



March 14, 2016

Via Hand Delivery

Jenna Whitlock
Acting State Director
U.S. Bureau of Land Management
Utah State Office
440 West 200 South, Suite 500
Salt Lake City, UT 84101

Re: Protest of May 2016 Competitive Oil and Gas Lease Sale

Dear Ms. Whitlock:

Pursuant to 43 C.F.R. § 3120.1-3, WildEarth Guardians hereby protests the Bureau of Land Management's ("BLM's") proposal to offer 4 publicly owned oil and gas lease parcels covering 6,742.75 acres of land for competitive sale on May 17, 2016. The four parcels are located in the Color Country District Office of central Utah. The lease parcels included for sale, as identified by the BLM's in its Final May 2016 Oil and Gas Sale List, include the following:¹

Lease Serial Number	Acres	Field Office	County
UTU91540	2,239.32	Richfield	Sevier
UTU91541	1,712.7	Richfield	Sevier
UTU91542	1,045.42	Richfield	Sevier
UTU91543	1,745.31	Richfield	Sevier

In support of its proposed leasing, the agency prepared an Environmental Assessment (EA), DOI-BLM-UT-C020-2016-0002-EA0031-EA.

As will be explained, the BLM's proposal to lease falls short of ensuring compliance with applicable environmental protection laws and is not based on sufficient analysis and assessment of key environmental impacts under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4331, *et seq.* The EA prepared by the BLM continues to perpetuate bald-faced climate

¹ This list of lease parcels is available on the BLM's website at http://www.blm.gov/style/medialib/blm/ut/lands_and_minerals/oil_and_gas/may_2016.Par.34614.File.dat/FinalSaleList.pdf.

denial, asserting that, “[T]here is a substantial amount of professional disagreement and uncertainty as to what impacts greenhouse gas (GHG) emissions have on climate[.]” EA at 58. The agency’s EA is therefore deficient and fail to provide sufficient justification for its proposed action and its proposal to issue a FONSI. For the reasons below, we request the BLM refrain from offering the 4 proposed lease parcels for sale and issuance.²

STATEMENT OF INTEREST

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 climate implications of its oil and gas leasing decisions and objectively and robustly weighs the costs and benefits of authorizing the release of more greenhouse gas emissions that are known to contribute to global warming.

WildEarth Guardians has submitted extensive comments on the proposed leasing, including comments submitted on January 20, 2016 over the BLM’s EA. WildEarth Guardians has also extensively commented on BLM’s proposed oil and gas leasing in Utah, raising concerns over the agency’s failure to adequately address climate impacts.

The mailing address for WildEarth Guardians to which correspondence regarding this protest should be directed is as follows:

WildEarth Guardians
2590 Walnut St.
Denver, CO 80205

STATEMENT OF REASONS

WildEarth Guardians protests the BLM’s May 2016 oil and gas lease sale over the agency’s failure to adequately analyze and assess the climate impacts of the reasonably foreseeable oil and gas development that will result in accordance with the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4331, *et seq.*, and regulations promulgated thereunder by the White House Council on Environmental Quality (“CEQ”), 40 C.F.R. § 1500, *et seq.*

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.* at 1500.1(b). This consideration is meant to “foster excellent action,” meaning decisions that are well informed and that “protect, restore, and enhance the environment.” *Id.* at 1500.1(c).

² For purposes of this protest, we hereby incorporate by reference comments and attachments thereto submitted by WildEarth Guardians in response to the BLM’s Draft EA.

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. 40 C.F.R. § 1502.16(d). To this end, the agency must analyze the “direct,” “indirect,” and “cumulative” effects of its actions, and assess their significance. 40 C.F.R. §§ 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.” 40 C.F.R. § 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.* at § 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. 40 C.F.R. § 1508.7.

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

Here, the BLM fell short of complying with NEPA with regards to analyzing and assessing the potentially significant climate impacts of oil and gas leasing. In support of its proposed leasing, the agency prepared an EA. In the EA, however, the BLM failed to analyze the reasonably foreseeable greenhouse gas emissions that would result from selling the oil and gas lease parcels, as well as failed to assess the significance of any emissions, particularly in terms of carbon costs.

In the EA, the BLM seemingly acknowledged that climate change is a very serious issue and that greenhouse gas emissions contribute to climate change. *See* EA at 15. Unfortunately, in spite of recognizing serious climate consequences resulting from the release of greenhouse gas emissions, the BLM made no effort to analyze and assess the potential greenhouse gas emissions that would result from oil and gas development and the likely climate consequences. In fact, the agency actually asserts that there is substantial disagreement over the impact that greenhouse gases have on the climate, seeming to suggest that the agency may in fact deny anthropogenic climate change.

The EA fails to analyze the reasonably foreseeable greenhouse gas emissions that would result from development of the proposed leases. Instead of using readily available information and methods, including analyses that other BLM offices have been perfectly capable of preparing, the agency instead asserts that it is simply impossible to estimate such emissions. *See* EA at 23. The issue, however, is not that it is impossible to estimate emissions, but that BLM believes it cannot estimate emissions as precisely as it prefers to. This is not allowed under NEPA.

Although the agency may believe that without definitive development proposals, it cannot project impacts, the whole point of leasing oil and gas is to facilitate development. The BLM cannot claim that the act of leasing carries with it no intention to foster future development. In fact, the BLM actually acknowledges that reasonably foreseeable development

of the proposed leases would include “one well pad with access road constructed on each lease parcel” and that “over the next 10 years (the life of a lease not held in production) 4 locations could be drilled, with the potential surface disturbance of approximately 48 acres (assuming approximately 12 acres per drill pad and access road).” EA at 7.

Regardless, because leasing conveys a right to develop, absent any stipulations that provide the agency with authority to constrain or even 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, or worse, assert that there would be no reasonably foreseeable emissions associated with its proposed action.

In any case, the BLM has completely failed to provide information and analysis, even brief information and analysis, supporting a FONSI and any decision to sell and issue the aforementioned lease parcels. Either the BLM must prepare an EIS or it cannot proceed with the lease sale as proposed. Below, we detail how BLM’s proposal fails to comply with NEPA.

1. The BLM Failed to Fully Analyze and Assess the Direct, Indirect, and Cumulative Impacts of Greenhouse Gas Emissions that Would Result from Issuing the Proposed Lease Parcels

In the EA, the BLM completely rejected analyzing and assessing the potential direct and indirect greenhouse gas emissions, including carbon dioxide and methane, that would result from the reasonably foreseeable development of the proposed leases. Although acknowledging that development of the lease parcels would occur and that greenhouse gas emissions would be produced, no analysis of these emissions was actually prepared. The BLM asserted, “Estimates of GHG [greenhouse gas]/climate emissions cannot be made without information or descriptions regarding a specific project or projects that could result in GHG emissions.” EA at 58.

This rejection is confusing given that the BLM did disclose that potential carbon dioxide-equivalent emissions per well could amount to 1,192 tons per year for a single operational well and 2,305 tons per year for a single drilling rig. *See* EA at 21. In spite of this, the BLM rejected conducting any analysis, asserting that emissions would be “unlikely to exceed the 25,000 ton per year reference point recommended by CEQ.” *Id.* Although we are heartened to see that the BLM now believes that it is appropriate and reasonable to require a full disclosure of potential greenhouse gas emissions associated with oil and gas leasing if potential annual emissions exceed 25,000 tons, nevertheless, the agency’s assertion that emissions would not exceed 25,000 tons is not supported.

For one thing, BLM’s estimate fails to account for greenhouse gas emissions from cumulative and similar actions. As NEPA requires, an agency must analyze the impacts of “similar” and “cumulative” actions in the same NEPA document in order to adequately disclose impacts in an EIS or provide sufficient justification for a FONSI in an EA. *See* 40 C.F.R. §§ 1508.25(a)(2) and (3). Here, the BLM failed to take into account the greenhouse gas emissions resulting from other proposed oil and gas leasing in Utah, as well as related oil and gas development, and to analyze the impacts of these actions in terms of their direct, indirect, and cumulative greenhouse gas emissions. Further, BLM’s assertion overlooks the greenhouse gas

emissions that would result from processing, transmission, and ultimate combustion of any oil and gas. There are readily available methods for analyzing and assessing such emissions, including estimates by the U.S. Environmental Protection Agency (“EPA”) as to how much CO₂e is produced per barrel of oil consumed and per therm of natural gas consumed. *See* EPA, “Calculations and References,” website available at <http://www.epa.gov/cleanenergy/energy-resources/refs.html> (last accessed Jan. 11, 2016). According to the EPA, 0.43 metric tons of CO₂ is released per barrel of oil consumed and 0.005302 metric tons of CO₂ is released per therm of natural gas consumed.³ The agency made no effort to calculate these emissions, even though they are critically relevant to the determination as to whether total emissions would exceed 25,000 tons annually.

The failure to fully analyze and assess reasonably foreseeable greenhouse gas emissions is made worse by the fact that the underlying Final EIS prepared for the Richfield Field Office’s Resource Management Plan nowhere analyze or assess greenhouse gas emissions associated with oil and gas development. In light of this, the BLM clearly has no basis to conclude that greenhouse gas emissions resulting from the reasonably foreseeable impacts of oil and gas development associated with the proposed leasing would not be significant. Without any analysis of cumulative greenhouse emissions whatsoever, the agency’s proposed FONSI is unsupported under NEPA.

2. The BLM Failed to Analyze the Costs of Reasonably Foreseeable Carbon Emissions Using Well-Accepted, Valid, Credible, GAO-Endorsed, Interagency Methods for Assessing Carbon Costs that are Supported by the White House

Compounding the failure of the BLM to make any effort to estimate the greenhouse gas emissions that would result from reasonably foreseeable oil and gas development is that the agency also rejected analyzing and assessing these emissions in the context of their costs to society. It is particularly disconcerting that the agency refused to analyze and assess costs using 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.

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).” *See* Exhibit 13 to Guardians’ Jan. 20, 2016 Comments on EA. The protocol was developed by a working group consisting of several federal agencies, including the U.S. Department of Agriculture, EPA, CEQ, and others.

In 2009, an Interagency Working Group was formed to develop the protocol and issued final estimates of carbon costs in 2010. *See* Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis

³ According to the U.S. Energy Information Administration (“EIA”), one Mcf of natural gas generally equals 10.28 therms. *See* EIA, “Frequently Asked Questions,” website available at <http://www.eia.gov/tools/faqs/faq.cfm?id=45&t=8>.

Under Executive Order 12866” (Feb. 2010), available online at <https://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf>. These estimates were then revised in 2013 by the Interagency Working Group, which at the time consisted of 13 agencies. *See* 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://www.whitehouse.gov/sites/default/files/omb/inforeg/social_cost_of_carbon_for_ria_2013_update.pdf. This report and the social cost of carbon estimates were again revised in 2015. *See* Exhibit 16 to Guardians’ Jan. 20, 2016 Comments on EA.

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 \$11 to \$220 per metric ton of carbon dioxide. *See* Chart Below. In its most 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. *See* Exhibit 1 to this Protest, White House, “Estimating the Benefits from Carbon Dioxide Emissions Reductions,” website available at <https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions>. 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. *See* Exhibit 19 to Guardians’ Jan. 20, 2016 Comments on EA.

Revised Social Cost of CO₂, 2010 – 2050 (in 2007 dollars per metric ton of CO₂)

Discount Rate	5.0%	3.0%	2.5%	3.0%
Year	Avg	Avg	Avg	95th
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.

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.” Exhibit 17 to Guardians’ Jan. 20, 2016 Comments on EA.

More importantly, the BLM has also utilized the social cost of carbon protocol in the context of oil and gas leasing. In recent Environmental Assessments for oil and gas leasing in Montana, the agency estimated “the annual SCC [social cost of carbon] associated with potential development on lease sale parcels.” Exhibit 18 to Guardians’ Jan. 20, 2016 Comments on EA at 76. 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. *See* Exhibit 2 to Protest, BLM, “Little Willow Creek Protective Oil and Gas Leasing,” EA No. DOI-BLM-ID-B010-2014-0036-EA (February 10, 2015) at 81, available online at https://www.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 13 to Guardians’ Jan. 20, 2016 Comments on EA. 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 this month found that current estimates for the social cost of carbon should be increased six times for a mid-range value of \$220 per ton. *See* Exhibit 15 to Guardians’ Jan. 20, 2016 Comments on EA. 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 13 to Guardians’ Jan. 20, 2016 Comments on EA.

That the economic impacts of climate change, as reflected by an assessment of social cost of carbon, should be a significant consideration in agency decisionmaking, is emphasized by a recent White House report, which warned that delaying carbon reductions would yield significant economic costs. *See* Exhibit 3 to Protest, Executive Office of the President of the United States, “The Cost of Delaying Action to Stem Climate Change” (July 2014), available online at https://www.whitehouse.gov/sites/default/files/docs/the_cost_of_delaying_action_to_stem_climate_change.pdf. 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, specifically supported in federal case law, and by Executive Order 13,514. As explained, NEPA requires agencies to analyze the consequences of proposed agency actions and consider include direct, indirect, and cumulative consequences. In terms of oil and gas leasing, an analysis of site-specific impacts must take place at the lease stage and cannot be deferred until after receiving applications to drill. *See New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 717-18 (10th Cir. 2009); *Conner v. Burford*, 848 F.2d 1441 (9th Cir.1988); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1227 (9th Cir.1988).

To this end, 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. National Highway Traffic Safety Administration*, 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.

More recently, a federal court has done 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 Service*, 52 F.Supp.3d 1174 (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. However, 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.*

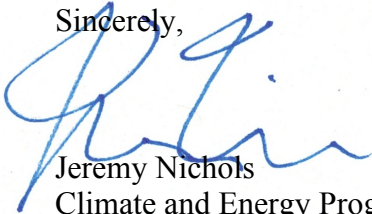
Such approval was based on a NEPA analysis with misleading economic assumptions, an approach long disallowed by courts throughout the country. *Id.*

A recent 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. See Exhibit 4, Greenstone, M., "There's a Formula for Deciding When to Extract Fossil Fuels," *New York Times* (Dec. 1, 2015), available online at http://www.nytimes.com/2015/12/02/upshot/theres-a-formula-for-deciding-when-to-extract-fossil-fuels.html?_r=0.

In light of all this, it appears more than reasonable to have expected the BLM to take into account carbon costs as part of its NEPA analyses. The agency did not. Instead, the BLM rejected the notion that a social cost of carbon analysis was appropriate, implicitly concluding that there would be no cost associated with the proposed oil and gas leasing.

The BLM's response to our concerns over social cost of carbon was confusing, at best. The agency did not assert that social cost of carbon was not a viable method or that it otherwise was not useful or appropriate, but rather asserted that "there is a substantial amount of professional disagreement and uncertainty as to what impacts greenhouse gas (GHG) emissions have on climate and, as a result, it is not possible to determine what social costs, if any, could be caused by emissions of GHGs." EA at 58. This is a shocking statement from the BLM considering that the White House and numerous other federal agencies and scientists have not only endorsed the social cost of carbon methodology as a viable and reasonable means for assessing carbon costs, but have urged its utilization to inform agency decisionmaking. Most recently, the National Academies of Science affirmed the social cost of carbon approach to assessing carbon costs as credible, legitimate, useful, reasonable, and scientifically grounded. See Exhibit 5, National Academies of Science, Engineering, and Medicine, *Assessment of Approaches to Updating the Social Cost of Carbon: Phase I Report on a Near-Term Update*, Committee on Assessing Approaches to Updating the Social Cost of Carbon, Board on Environmental Change and Society (2016). How the BLM could possibly conclude that, "it is not possible to determine what social costs, if any, could be caused by emissions of GHGs" is beyond us. In any case, the agency's rationale for rejecting such an analysis is not supported.

Sincerely,



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