared by the U.S. Department of State for the proposed Keystone XL oil pipeline include “an estimate of the ‘social cost of carbon’ associated with potential increases of GHG emissions.” Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 13, EPA, Comments on Supplemental Draft EIS for the Keystone XL Oil Pipeline (June 6, 2011).

More importantly, BLM’s Billings Field Office, has also utilized the social cost of carbon protocol in the context of oil and gas approvals. For example, the Billings Field Office estimated “the annual SCC [social cost of carbon] associated with potential development on lease sale parcels.” Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 14, BLM, “Environmental Assessment for October 21, 2014 Oil and Gas Lease Sale,” DOI-BLM-MT-0010-2014-0011-EA (May 19, 2014) at 76,

https://blm_prod.opengov.ibmcloud.com/sites/blm.gov/files/MT-DAKS%20Billings%20Oct%202014%20EA%20Protest.pdf. In conducting its analysis, the BLM used a “3 percent average discount rate and year 2020 values,” presuming social costs of carbon to be \$46 per metric ton. *Id.* Based on its estimate of greenhouse gas emissions, the agency estimated total carbon costs to be “\$38,499 (in 2011 dollars).” *Id.* In Idaho, the BLM also utilized the social cost of carbon protocol to analyze and assess the costs of oil and gas leasing. Using a 3% average discount rate and year 2020 values, the agency estimated the cost of carbon to be \$51 per ton of annual CO₂e increase. Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 15, BLM, “Little Willow Creek Protective Oil and Gas Leasing,” EA No. DOI-BLM-ID-B010-2014-0036-EA (February 10, 2015) at 81, https://eplanning.blm.gov/epl-front-office/projects/nepa/39064/55133/59825/DOI-BLM-ID-B010-2014-0036-EA_UPDATED_02272015.pdf. Based on this estimate, the agency estimated that the total carbon cost of developing 25 wells on five lease parcels to be \$3,689,442 annually. *Id.* at 83.

To be certain, the social cost of carbon protocol presents a conservative estimate of economic damages associated with the environmental impacts climate change. As the EPA has noted, the protocol “does not currently include all important [climate change] damages.” Exhibit 6 at 1. As explained:

The models used to develop [social cost of carbon] estimates do not currently include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature because of a lack of precise information on the nature of damages and because the science incorporated into these models naturally lags behind the most recent research.

Id. In fact, more recent studies have reported significantly higher carbon costs. For instance, a report published in 2015 found that current estimates for the social cost of carbon should be increased six times for a mid-range value of \$220 per ton. Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 16, Moore, C.F. and B.D. Delvane, “Temperature impacts on economic growth warrant stringent mitigation policy,” *Nature Climate Change* 2 (January 12, 2015). And a report from 2017, estimated carbon costs to be \$50 per metric ton, a value that experts have found to be the “best estimate of the social cost of greenhouse gases.” *See* Exhibit 21, Revesz, R. *et al.* “Best cost estimate of greenhouse gases,” 357 *Science* 655, 655 (Aug. 18, 2017). In spite of uncertainty and likely underestimation of carbon costs, nevertheless, “the SCC is a useful measure to assess the benefits of CO₂ reductions,” and thus a useful measure to assess the costs of CO₂ increases. Exhibit 6.

That the economic impacts of climate change, as reflected by an assessment of social cost of carbon, should be a significant consideration in agency decision making, is emphasized by a 2014 White House report, which warned that delaying carbon reductions would yield significant economic costs. Previously attached to Guardians’ Jan. 5, 2018 Comments as Exhibit 17, Executive Office of the President of the United States, “The Cost of Delaying Action to Stem Climate Change,” (July 2014). As the report states:

[D]elaying action to limit the effects of climate change is costly. Because CO₂

accumulates in the atmosphere, delaying action increases CO₂ concentrations. Thus, if a policy delay leads to higher ultimate CO₂ concentrations, that delay produces persistent economic damages that arise from higher temperatures and higher CO₂ concentrations. Alternatively, if a delayed policy still aims to hit a given climate target, such as limiting CO₂ concentration to given level, then that delay means that the policy, when implemented, must be more stringent and thus more costly in subsequent years. In either case, delay is costly.

Id. at 1.

The requirement to analyze the social cost of carbon is supported by the general requirements of NEPA and is specifically supported in federal case law. Courts have ordered agencies to assess the social cost of carbon pollution, even before a federal protocol for such analysis was adopted. In 2008, the U.S. Court of Appeals for the Ninth Circuit ordered the National Highway Traffic Safety Administration to include a monetized benefit for carbon emissions reductions in an Environmental Assessment prepared under NEPA. *Center for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1203 (9th Cir. 2008). The Highway Traffic Safety Administration had proposed a rule setting corporate average fuel economy standards for light trucks. A number of states and public interest groups challenged the rule for, among other things, failing to monetize the benefits that would accrue from a decision that led to lower carbon dioxide emissions. The Administration had monetized the employment and sales impacts of the proposed action. *Id.* at 1199. The agency argued, however, that valuing the costs of carbon emissions was too uncertain. *Id.* at 1200. The court found this argument to be arbitrary and capricious. *Id.* The court noted that while estimates of the value of carbon emissions reductions occupied a wide range of values, the correct value was certainly not zero. *Id.* It further noted that other benefits, while also uncertain, were monetized by the agency. *Id.* at 1202.

In 2014, a federal court did likewise for a federally-approved coal lease. That court began its analysis by recognizing that a monetary cost-benefit analysis is not universally required by NEPA. *See High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F.Supp. 3d 1174, 1193 (D. Colo. 2014) (citing 40 C.F.R. § 1502.23). However, when an agency prepares a cost-benefit analysis, “it cannot be misleading.” *Id.* at 1182 (citations omitted). In that case, the NEPA analysis included a quantification of benefits of the project, but, the quantification of the social cost of carbon, although included in earlier analyses, was omitted in the final NEPA analysis. *Id.* at 1196. The agencies then relied on the stated benefits of the project to justify project approval. This, the court explained, was arbitrary and capricious. *Id.* Such approval was based on a NEPA analysis with misleading economic assumptions, an approach long disallowed by courts throughout the country. *Id.* Furthermore, the court reasoned that even if the agency had decided that the social cost of carbon was irrelevant, the agency must still provide “*justifiable reasons* for not using (or assigning minimal weight to) the social cost of carbon protocol” *Id.* at 1193 (emphasis added). In August 2017, a federal district court in Montana cited to the *High Country* decision and reaffirmed its reasoning, rejecting a NEPA analysis for a coal mine expansion that touted the economic benefits of the expansion without assessing the carbon costs that would result from the development. *See Mont. Env'tl. Info. Ctr. v. U.S. Office of Surface Mining*, No. CV 15-106-M-DWM (D. Mont. Aug. 14, 2017).

A 2015 op-ed in the New York Times from Michael Greenstone, the former chief economist for the President's Council of Economic Advisers, confirms that it is appropriate and acceptable to calculate the social cost of carbon when reviewing whether to approve fossil fuel extraction. Previously attached to Guardians' Jan. 5, 2018 Comments as Exhibit 18, Greenstone, M., "There's a Formula for Deciding When to Extract Fossil Fuels," New York Times (Dec. 1, 2015), available at <https://www.nytimes.com/2015/12/02/upshot/theres-a-formula-for-deciding-when-to-extract-fossil-fuels.html>. In 2017, the Proceedings of the National Academy of Sciences of the United States of America ("PNAS"), acknowledged in a peer-reviewed article from February of this year that the social cost of carbon analysis is "[t]he most important single economic concept in the economics of climate change," and that "federal regulations with estimated benefits of over \$1 trillion have used the SCC." Previously attached to Guardians' Jan. 5, 2018 Comments as Exhibit 19, William D. Nordhaus, Revisiting the Social Cost of Carbon, PNAS, Feb. 14, 2017, <http://www.pnas.org/content/114/7/1518.full.pdf>.

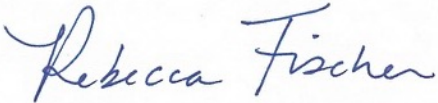
In its response to this argument, the BLM makes two mistakes. First, the agency notes that the social cost of carbon is just one approach that an agency can take. DNA, Attachment F at 16–17. But, this ignores the fact that all of the underlying RMPs/EISs quantify the economic benefits of leasing more oil and gas but fail to disclose the economic costs of additional leasing. See White River RMP at 4-59; Kremmling RMP, 3-236 to 3-255, Little Snake RMP 3-134 to 3-138. This lopsided analysis is exactly what the courts found arbitrary and capricious in the decisions in *High County Conservation Advocates* and *Montana Environmental Information Center*. The BLM must either explain why it took this approach or include an analysis of the economic costs of releasing more carbon. Second, the BLM also seems to misunderstand the purpose of the social cost of carbon when it argues that the underlying RMPs/EISs provide an appropriate analysis through general discussions of climate change. The protocol is useful because it provides *context and significance* to the climate change discussion instead of concluding, as BLM always does, that leasing results in insignificant, incremental impacts because climate change is a global problem. The latter approach does nothing to inform the public of the impacts of federal oil and gas leasing and cannot stand under NEPA.

Clearly, the social cost of carbon provides a useful, valid, and meaningful tool for assessing the climate consequences of the proposed leasing, and the BLM's complete failure to discuss it or otherwise explain its omission while touting the economic benefits of leasing oil and gas in the RMPs/EISs is arbitrary and capricious.

III. Conclusion

In sum, the BLM's DNA for the June 2018 oil and gas lease sale and the underlying RMPs/FEISs, do not meet the requirements of NEPA because the BLM 1) fails to analyze the site-specific impacts from reasonably foreseeable direct and indirect greenhouse gas emissions, 2) fails to analyze a range of reasonable alternatives, 3) fails to analyze the cumulative impacts from greenhouse gas emissions that will result from issuing the lease sale parcels, and 4) fails to analyze the proposed action within the context of the social cost of carbon. As a result, Guardians requests that agency defer all of the leases in the proposed action unless and until the BLM completes its duties under NEPA.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca Fischer". The signature is written in a cursive style with a light blue background behind the text.

Rebecca Fischer, Climate Guardian
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