

**National Audubon Society
The Wilderness Society
Wyoming Outdoor Council
Wyoming Wilderness Association**

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Via electronic mail at <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=116997>

December 13, 2018

**Comments on the First Quarter Competitive Oil and Natural Gas Lease Sale
Environmental Assessment of the BLM Wyoming State Office**

Dear Travis Bargsten:

Please accept these comments on the above oil and natural gas lease sale environmental assessment that are submitted by The Wilderness Society, Wyoming Outdoor Council, Wyoming Wilderness Association, and the National Audubon Society. Under the Proposed Action Alternative, the BLM plans to offer 146 parcels totaling approximately 163,917.72 acres of federal minerals.

The Environmental Assessment (EA) prepared for this lease sale is numbered DOI-BLM-WY-0000-2019-0001-EA.

The Proposed Alternative offers parcels in sensitive wildlife habitat. Sixty five percent of offered parcels are located within Greater sage-grouse Priority Habitat Management Areas (PHMA) and all but two of the remaining parcels are in General Habitat Management Areas (GHMA). Even under BLM's Modified Alternative, 21 proposed parcels would be leased in designated mule deer migration corridors, some within stopovers and crucial winter range.

I. ISSUES OF CONCERN

The parties are concerned that BLM has violated NEPA by failing to analyze a reasonable range of alternatives, failing to take a hard look at impacts, and failing to adequately analyze cumulative impacts. We are concerned that BLM has violated FLPMA by the agency's failure to adhere to the Wyoming BLM Approved Resource Management Plan Amendments (ARMPA) for Greater-sage grouse, and by failing to manage for multiple use. BLM's proposal does not prioritize leasing outside of Core Greater sage-grouse habitat, in opposition to the Core Area Protection Strategy. We are particularly concerned about these parcels in the context of the ongoing sage grouse revisions for RMPs, which weaken the strategy and risk the species' survival. We are also concerned about the lack of effective protections for mule deer migration corridors and crucial winter range in the face of dramatic population level declines. Furthermore, we are concerned about leasing within ACEC's, near WSAs, near National Historic Trails, and

within LWCs, and the values this would put at risk. Finally, the EA fails to incorporate the best available science on greenhouse gas emissions and climate change and to effectively mitigate these impacts.

II. INTERESTS OF THE PARTIES

The Wilderness Society, Wyoming Outdoor Council, Wyoming Wilderness Association, and National Audubon Society have a long-standing interest in the management of BLM lands in Wyoming and we engage frequently in the decision-making processes for land use planning and project proposals that could potentially affect our public lands and mineral estate, including the oil and natural gas leasing process and lease sales. Our members and staff enjoy a myriad of recreational, scientific and other opportunities on BLM-managed public lands, including hiking, biking, nature-viewing, photography, and quiet contemplation in the solitude offered by wild places. Our missions are to work for the protection and enjoyment of the public lands for and by our members and the public.

The National Audubon Society's mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity.

The mission of the Wilderness Society is to protect wilderness and inspire Americans to care for our wild places.

Founded in 1967, the Wyoming Outdoor Council is the state's oldest and largest independent conservation organization. Its mission is to protect Wyoming's environment and quality of life for present and future generations.

The Wyoming Wilderness Association is a non-profit organization created in 1979 by a group of wilderness advocates and outdoors people who envisioned the Wyoming Wilderness Act. Our mission is to defend Wyoming's magnificent wild landscapes from the pressures of development, mismanagement, and commodification. We represent the values and interest of nearly 2,000 Wyoming members.

Although our organizations generally support the judicious leasing and responsible development of the public's oil and gas resources when done in the right place and after full disclosure of the environmental impacts that will result from development, we have concluded that with respect to this proposal, none of those basic guiding tenets have been achieved.

III. STATEMENT OF CONCERNS

A. BLM Has Not Complied with the National Environmental Policy Act.

1. The EA fails to analyze a reasonable range of alternatives.

NEPA generally requires the BLM to conduct an alternatives analysis for "any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42

U.S.C. § 4332(2)(E). The regulations further obligate BLM to “rigorously explore and objectively evaluate all reasonable alternatives” including those “reasonable alternatives not within the jurisdiction of the lead agency,” so as to “provid[e] a clear basis for choice among options.” 40 C.F.R. § 1502.14. The range of alternatives is the heart of a NEPA document because “[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of [a NEPA analysis] to inform agency deliberation and facilitate public involvement would be greatly degraded.” *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 708 (10th Cir. 2009). That analysis must cover a reasonable range of alternatives so that an agency can make an informed choice from the spectrum of reasonable options.

By contrast, in evaluating oil and gas lease sales, BLM frequently analyzes only two alternatives: a no action alternative, which would exclude all lease parcels from the sale; and a lease everything alternative, which would offer for lease nearly all proposed parcels. An EA offering a choice between leasing every proposed parcel, and leasing nothing at all, does not present a reasonable range of alternatives. *See TWS v. Wisely*, 524 F. Supp. 2d 1285, 1312 (D. Colo. 2007) (BLM violated NEPA by failing to consider “middleground compromise between the absolutism of the outright leasing and no action alternatives”); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999) (NEPA analysis failed to consider reasonable range of alternatives where it “considered only a no action alternative along with two virtually identical alternatives”).

While in this lease sale BLM does consider a third alternative, the BLM Modified Alternative, it differs hardly at all from the Proposed Action Alternative because only five parcels would be deferred out of the 146 being considered for sale and 144 parcels would still be offered. EA at 2-2 to 2-4. BLM is still not considering several reasonable middle-ground alternatives. For example, the EA fails to evaluate an alternative that would defer leasing in sage-grouse priority habitat management areas (PHMA) and/or general habitat management areas (GHMA), despite a legal obligation to do so under the Approved Resource Management Plan Amendments (September 2015) (ARMPA) and associated policy guidance. *See Wyoming BLM ARMPA at 24*, Management Objective No. 14 (“Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMAs and GHMAs.”); *see also* Record of Decision (ROD) and Approved RMP Amendments for the Rocky Mountain Region at 1-25 (“the ARMPs . . . prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs. . . . This objective is intended to guide development to lower conflict areas and as such protect important habitat. . . .”). The BLM has also failed to fully consider deferring parcels in Lands with Wilderness Characteristics (LWC) and big game migration corridors. Because BLM has not evaluated these or any other “middle-ground” alternatives, it has violated NEPA.

BLM’s statements in the EA that deferring parcels in PHMA and GHMA was not considered as an alternative because such deferrals would not conform with the applicable RMPs is simply wrong. EA at 2-9. Designating lands as open to leasing in an RMP makes them *available* to lease but does not *require* that they be leased. Moreover, the prioritization requirement of the RMPs applies here, and clearly requires deferring at least some leasing in sage-grouse habitat.

Even if lands at issue here are open for leasing under the RMPs, it would be entirely reasonable for BLM to consider deferring parcels with important sage-grouse habitat, and in big game migration corridors and LWCs. Virtually all of the parcels in this sale (all but two) are in sage-grouse habitat. EA at 4-22. Two parcels are in LWC and another eleven are in citizen-proposed wilderness. *Id.* at 3-2. There are extensive areas of big game migration corridors in the High Desert District. *Id.* at Maps on pages 2-5 to 2-8. Given the importance of these areas to the conservation of this imperiled species, protection of these crucial big game ranges, and for preserving important wild lands, the EA should have analyzed an alternative that deferred leasing in at least some of these areas besides just the four parcels mentioned in the BLM Modified Alternative.

2. *BLM has failed to take the necessary “hard look” at potential environmental impacts.*

BLM has not taken the required “hard look” at potential environmental impacts, as required by NEPA. Under NEPA, BLM must evaluate the “reasonably foreseeable” site-specific impacts of oil and gas leasing prior to making an “irretrievable commitment of resources.” *New Mexico ex rel. Richardson*, 565 F.3d at 718; *see also Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988) (agencies are to perform hard look NEPA analysis “before committing themselves irretrievably to a given course of action so that the action can be shaped to account for environmental values”); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553 (1978) (stating NEPA “places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action”). Courts have held that BLM makes such a commitment when it issues an oil and gas lease without reserving the right to later prohibit all development. *New Mexico ex rel. Richardson*, 565 F.3d at 718; *Pennaco Energy, Inc. v. United States Dep’t of the Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004)..

Here, BLM is in fact proposing to make an “irretrievable commitment of resources” by offering leases without reserving the right to prevent future development; the site-specific impacts are “reasonably foreseeable” and should be analyzed in this EA, rather than waiting until a leaseholder submits an application for permit to drill (APD). Unfortunately, the EA takes exactly the wrong approach and does not adequately evaluate impacts. The EA claims that leasing is merely an administrative action and entails no environmental impacts or consequences. EA at 1-3 and 4-1. Therefore, BLM expressly defers a site-specific analysis on key resource values, including wildlife, recreation, visual resources, and useable water resources. The BLM fails to consider reasonably foreseeable impacts in this EA despite acknowledging a responsibility to do so. *See* EA at 1-4 (citing *New Mexico ex rel. Richardson v. BLM*). This approach violates NEPA, and BLM must take the site-specific impacts of leasing into account at this stage.

NEPA requires that BLM analyze and disclose all reasonably foreseeable impacts from development before it issues the leases. The environmental effects of reasonably foreseeable future actions analyzed in the 2015 ARMPA were premised on the implementation of the conservation measures contained in the plan amendments, including, importantly, prioritizing oil and gas leasing and development outside of PHMAs and GHMAs, implementing the net conservation gain requirement, requiring compensatory mitigation, requiring effective noise controls in GHMA as well as PHMA, mineral withdrawals in sagebrush focal areas, compliance with required design features, etc. For the analysis of impacts to be accurate, it must examine the

direct, indirect and cumulative effects of habitat-disturbing actions in sage-grouse habitat without the implementation of those conservation measures, which have recently been abandoned by BLM or may be abandoned in the near future. *See, e.g.*, Instruction Memorandum (IM) 2018-093 (eliminating the compensatory mitigation requirement). *See also* EA at 4-22 (mentioning the sage-grouse land use plan amendments BLM has initiated that may eliminate protections in the 2015 plans). BLM’s EA does not consider these reasonably foreseeable impacts.

Moreover, BLM cannot rely for this sale on the plan-level analysis conducted for the ARMPA. Tiering is only appropriate when a subsequent NEPA document incorporates by reference earlier general matters into a subsequent narrower statement; but it does not allow a subsequent analysis to ignore the *specific* environmental issues that are presented in the later analysis. 40 C.F.R. § 1508.28. The ARMPA does not address the site-specific impacts associated with issuing these particular lease parcels. On the contrary, by requiring a prioritization analysis the ARMPA contemplates that such an analysis will occur at the leasing stage. *See S. Fork Band Council of W. Shoshone of Nevada v. U.S. Dep’t of the Interior*, 588 F.3d 718, 726 (9th Cir. 2009) (holding that while tiering is sometimes permissible, “the previous document must actually discuss the impacts of the project at issue”).

3. *BLM has failed to consider the cumulative impacts of leasing.*

NEPA also requires BLM to evaluate the cumulative impacts of this lease sale “resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” 40 C.F.R. § 1508.27(b)(7); *Kern v. Bureau of Land Management*, 282 F.3d 1062, 1075-77 (9th Cir. 2002). To satisfy this requirement, BLM’s NEPA analysis must consider the cumulative impact of all the recent and currently-planned oil and gas auctions in which BLM has offered hundreds of leases affecting sage grouse habitat protected under the RMPs. These sales include, but are not limited to:

1. The first, second, and third quarter 2018 lease sales in Wyoming,
2. The pending special lease sale in Wyoming scheduled for February where 302 parcels in PHMA will be offered,
3. The first, second, third, and fourth quarter 2018 leases sales in Montana, and
4. Recently proposed lease sales in Utah, Colorado, and Nevada.

These lease sales have proposed to sell hundreds of parcels and hundreds of thousands of acres in sage-grouse habitats, and all of them except for the sales in Nevada are in states that border Wyoming. Yet none of these sales are considered in the EA, which violates the obligation to consider cumulative impacts.

In addition, the cumulative impacts from the following oil and gas projects have not been considered in the EA:

- Continental Divide-Creston Oil and Gas Project (8,950 new wells proposed),
 - Normally Pressured Lance Oil and Gas Project (3,500 new wells proposed),
 - Converse County Oil and Gas Project (5,000 new wells proposed),
 - Moneta Divide Natural Gas and Oil Development Project (4,250 new wells proposed),
- and

- Greater Crossbow Oil and Gas Project (1,500 new wells proposed).¹

These massive projects – which together will involve drilling over 23,000 new oil and gas wells and constructing thousands of miles of new roads and pipelines in Wyoming, will have significant impacts on sage-grouse and sage-grouse habitats. *See, e.g.*, Converse County Oil and Gas Project Draft EIS at 3.18-57 (estimating that 54 leks will be abandoned due to project activities; “[d]espite the recent upward trend in peak male attendance, all greater sage-grouse leks in the analysis area are at risk of being abandoned as development continues to increase.”). These projects need to be considered as part of a cumulative impacts analysis.

BLM must analyze and disclose the cumulative impacts of this wave of leasing and oil and gas projects on the Greater sage-grouse and its habitat. BLM (in the Rocky Mountain Region Record of Decision and the Wyoming “Nine Plan” Amendments and Revisions) and numerous authorities, have recognized the importance of addressing sage-grouse conservation on a comprehensive range-wide basis, and accounting for connectivity between state and regional populations and habitats, habitat fragmentation, and other impacts. As stated in the Rocky Mountain ROD, for the grouse plans collectively: “The cumulative effect of these measures is to conserve, enhance, and restore GRSG habitat across the species’ remaining range in the Rocky Mountain Region and to provide greater certainty that BLM resource management plan decisions in GRSG habitat in the Rocky Mountain Region can lead to conservation of the GRSG and other sagebrush-steppe-associated species in the region.” Rocky Mountain ROD at S-2.

Under NEPA, BLM cannot lease hundreds of parcels covering many thousands of acres in Montana, Wyoming and other states without considering the cumulative and trans-boundary impacts to the greater sage-grouse and other resources. It also cannot ignore the cumulative impacts of 23,000 new oil and gas wells that are proposed to be drilled in Wyoming.

The cumulative (as well as direct and indirect) impacts from issuing these leases and permitting these wells may result in significant impacts to the environment. It is not plausible for BLM to assert that leasing 163,917 acres (over 256 square miles), in addition to BLM’s numerous other recent and planned large lease sales, will not have any significant impact. Thousands of new oil and gas wells will also have significant impacts. Properly analyzing those impacts will require a full environmental impact statement (EIS), not just an EA. Issuing a finding of no significant impact (FONSI) for this lease sale would be arbitrary and capricious and violate NEPA.

BLM claims “cumulative effects are described in the RMP FEISs to which this EA tiers.” EA at 4-27. But the RMPs did not consider the impacts of these specific leases—no leasing was even proposed in these areas when the RMPs were developed. The RMPs only considered leasing in a general sense, not at a site or lease-specific level. The EA claims the “RMP FEISs to which this EA tiers address potential cumulative effects, including as a result of other reasonably foreseeable future actions outside of their respective planning areas.” *Id.* But again, the leasing and projects we have highlighted were not even proposed when these RMPs were developed.

¹ While the map on page 1-2 of the EA shows the Moneta Divide project and the Converse County project it does not discuss cumulative impacts when these projects are considered, and if anything the map emphasizes the need to consider the impacts of these projects when considered alongside the parcels to be offered in this lease sale, which are also shown on the map.

Therefore, BLM needs to improve the cumulative impacts analysis in this EA and make decisions accordingly.

B. The BLM is Violating the Federal Land Policy and Management Act.

1. The EA is not consistent with the Wyoming BLM Approved Resource Management Plan Amendments (September 2015) Prioritization Mandate, as required by FLPMA.

BLM has not prioritized leasing outside of sage-grouse PHMA and GHMA, as required by the Rocky Mountain Region Record of Decision (ROD), the Wyoming BLM Approved Resource Management Plan Amendments (ARMPA), and the Buffalo Field Office Resource Management Plan (RMP). Under the Federal Land Policy and Management Act (FLPMA), BLM must manage public lands “in accordance with the [applicable] land use plans . . .” 43 U.S.C. § 1732(a); *see also* 43 C.F.R. § 1610.5-3(a) (“All future resource management authorizations and actions . . . shall conform to the approved plan.”). Commenting on these provisions, the Supreme Court said,

The statutory directive that BLM manage “in accordance with” land use plans, and the regulatory requirement that authorizations and actions “conform to” those plans, prevent BLM from taking actions inconsistent with the provisions of a land use plan.

Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 68 (2004).

Here, the leasing EA is not consistent with provisions of the Rocky Mountain ROD and Wyoming BLM ARMPA, which require the “prioritization” of oil and gas leasing outside of PHMAs and GHMAs. Under the Rocky Mountain Region ROD, BLM must:

prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs . . . to further limit future surface disturbance and to encourage new development in areas that would not conflict with GRSG. This objective is intended to guide development to lower conflict areas and, as such, protect important habitat and reduce the time and cost associated with oil and gas leasing development. It would do this by avoiding sensitive areas, reducing the complexity of environmental review and analysis of potential impacts on sensitive species, and decreasing the need for compensatory mitigation.

Rocky Mountain Region ROD at 1-25. The Wyoming BLM ARMPA echoes this directive and includes the following objective: “Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMAs and GHMAs.” ARMPA Management Objective No. 14, at 24. The Buffalo Field Office ARMP/ROD makes the same provision. Buffalo ARMP/ROD at 50.

In addition, the Lander RMP ROD states that:

In order to avoid surface-disturbing activities in Core Areas, priority will be given to development of oil and gas and other mineral resources outside Core Areas, subject to applicable stipulations. When authorizing development of oil

and gas and other mineral resources in core habitat, subject to applicable stipulations for the conservation of greater sage-grouse, priority will be given to development in non-habitat areas first and then in the least suitable habitat for sage-grouse.

Lander RMP ROD at 68, decision # 4120. See also decisions 4087-4115 in the Worland RMP ROD and decisions 4088-4116 in the Cody RMP ROD. “The LUPs in BLM Wyoming direct the priority for leasing of fluid mineral resources to be outside of sage-grouse habitat areas.” Wind River/Bighorn Basin WY-183Q Third Quarter Oil and Gas Lease Sale EA at 3-34.

The prioritization mandate applies even when lands are designated as open for leasing under the applicable RMP. Thus, the fact that these lands are open to leasing does not excuse compliance with the prioritization requirement, as BLM asserts in the EA. EA at 3-22 and 4-22. In addition, BLM cannot rely on stipulations as a substitute for compliance with the RMP prioritization mandate. *See id.* (stating “appropriate” stipulations have been applied). The RMP requirement is to apply certain stipulations *in addition to* prioritization, not instead of it. They are separate RMP provisions that both must be satisfied.

BLM’s now-replaced Instruction Memorandum (IM) 2016-143 also put in place many provisions to guide prioritization of leasing outside of sage-grouse habitats. While IM 2016-143 has been replaced with IM 2018-026, which states, “[i]n effect, the BLM does not need to lease and develop outside of GRS habitat management areas before considering any leasing and development within GRS habitat,” this mere IM cannot supersede the statutory obligation for BLM to manage public lands “in accordance with the [applicable] land use plans . . .” And the RMPs are clear, BLM must “prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs” and “[p]riority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMAs and GHMAs.” The prioritization requirement applies as much to leasing as specific development plans. BLM’s claims that IM 2018-026 allows it to ignore the prioritization requirement at this leasing stage are misplaced. EA at 3-22.

To the extent IM 2018-026 can be read as purporting to remove any requirement to limit leasing in sage-grouse habitat management areas, and the requirement to prioritize leasing outside those areas, it is inconsistent with the Rocky Mountain ROD, ARMPA, and Buffalo and Lander RMPs. The entire point of the prioritization objective is to limit development and surface disturbance in important sage-grouse habitat—not simply to order BLM’s administrative paperwork. Nor is the prioritization requirement satisfied by “encourag[ing] lessees to voluntarily prioritize leasing” outside habitat management areas. IM 2018-026 at 3. The prioritization objective applies to BLM’s decisions about where to offer leases—not the business choices of companies with no stewardship obligations—and it is binding on the agency.

BLM is planning to lease almost exclusively in sage-grouse habitats where industry has expressed an interest. It is planning to offer 146 parcels for sale and approximately 65 percent (95) of those are in PHMA with “almost all of the remainder” in GHMA, and only two parcels being located in non-habitat areas. EA at 4-22. This is an affront to sage-grouse conservation and will help ensure that the Fish and Wildlife Service (FWS) is forced to change its “not warranted” decision and be pushed to move to list the sage-grouse under the Endangered Species Act. BLM is showing that in Wyoming at least there are not “adequate regulatory mechanisms” to protect

the sage-grouse, as the FWS relied on for its not warranted finding. Leasing nearly 150 parcels that cover over 150,000 acres is not in compliance with the prioritization requirement in BLM's RMPs. The BLM's failure to prioritize leasing outside of sage-grouse habitats is a violation of FLPMA.

According to the EA, there are currently approximately 1.2 million acres of federal leases in PHMA. EA at 3-23 (Figure). This represents a 74 percent reduction in the acreage under lease in PHMAs since implementation of the core area strategy began in 2008. *Id.* 3-22. Yet now BLM is proposing to lease an additional 95 parcels covering about 95,500 acres in PHMA, which would represent an 8 percent increase in PHMA leased acreage. In addition, pursuant to the lease sale proposals for the first, second, and third quarter 2018 lease sales in Wyoming, BLM proposed to offer an additional 303 parcels in PHMA, representing about an additional 397,365 acres in PHMA.² Coupled with the acreage that BLM deferred from the fourth quarter 2018 lease sale due to the decision in the Idaho court case, and which it now plans to reoffer at a special February 2019 lease sale, where 365,902 acres (on 302 parcels) would be offered in PHMA, this would bring the total increase in PHMA leasing up about 72 percent. Clearly this level of leasing in PHMAs is not meeting the prioritization requirement, or the conservation objectives of the 2015 sage-grouse plans.

Additionally, BLM's EA fails to sufficiently consider impacts to winter concentration areas, and as such is inconsistent with the Governor's executive order on Greater Sage-Grouse Core Area Protection. EO 2015-4 (2015). The EO notes that Wyoming has the greatest population of greater sage-grouse across the range, and that a "robust and scientifically rigorous system of monitoring" is necessary to conserve the species. *Id.* at 1, 2. To that end, the state supports research of activities in winter concentration areas, and is committed to developing "appropriate local, science-based standards to manage disturbance in identified and mapped winter concentration areas." EO at 5. The EO stresses the importance of collaborating with federal agencies, including BLM, to "ensure a uniform and consistent application of this Executive Order to maintain and enhance Greater sage-grouse habitats and populations." *Id.* at 5, 6. The Wyoming BLM ARMPA also addresses winter concentration areas. ARMPA Management Decision SSS10 at 36. MD SSS10 states the following:

Surface disturbing and/or disruptive activities in sage-grouse winter concentration areas would be prohibited from December 1-March 14.

Activities in unsuitable habitats within PHMAs would be evaluated under the exception and modification criteria and could be allowed on a case-by-case basis.

Protection of additional mapped winter concentration areas in GHMAs would be implemented where winter concentration areas are identified as supporting populations of sage-grouse that attend leks within PHMAs (core only). Appropriate seasonal timing restrictions and habitat protection measures would be considered and evaluated in consultation with the WGFD in all identified winter concentration areas.

Id. at 36.

² The exact acreage in PHMAs is not clearly indicated in all of the EAs for the first three quarter lease sales, so this is an estimate that may not be completely accurate.

BLM appears to recognize the need to protect sage-grouse winter concentration areas on approximately 75 of the parcels it plans to offer, where a timing limitation stipulation is specified. However, the EA does not include an analysis of reasonably foreseeable impacts to this important habitat and the sage-grouse that rely upon it. BLM's analysis of the proposed action alternative says only that "Parcels offered in PHMAs and GHMAs will be offered subject to the appropriate Greater sage-grouse stipulations (see Attachment 5.1), in conformance with the BLM's recent RMP revisions and amendments to provide for conservation of Greater sage-grouse and their habitats." EA at 4-22. In failing to analyze potential impacts to sage-grouse from leasing in Winter Concentration Areas, the BLM ignores the Governor's EO and the agency's own management decision. The EA makes no mention whatsoever of the additional "habitat protection measures" to be "considered and evaluated... in all identified winter concentration areas," nor of any consultation between BLM and WGFD regarding winter concentration areas as required by the ARMPA. As such, BLM should defer all leases in Greater sage-grouse winter concentration areas until potential adverse impacts have been adequately evaluated, consultation with WGFD occurs, and appropriate habitat protection measures are designed in collaboration with WGFD.

2. *The BLM is not complying with FLPMA's multiple-use mandate.*

Under FLPMA, BLM is required to manage the public lands on the basis of multiple use and sustained yield. 43 U.S.C. §§ 1712(c)(1); 1732(a). As the Supreme Court has noted, "[m]ultiple use management is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values." *Norton v. S. Utah Wilderness Alliance*, 542 U.S. at 58 (internal quotations omitted).

In recognition of the environmental components of the multiple use mandate, courts have repeatedly held that under FLPMA's multiple use mandate, development of public lands is not required, but must instead be weighed against other possible uses, including conservation to protect environmental values. *See, e.g., New Mexico ex rel. Richardson*, 565 F.3d at 710 ("BLM's obligation to manage for multiple use does not mean that development *must* be allowed. . . . Development is a possible use, which BLM must weigh against other possible uses — including conservation to protect environmental values, which are best assessed through the NEPA process."); *Rocky Mtn. Oil & Gas Ass'n v. Watt*, 696 F.2d 734, 738 n.4 (10th Cir. 1982) ("BLM need not permit all resource uses on a given parcel of land."). And, just as BLM can deny a project outright in order to protect the environmental uses of public lands, it can also condition a project's approval on the commitment to mitigation measures that lessen environmental impacts. *See, e.g., Pub. Lands Council v. Babbitt*, 167 F.3d 1287, 1300-01 (10th Cir. 1999) ("FLPMA unambiguously authorizes the Secretary to specify terms and conditions in livestock grazing permits in accordance with land use plans"); *Grynberg Petro*, 152 IBLA 300, 306-07 (2000) (describing how appellants challenging conditions of approval bear the burden of establishing that they are "unreasonable or not supported by the data").

The multiple use framework's emphasis both on environmental resources and on the need to balance between present and future generations are highly relevant to consideration of impacts to wildlife and recreation. For example, multiple use includes "the management of the public lands and their various resource values so that they are utilized in the combination that will best

meet the present and future needs of the American people; . . . a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources . . . ; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment. . . .” 43 U.S.C. § 1702(c).

The fact an RMP makes lands *available* for leasing does not mean that actually leasing the lands meets BLMs’ multiple use obligations. Given BLM’s acknowledged discretion to engage in leasing, or not leasing, under the Mineral Leasing Act, it is clear the leasing stage, as much as the planning stage, is when multiple use decisions should be made. Since land use plan decisions only set a basic framework for land management, and do not make project-specific decisions, it is clear the leasing stage is when decisions should be made about whether issuing a lease parcel would meet BLM’s multiple use responsibilities, and this must be reflected in the NEPA analysis at the leasing stage, which has not occurred here.

None of the overarching legal mandates under which BLM operates – be it multiple-use or non-impairment – authorizes the Department of the Interior (DOI) to establish energy development as the dominant use of public lands. On our public lands, energy development is an allowable use that must be carefully balanced with other uses. Thus, any action that attempts to enshrine energy development as the dominant use of public lands is invalid on its face and inconsistent with the foundational statutes that govern the management of public lands.

Federal courts have consistently rejected efforts to affirmatively elevate energy development over other uses of public lands. In the seminal case, *New Mexico ex rel. Richardson v. BLM*, the Tenth Circuit put to rest the notion that BLM can manage chiefly for energy development, declaring that “[i]t is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses.” 565 F.3d 683, 710 (10th Cir. 2009); *see also S. Utah Wilderness Alliance v. Norton*, 542 U.S. 52, 58 (2004) (defining “multiple use management” as “striking a balance among the many competing uses to which land can be put”). Other federal courts have agreed. *See, e.g., Colo. Envtl. Coalition v. Salazar*, 875 F. Supp. 2d 1233, 1249 (D. Colo. 2012) (rejecting oil and gas leasing plan that failed to adequately consider other uses of public lands). Thus, any action by BLM that seeks to prioritize oil and gas leasing and development as the dominant use of public lands would violate FLPMA. BLM must therefore consider a reasonable range of alternatives for this lease sale that considers and balances the multiple uses of our public lands, consistent with NEPA and FLPMA.

BLM’s energy dominance thrust removes the public from decision making. This approach was rejected in the Idaho court decision. *Western Watersheds Project v. Zinke*, No. 1:18-cv-00187-REB at 41 and 55-56 (D. Idaho, Sept. 21, 2018) (stating “the public involvement requirements of FLPMA and NEPA cannot be set aside in the name of expediting oil and gas lease sales. The benefits of public involvement and the mechanism by which public involvement is obtained are no “unnecessary impediments and burdens.””). Moreover, it fails to recognize that natural resources protection, particularly to support hunting opportunities, is a multi-billion-dollar industry in Wyoming. Elevating energy development to the level that BLM is engaging in ignores past agreements to avoid leasing in sensitive areas and ignores current research regarding the impacts of oil and gas activities on wildlife and wildlife habitats. Across the West oil and gas companies hold leases that they are not developing. About 50 percent of currently approved federal oil and gas leases are not producing energy. Yet this push by industry, which is being

accommodated by BLM, locks up our public lands and prevents them from being managed for multiple use. If BLM listened to the public, it would scale back this massive leasing rush so that multiple use values could be more fully recognized and accommodated.

C. The EA Has Not Adequately Addressed Lands with Wilderness Characteristics, in Violation of NEPA and FLPMA.

Table 1: Lease Sale Parcels with Conflicts

Parcel #	BLM LWC	Citizen LWC	< 0.25 mile from WSA	Citizens Wilderness Proposal	Impacts Wilderness Values of WSA
46			⊗		⊗
47			⊗		⊗
62				⊗	⊗
64			⊗ < 0.5 mile from WSA	⊗	⊗
68				⊗	⊗
104	⊗			⊗	⊗
107		⊗		⊗	⊗
109			⊗		⊗
129				⊗	
130				⊗	
131				⊗	
132				⊗	
133				⊗	
134				⊗	
139		⊗			⊗
140		⊗			⊗

1. Parcels located in BLM and Citizen lands with wilderness characteristics.

The EA identifies 2 parcels (104 in the RFO and 137 in the PFO) as possessing Lands with Wilderness Characteristics (LWCs). EA at page 24. We thank the BLM for noting LWCs in the EA. There are also several parcels identified by citizens to possess LWC (107, 139, and 140.) These parcels are noted in table 1 above. Parcels 139 and 140 are located in the RSFO in LWC units WY040-2011-144 and WY040-2011-002. Decisions are still being determined in the RMP revision for this area. We request that the BLM not offer these parcels until the field office has completed the RMP process. Finally, parcel 107, located in the RFO, is within the BLM unique identifier WY-030-4412.

The LWC unit is 75,842 acres. The citizen's inventory indicates that this unit possesses wilderness characteristics. This unit shares many of the same natural features of the nearby Adobe Town WSA. This area contains highly erodible soils. A night spent in the Kinney Rim area will often reveal no unnatural light in any direction. This unit is one of the few places where an individual can spend a night or several nights viewing the stars in silence without interruption from the sights and sounds of other humans. Additionally, within this unit, smaller valleys and topographic features dotted with pinion juniper and enormous boulders, which provides outstanding topographic and vegetative screening along its entire length. We request that the BLM review the citizen's wilderness inventory for this unit before offering further leasing in this unit.

The BLM must review significant new information submitted by the public; otherwise the BLM fails to take the requisite "hard look" at how the sale of the parcels listed in tables 1 would affect the Wilderness resources as required by NEPA. In order to evaluate impacts under NEPA, the BLM must analyze those impacts from an accurate understanding of conditions on the ground. 40 C.F.R. § 1502.15 (agencies must "describe the environment of the areas to be affected or created by the alternatives under consideration."); *see also Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988) ("without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA."). The BLM should therefore defer leasing these parcels until the agency has updated its inventory for these areas in response to the information submitted to the agency.

2. The EA does not analyze the impacts to LWCs or the Wilderness Resource.

The EA does not analyze the impacts to Wilderness resources. Nowhere in the EA does the BLM analyze the impacts to LWCs. Additionally, there are 11 parcels that fall within the Citizens Wilderness Proposal (CWP). (See table 1). We request that the BLM defer or delete these parcels until the BLM adequately analyzes the impacts to the Wilderness resource.

NEPA requires the BLM to analyze any potential impacts to LWCs and the Wilderness resource. The purpose of an EA is to evaluate and minimize adverse environmental effects before

they occur. *See*, 40 C.F.R. §§ 1508.8, 1508.9. An EA should provide “sufficient evidence and analysis” to justify this determination, in part by taking a “hard look” at potential direct, indirect and cumulative impacts of the proposed action. *See, e.g. Wilderness Soc. v. Forest Serv.*, 850 F. Supp. 2d 1144, 1155 (D. Idaho 2012). The BLM must fully evaluate the impacts of leasing on LWCs in the EA. Simply listing the LWC units that overlap with the proposed lease parcels, as the BLM has done in the EA, does not constitute environmental impact analysis under NEPA. NEPA requires federal agencies to consider “any adverse environmental effects which cannot be avoided.” 42 U.S.C. § 4332(C)(ii). Effects that must be considered include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8.

3. Parcels are within areas that have ongoing plan amendments.

Two parcels (139 and 140) in the RSFO conflict with decisions pending the completion of a plan amendment. These parcels lie on the boundary of the Twin Buttes WSA and fall inside the citizen’s LWCs noted above. The RSFO is undergoing a management revision process that will decide their future management and does not have management direction for the LWCs. We respectfully ask that the BLM not take away the opportunity for the public to decide how these lands should be managed in the next plan. The Green River RMP is over 20 years old and does not contain management direction for LWCs. The LWCs inventories are new information that should be considered during this lease sale and incorporated in the next plan. We request that the BLM defer leasing in LWCs in the RSFO until completion of the RMP.

The BLM has deferred leasing in areas where the VRM RMP Amendment is occurring in the past. The State Director deferred lease 2 parcels in the 2018 second quarter lease sale³. FONSI, p. 1. *See also* EA at Appendix A (stating parcel 116 is partially deferred and parcel 117 is fully deferred). The State Director also deferred parcel 13 in the RFO in the November 2015 sale because of the ongoing Rawlins VRM amendment⁴. Appendix B of the EA for this lease sale states that parcel 13 is deferred because of ... “pending completion of the Rawlins Visual Resource Management RMP Amendment”. We request that the BLM also defer parcels 139 and 140 until the Rock Springs RMP is finalized.

³ FONSI for the June 26th, 2018 Competitive Lease Sale, available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/85072/149040/183061/Finding_of_No_Significant_Impact_V3.pdf

⁴ EA for the High Desert District November 2015 Oil and Gas Lease Sale, available at: <https://eplanning.blm.gov/epl-front-office/eplanning/legacyProjectSite.do?methodName=renderLegacyProjectSite&projectId=69058>

4. *Parcels border Wilderness Study Areas (WSAs)*

Four lease parcels (46, 47, 64, and 109) border Wilderness Study Areas. Parcel 109 nearly touches Whitehorse Creek WSA in the Northern Red Desert. Parcels 46, 47, and 64 border Fort Creek WSA. Leasing this area would also harm the wilderness values of Fort Creek WSA.

Leasing near these WSAs will degrade the suitability for Wilderness designation. The Northern Red Desert is one of the remaining roadless and wild places on BLM lands in Wyoming. Leasing parcel 109 will significantly reduce the wild qualities of this landscape. Lease parcels 46, 47, 64 also occur in a fragile wilderness landscape that would be significantly altered by leasing and development. We recommend that the leases be deleted and not be offered in future sales.

D. BLM Has Not Adequately Considered Impacts to Big Game Crucial Winter Range and Migration Corridors, and Has Not Considered a Reasonable Range of Alternatives

1. BLM Has Not Adequately Considered Impacts to Big Game Migration Corridors and Crucial Winter Range

The BLM's EA does not adequately consider impacts to big game migration corridors and crucial winter range. Wyoming is home to ungulate species such as deer, elk, and antelope that are an essential part of the state's culture and economy, and boasts the longest mule deer migration on earth. Both BLM's Proposed Alternative, and the Modified Alternative which purports to protect migration corridors more effectively, fail to address potentially devastating impacts to mule deer populations from development in corridors. The Modified Alternative would offer 21 parcels in migration corridors, 20 of which are located in the famed Sublette (or Red Desert to Hoback corridor). Many parcels overlap crucial winter range and stopovers, habitat that WGFD has designated vital to mule deer. BLM has attached a "special lease notice" to the parcels overlapping corridors and claims this approach is consistent with Secretarial Order 3362. EA at 2-2. The Wyoming Outdoor Council has critiqued this approach and asked BLM to incorporate the best available science into its implementation of SO 3362, to be fully consistent with that order and Deputy Secretary Bernhardt's Secretarial Order 3369 "Ensuring Scientific Integrity within the Department of the Interior." That December 3 letter, addressed to State Director Mary Jo Rugwell and distributed widely to stakeholders, is attached and incorporated by reference herein (Attachment 1). It summarizes the best available science on mule deer migrations, which plainly demonstrates that anthropogenic disturbance within mule deer migration corridors and crucial winter range presents population level threats to our already declining mule deer herds. Mule deer specifically cannot adapt to this disturbance by altering their migration strategy, an anomaly among big game.

BLM's discussion of resource values in the EA acknowledges the severity of recent population level declines, and notes that the Sublette herd's population is 46% below WGFD's objective while the Platte Valley herd is 18% below objective. EA at 3-24. Nonetheless BLM continues to lease in both corridors, including in vital habitat like stopovers and crucial winter range. BLM's EA implies that because much of the Sublette corridor is closed to leasing, and

because leasing on private and state lands within mule deer migration corridors is likely to occur, this lease sale will not be particularly impactful. *Id.* at 3-25. In BLM's impact analysis, the agency claims "Thus, the current land use allocations and/or limits to potential economically-recoverable oil and gas resources provide a degree of protection from oil and gas operations for much of the migration corridors, though barriers to migration could still occur in portions of the corridors because of land use activities on Federal and non-Federal lands (including energy development, residential construction, recreation, and other uses)." *Id.* at 4-22. This analysis is woefully inadequate in assessing impacts to the 16,988 acres BLM intends to lease in corridors this quarter.

BLM has mischaracterized the extent of impacts by focusing on "barriers" rather than functionality of corridors. We know from the best available science that this approach is misguided. To remain functional, mule deer migration corridors need more than mere habitat connectivity. Mule deer will not simply go around development. Rather, development of any density increases mule deer speed through stopovers, hindering their ability to track plant phenology and effectively surf the green wave. BLM cannot fulfill its mandate to protect big game habitat under SO 3362 without robust, legally enforceable protections for both corridors and crucial winter range based on the best available science. When BLM ignores the best research on mule deer migrations, the agency violates NEPA's mandate to take a hard look at environmental impacts. We have attached a map of the proposed leasing in corridors and CWR to demonstrate the extent of these resource conflicts (Attachment 2). When considered alongside the best available science as summarized in our letter to Director Rugwell, these maps illustrate that BLM's laissez-faire approach to leasing in vital mule deer habitat could have dire consequences for the functionality of corridors and the health of our herds. BLM must analyze these risks to comply with NEPA.

Furthermore, BLM must consider the cumulative impacts of prior federal lease sales, particularly the 3rd quarter 2018 and supplemental February sale, as well as the impacts from state leasing, on corridors and crucial winter range. Taken together, these lease sales will have profound adverse impacts to the functionality of corridors and the health of our herds. The attached map of the Sublette corridor demonstrates the extent of federal leasing in the corridor and its attendant crucial winter range, including leasing in WGFD designated vital areas like stopovers.

2. BLM Has Failed to Consider Reasonable Alternatives to Leasing in Big Game Crucial Winter Range and Migration Corridors, and Failed to Consider Relevant Information Critical to Informed Decision-Making.

BLM must consider a range of reasonable alternatives in its EA, including alternatives to leasing in crucial winter range and migration corridors. Because BLM has failed to adequately consider the best available science in evaluating impacts to big game, particularly impacts to mule deer migrations, the agency has also failed to consider a reasonable range of alternatives. The best available science indicates that anthropogenic disturbance in migration corridors and crucial winter range can cause population level declines in mule deer herds. Given existing declines in mule deer herds, over 30 percent statewide in recent decades, BLM should consider a no leasing alternative in designated corridors and CWR. At very least, BLM should apply an NSO stipulation to these habitats.

Reliance on a special lease notice creates conflicts when managing for other resource values. A lease notice does not carry the legal weight of a lease stipulation, nor does it alter the terms or conditions of the BLM's standard oil and gas lease. BLM regulations are clear on this point:

An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form.

Information notices shall not be a basis for denial of lease operations. See 43 C.F.R. § 3101.1-3 (emphasis added).

Many proposed parcels are located within both sage grouse PHMA and migration corridors. Because sage-grouse stipulations concentrate development in order to minimize disturbance of sage grouse habitat, these legally enforceable stipulations and other concerns like steep slope management could force concentrated development into migration corridors. The unenforceable lease notice would give way to enforceable stipulations, leaving migration corridors and CWR unprotected.

Alternatives must be developed in light of a thorough analysis of potential impacts. Mitigation measures historically relied upon by BLM to “protect” big game have proven ineffective. A recent, peer reviewed, BLM-funded study of mule deer in the Pinedale area demonstrated that despite the application of on-site mitigation required by BLM, population effects to the herd were “considerable” and “not fully offset through mitigation or best management practices.” *See Mule deer and energy development – Long-term trends of habituation and abundance*, at 4527. The study found that “[f]ollowing fifteen years of natural gas development in western Wyoming, mule deer did not habituate to disturbance and continued to avoid energy infrastructure. Even during the last 3 years of development when most wells were in production and well pads were in various states of reclamation, we found no evidence of habituation. Instead, mule deer used areas that averaged nearly 1 km further from well pads compared with animals before development occurred.” *Id.* at 4526. Among other things, the EA fails to consider that:

Long-term avoidance behavior is problematic because indirect habitat loss reduces the size of winter range available for mule deer—habitat that would otherwise be used is functionally unavailable to the animals that occupy the range (Korfanta, Mobley, & Burke, 2015; Northrup et al., 2015; Sawyer et al., 2006). Winter range for temperate ungulates is often geographically restricted, particularly in migratory herds, so that habitat loss cannot be offset by simple range expansion. Thus, when habitat is lost directly through conversion to infrastructure and additionally through behavioral avoidance, carrying capacity is also reduced. *Id.*

The information presented in the mule deer study is not disclosed in the EA, nor is the fact that the study specifically questions the validity of NEPA documents that suggest adverse impacts to big game are temporary:

Our findings contradict many NEPA documents (e.g. Environmental Impact Statements, Environmental Assessments) that guide federal land use on millions of acres in the western USA and consider natural gas development a short-term impact to which animals can readily habituate once drilling activities are complete (e.g. BLM, 2005, 2006, 2012). We understand that a paucity of data on the long-term impacts of development likely led to this type of conclusion in the NEPA process. However, our long-term dataset comprising multiple generations of animals indicates that avoidance of energy infrastructure is a long-term effect that can be associated with significant population declines.

Id. at 4527.

While not specifically referencing the leasing EA, the researcher's findings nonetheless highlight fundamental flaws in both the BLM's impacts analysis as well as its misinformed and inadequate approach to management of important big game habitats.

The researchers continued:

Our work has important implications for applying the mitigation hierarchy (Council on Environmental Quality, 2000), which seeks to reduce negative effects of development by sequentially avoiding, minimizing, and offsetting impacts. First, effective mitigation seeks to match the mitigation activity with the duration of the impact (Council on Environmental Quality, 2000). Our study indicates that impacts of energy development in sagebrush steppe can be long term, if not permanent, and mitigation measures should be accordingly long term. Second, minimizing impacts through onsite mitigation, although desirable for species that exhibit high site fidelity, may not be possible. Onsite mitigation was insufficient to abate behavioral and demographic consequences to mule deer during our study. Third, given the limitations of onsite mitigation, avoidance of impacts by strategically foregoing leasing or reducing intensity of development of critical habitats is likely the most effective approach to averting population-level impacts. And finally, where avoidance and minimization are not possible or effective, offsite mitigation approaches such as biodiversity offsets or conservation banks that aim to compensate for biological impacts in one area with protected or improved habitat elsewhere (Bull, Suttle, Gordon, Singh, & Milner-Gulland, 2013; Carroll, Fox, & Bayon, 2008) are untested but warrant consideration.

Id. at 4527.

Our long-term study refutes the prevailing notion that mule deer habituate to human disturbance, and instead, demonstrates that energy development can have long-term consequences for deer populations simply through avoidance behavior and the indirect habitat loss that ensues. Furthermore, as the NEPA process is based on full disclosure of the potential impacts from a proposed action, our work indicates that future impact assessments should disclose that the impacts to ungulate habitat in the shrub-steppe environment of the West may well be long-term and perhaps an irretrievable commitment of resources.

Id. at 4528.

More recent research has built upon these studies to reinforce the hypothesis that mule deer do not habituate to anthropogenic disturbance, that impacts persist across generations, and that impacts have population level consequences for herds. A detailed analysis of this research can be found in the above referenced letter to Director Rugwell. The Wyoming Migration Initiative has incorporated much of the emerging science on ungulate migrations in the recently published Wild Migration Atlas, incorporated by reference herein.⁵

Big game is essential to Wyoming residents' way of life and to the local economy. According to a 2017 study by leading economic research firm Southwick Associates, big game hunting in Wyoming contributes over \$300 million to the state's economy annually and provides 3,100 jobs. "Big Money: Big Game Hunting and Outfitting Economic Contributions in Wyoming," Southwick Associates (2017).⁶ Much of this revenue comes from nonresidents who travel to Wyoming specifically to hunt big game. As the study explains, " While helping to support an entire industry built around outfitting and guiding, the revenues generated transcend hunt-centric business and benefit all state residents through funds spent on lodging, food, gas, other travel-related expenses, retail goods and services, land access and state and local taxes." *Id.* at 7. The top three preferred big game species among residents and non-resident hunters alike are antelope, deer, and elk. Leasing in crucial winter range and migration corridors puts these species at risk, threatening both our natural heritage and our economic opportunities. The public has repeatedly expressed concerns with leasing in these vital habitats, demanding action from state officials to request deferral of offending leases.⁷ Yet despite the clear need for an analysis of alternatives to leasing in crucial wildlife habitats, BLM simply chose not to address the issue at all.

The BLM's Modified Alternative acknowledges the need to defer two parcels until the Rock Springs Field Office RMP revisions has been completed, anticipating the need for stipulations in the RMP to protect corridors and crucial winter range. At the state level, Wyoming's OSLI has already developed binding stipulations to protect these habitats for state lease sales; the federal government should follow suit.⁸ This same logic extends to leasing in corridors and crucial winter range throughout Wyoming, so that BLM should defer all leasing in

⁵ Matthew Kauffman et al., "Wild Migrations: Atlas of Wyoming's Ungulates," Oregon State University Press (2018).

⁶ Full report available online at <https://www.wyoga.org/pdf/2017/southwick-study/Wyoming-Big-Game-Hunting-Economics-Southwick-Associates-Final.pdf>

⁷ See, e.g. Wyoming Game and Fish Commission meeting, Casper Commission meeting 11/13/18, livestream recording available online at <https://www.youtube.com/watch?v=L2B9N6rXtaM> (public comments and discussion incorporated herein).

⁸ See OSLI stipulation # 146 "Designated Ungulate Migration Corridor ("This lease is issued subject to, and conditioned upon, lessee's acknowledgment and agreement that the parcel of land encompassed by this lease is located wholly or partially within an Ungulate Migration Corridor as designated by the Wyoming Game and Fish Department (WGFD). Exploration and development activities shall be undertaken and managed as a controlled surface use. Prior to exploration and development, lessee is required to submit to WGFD a plan to protect and/or mitigate impacts to the migration corridor including strategies to avoid bottleneck and stopover areas. Plans must be approved by the Director, in consultation with the WGFD, before exploration and development activities can occur. The maximum surface restriction imposed by this stipulation will be a restriction of one oil or gas pad per 640 acres. All attempts should be made to avoid and minimize impacts to the surface in order to maintain habitat functionality within the ungulate migration corridor.")

these habitats until a statewide RMP amendment incorporating the best available science into binding stipulations has been established. We addressed these issues in our comments on BLM's February supplemental lease sale, incorporated fully by reference herein.⁹ Wyoming has developed a State Action Plan for implementation of SO3362 designating vital habitat within priority corridors and crucial winter range, and identifying stopovers and bottlenecks. Thus far, three mule deer corridors have been designated - the Sublette, Baggs, and Platte Valley corridors. We anticipate designation of the Wyoming Range and Dubois corridors shortly. Given the scope of leasing in big game habitat, and the state's efforts to designate and protect vital habitat, BLM should have at least considered deferral of the relevant leases, yet no alternative so much as mentions the possibility of deferring leases in migration corridors and crucial winter range. The BLM's refusal to consider reasonable alternatives is not permissible under NEPA, and EAs that fail to contain an analysis of reasonable alternatives to leasing in crucial wildlife habitats should not be approved by the Wyoming BLM State Office. For the reasons set forth above, and in the December 3, 2018 letter to Director Rugwell, we ask that BLM defer all parcels offered in the March 2019 lease sale that overlap designated mule deer migration corridors and crucial winter range.

F. The EA Must Incorporate the Best Available Science on Climate Change

In October 2018, the Intergovernmental Panel on Climate Change released a landmark report warning that the thresholds previously considered for the most severe impacts of climate change were higher than accurate, and that warming of 1.5 degrees Celsius beyond preindustrial levels will cause severe social and economic damage. "Global Warming of 1.5 degrees C," Intergovernmental Panel on Climate Change Special Report, October 2018. The following November, The National Oceanic and Atmospheric Association released the 2018 National Climate Report, a major scientific report by 13 federal agencies saying that climate change could shrink the US economy by 10% if significant steps are not taken to address emissions. The assessment predicts devastating impacts to the economy, public health, and the environment including falling agricultural yields, longer fire seasons, disrupted export and supply chains, threats to water supplies, flooding, and outbreaks of disease, among other adverse impacts. NOAA National Centers for Environmental Information, State of the Climate: National Climate Report for November 2018, published online December 2018, retrieved on December 10, 2018 from <https://www.ncdc.noaa.gov/sotc/national/201811>. Later in November, The Wilderness Society and Taxpayers for Common Sense released a report on the economic impact of lost methane from venting and flaring on federal lands. That report found the cost of lost gas on federal lands in eight Western states to be \$807 million. "The State of Methane," The Wilderness Society and Taxpayers for Common Sense, November 27, 2018.

These reports emphasize the need to take immediate action to mitigate climate change. Despite new data on the risks of climate change from the most reliable scientific sources, our national energy dominance policy continues to prioritize fossil fuel production and expand drilling on federal lands. BLM's new methane rule eliminates the prior Obama era rule requiring

⁹ National Audubon Society et al., "Re: Supplemental Comments on the WY BLM Fourth Quarter Competitive Oil and Natural Gas Lease Sale Environmental Assessment: DOI-BLM-WY-0000-2018-0004-EA," November 9, 2018.

increased inspection and reporting requirements and reduces methane capture requirements. Methane is a particularly potent contributor to climate change, roughly 30 times more effective as a heat trapping gas than CO2.

The EA does address climate change impacts to an extent. EA at 4-12. However, the EA does not consider the best available science on climate change, nor does it adequately mitigate impacts. While the EPA requires "Green Completion" to reduce VOC emissions in the Upper Green River Basin, the BLM should require Green Completion for all wells, and apply best management practices for leak detection and capture of fugitive gases.

IV. CONCLUSION

Thank you for considering these comments on the March 2019 oil and gas lease sale environmental assessment. As indicated, we have strong concerns that many of the lease parcels are located in crucial sage-grouse habitats. There is a need to provide for better protection for this species by prioritizing leasing outside of GHMA and PHMA, as BLM's land use plans, and FLPMA, require. In addition, the proposed leasing is not based on a reasonable range of alternatives, the EA does not provide a "hard look" at environmental impacts or consider the cumulative impacts of leasing, and the leasing would not comply with the FLPMA multiple use mandate. There is also a need for better analysis of Lands with Wilderness Characteristics and impacts to Wilderness Study Areas. Finally, there is an immediate need for legally enforceable protections for big game migration corridors and crucial winter ranges.

Sincerely,



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Attachments

1. Wyoming Outdoor Council's letter to Director Rugwell, "Re: Ensuring Functionality of Wildlife Corridors by Using the Best Available Science to Implement Secretarial Order 3362"
2. Map of Lease Parcels Offered in the Sublette Mule Deer Migration Corridor and Crucial Winter Range