

**UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF HEARINGS AND APPEALS  
BOARD OF LAND APPEALS**

WILDEARTH GUARDIANS,	)	
	)	IBLA No. 2016-0079
Appellant	)	
	)	Notice of Appeal, Bridger Coal Lease
	)	Modification to WYW-154595,
	)	EA #DOI-BLM-WY-040-EA15-120,
	)	Sweetwater County, Wyoming
	)	

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**STATEMENT OF REASONS**

On January 28, 2016, WildEarth Guardians (hereafter “Guardians”) gave Notice of Appeal of a decision made by Bureau of Land Management (“BLM”) Rock Springs Field Office Manager, Kimberlee D. Foster authorizing a coal lease modification that would add 120.02 acres and 738,000 tons of coal to lease number WYW-154595. The lease was applied for by the Bridger Coal Company, a joint venture between the utility companies PacifiCorp and Idaho Power, and would expand the Jim Bridger mine in Sweetwater County in southern Wyoming. The Jim Bridger mine is the sole source of coal for the adjacent Jim Bridger power plant. This decision is documented in a Decision Record (“DR”) and Finding of No Significant Impact (“FONSI”) both signed by Ms. Foster on December 29, 2015. The DR and FONSI rely on Environmental Assessment (“EA”) Number DOI-BLM-WY-040-EA15-120. Pursuant to 43 C.F.R. § 4.412, Guardians now files the following Statement of Reasons.

**I. INTRODUCTION**

Guardians challenges the Jim Bridger lease modification DR, FONSI, and EA on the basis that the BLM failed to analyze and assess the climate change impacts that would result from approving the lease modification and extending both the life of the coal mining operations, as well as the attendant reasonably foreseeable coal burning operations at the Jim Bridger power plant, and the length of time reclamation activities would be undertaken. Here, the BLM rejected utilizing a credible and valid means of assessing the climate impacts that would result from extended greenhouse gas emissions, namely quantifying climate impacts in terms of actual costs. Overall, the BLM failed to demonstrate that the

impacts of approving the Jim Bridger lease modification will not be significant under the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321, *et seq.*

Guardians respectfully requests that the IBLA set aside BLM’s decisions to authorize the lease modification and remand to the BLM to achieve compliance with NEPA.

## **II. APPELLANT IS A PARTY WHO IS ADVERSELY AFFECTED**

To maintain an appeal, an Appellant must (1) be a party to the case; and (2) be adversely affected by the decision being appealed. *See* 43 C.F.R. § 4.410(a). As an initial matter, Guardians satisfies both these requirements.

WildEarth Guardians is a registered non-profit corporation whose purpose is the conservation of natural resources. With more than 100,000 members, Guardians’ mission is to protect and restore the wildlife, wild places, wild rivers, and health of the American West. Guardians is headquartered in Santa Fe, New Mexico, but has offices in Denver, Colorado, Missoula, Montana, Portland, Oregon, Laramie, Wyoming, and Tucson, Arizona. Through its Climate and Energy Program, Guardians works to safeguard the climate, clean air, and communities of the American West by promoting a sensible transition away from reliance upon fossil fuels.

To be a party to the case, a person or group must have actively participated in the decisionmaking process regarding the subject matter of the appeal. *See* 43 C.F.R. § 4.410(b). Here, Guardians submitted comments to the BLM on January 16, 2015 regarding the Jim Bridger lease modification during the public comment period provided by the BLM. *See* EA at 8. Thus, WildEarth Guardians satisfies the “party to a case” qualification.

To demonstrate that it will “be adversely affected by the decision being appealed,” a party must demonstrate a legally cognizable “interest” and that the decision appealed has caused or is substantially likely to cause injury to that interest. *Glenn Grenke v. BLM*, 122 IBLA 123, 128 (1992); 43 C.F.R. § 4.410(d). This requisite “interest” can be established by cultural, recreational, or aesthetic uses as well as enjoyment of the public lands. *Southern Utah Wilderness Alliance*, 127 IBLA 325, 326 (1993); *Animal*

*Protection Institute of America*, 117 IBLA 208, 210 (1990). The IBLA does not require a showing that an injury has actually occurred. Rather, a “colorable allegation” of injury suffices. *Powder River Basin Resource Council*, 124 IBLA 83, 89 (1992). Moreover, it is not necessary for parties to show that they have actually set foot on the impacted parcel or parcels to establish use or enjoyment for purpose of demonstrating adverse effects related to coal leasing. Rather, “one may also establish he or she is adversely affected by setting forth interests in resources or in other land or its resources affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests.” *Coalition of Concerned National Park Retirees, et al.*, 165 IBLA 79, 84 (2005).

Attached as Exhibit 1 is the Declaration of Erik Molvar. It shows he is a member and employee of Guardians. *See* Exhibit 1 at ¶ 3. His Declaration shows he personally uses and enjoys the area that will be directly and indirectly affected by the Jim Bridger mine and power plant for recreational, aesthetic, educational, and conservation purposes, and that he intends to return to the area for enjoyment. *See id.* at ¶ 6-15. Mr. Molvar regularly visits and enjoys lands in the Red Desert of Wyoming, which is the area where the Jim Bridger mine and power plant is located, for recreational enjoyment. He hunts, hikes, camps, backpacks, takes photographs, and even documents hikes for guide books in this area. He regularly observes the coal mining operations at the Jim Bridger mine and the coal burning operations at the Jim Bridger power plant and is offended by their sights and sounds as they detract from his enjoyment of the natural beauty of the area. Mr. Molvar’s Declaration establishes that the BLM’s decision to approve the Jim Bridger coal lease modification will adversely affect his recreational, aesthetic, educational, and conservation interests, which are legally cognizable, in these areas through increased air pollution and other environmental impacts. *See id.* at ¶ 16-18. Further, Mr. Molvar’s declaration establishes that a favorable ruling in this appeal would remedy his diminished enjoyment of public lands in the area that will result from the lease modification. *See id.* at ¶ 18. Mr. Molvar’s Declaration establishes that the BLM’s decision will adversely affect WildEarth Guardians.

### III. STATEMENT OF REASONS

#### A. Background

Guardians challenges the BLM's approval of the Jim Bridger coal lease modification for failing to comply with NEPA. 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).

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. The scope of any impacts analysis and assessment must include both "[c]umulative" actions, as well as "[s]imilar actions," which are defined as actions with "similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography." 40 C.F.R. § 1508.25(a)(2) and (3).

The significance of impacts is based on the "context" and "intensity" of the impacts. 40 C.F.R. § 1508.27. While context is based on consideration of impacts to society as a whole, the affected region, and the locality, consideration of intensity must be based on, among other things, "[t]he degree to which the proposed action "affects public health or safety," the "[u]nique characteristics of the geographic area,"

the degree to which impacts are likely to be “highly controversial” or “highly uncertain,” and whether the action may be significant on a cumulative basis. 40 C.F.R. § 1508.27(b).

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 FONSI and implement its action. *See* 40 C.F.R. § 1508.13; *see also* 43 C.F.R. § 46.325(2).

Here, the BLM failed to assess the significance of the reasonably foreseeable climate change impacts that would result from greenhouse gas emissions released as a result of the mining and inevitable combustion of coal. In particular, the BLM failed to assess the climate change impacts using a readily available, credible, and widely utilized (even by the BLM) method of calculating the costs associated with the carbon dioxide emissions that would be released as a result of BLM’s decision. Accordingly, the BLM has no basis to conclude that the impacts of the coal lease modification would not be significant according to NEPA and therefore no basis for issuing a FONSI and foregoing preparation of an EIS.

#### **B. Climate Change Impacts are a Significant Issue**

To begin with, it is critical to point out that even the BLM recognizes that climate change impacts caused by the release of greenhouse gas emissions are a significant issue. Climate change was identified as one of six issues the BLM determined warranted consideration in the EA. *See* at EA at 9. The BLM explained that climate change, or global warming, “is caused mostly by increasing concentrations of GHGs [greenhouse gases] (primarily CO<sub>2</sub> [carbon dioxide], methane, NO<sub>x</sub>, and flourinated gases) in the atmosphere, and it is changing climate patterns.” EA at 22. The BLM also detailed a number of major environmental impacts that are occurring as a result of climate change, including “[r]ising temperatures,” “[l]andscape fragmentation,” stressed communities, and irreversible climate change. EA at 22-23. The EA acknowledges that specifically in the State of Wyoming, global warming is leading to increased average temperatures, decreased precipitation, and earlier snowmelt. *See* EA at 23.

The BLM also acknowledges that carbon dioxide is the primarily greenhouse gas emitted by human activities that is contributing to climate change and that the main activity producing carbon dioxide is the combustion of fossil fuels “including the combustion of coal.” EA at 23. To this end, the BLM actually took steps in the EA to disclose the likely greenhouse gas emissions that would result from approval of the Jim Bridger lease modification. *See* EA at 25-26.

Thus, it is clear that climate change resulting from greenhouse gas emissions caused by human activities is a significant issue in relation to the Jim Bridger coal lease modification. This is underscored by the fact that on January 15, 2016, a little more than two weeks after the lease modification was approved, the Secretary of the Interior imposed a halt to new coal leasing, including new lease modifications, citing, among other concerns, the climate change impacts of coal leasing decisions. *See* Secretary of the Interior, “Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program,” Secretarial Order 3338 (Jan. 15, 2016), available online at [http://www.blm.gov/style/medialib/blm/wo/Communications\\_Directorate/public\\_affairs/news\\_release\\_attachments.Par.4909.File.dat/FINAL%20SO%203338%20Coal.pdf](http://www.blm.gov/style/medialib/blm/wo/Communications_Directorate/public_affairs/news_release_attachments.Par.4909.File.dat/FINAL%20SO%203338%20Coal.pdf) (last accessed March 30, 2016).

### **C. The BLM Failed to Assess Climate Impacts Under NEPA and Failed to Justify a FONSI**

While the BLM acknowledged human-induced climate change as a significant issue and actually quantified the emissions that would result from approval of the Jim Bridger lease modification, the agency entirely failed to assess the significance of these emissions in the context of their climate impacts. This is a significant shortcoming and indicates there is no support, implicit or otherwise, that the impacts of the greenhouse gas emissions will not be significant and therefore justify a FONSI.

Here, acknowledging the importance of addressing the climate impacts of its mining approval, the BLM rightfully disclosed the lease modification would result in 1,374,156 metric tons of carbon dioxide emissions, as well as releases of other greenhouse gas emissions. The BLM, however, fell short of providing any explanation as to whether this level of emissions is significant pursuant to NEPA. Instead, the agency appears to assert that it is not possible to assess the significance of these emissions, claiming

“there is no methodology that would allow BLM to estimate the specific impacts (if any) that this increment of warming or climate change would produce in the CIAA [cumulative impacts analysis area] or elsewhere.” EA at 43. In other words, according to the BLM, the best the agency can do is calculate emissions, but not assess at all the degree to which these emissions may or may not be significant under NEPA.

While procedurally, this indicates the climate change impacts are significant given that, as the BLM implicitly acknowledges, the impacts appear to be “highly uncertain” and therefore significant pursuant to 40 C.F.R. § 1508.27(b)(5), substantively, the agency is simply incorrect. There is a method to assess impacts.

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 (CO<sub>2</sub>) 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 CO<sub>2</sub> reduction).” Exhibit 2, U.S. Environmental Protection Agency (“EPA”), “Fact Sheet: Social Cost of Carbon” (Nov. 2013) at 1, available online at <http://www.epa.gov/climatechange/Downloads/EPAactivities/scc-fact-sheet.pdf> (last accessed March 30, 2016). The protocol was developed by a working group consisting of several federal agencies, including the U.S. Department of Agriculture, U.S. Environmental Protection Agency (“EPA”), CEQ, and others, with the primary aim of implementing Executive Order 12866, which requires that the costs of proposed regulations be taken into account.

In 2009, an Interagency Working Group was formed to develop the protocol and issued final estimates of carbon costs in 2010. These estimates were revised in 2013 by the Interagency Working Group, which at the time consisted of 13 agencies, including the Department of Agriculture, and again revised in 2015. *See* Exhibit 3, Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory

Impact Analysis Under Executive Order 12866” (July 2015), available online at <https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-td-final-july-2015.pdf> (last accessed March 30, 2016).

Depending on the discount rate and the year during which the carbon emissions are produced, the Interagency Working Group estimates the cost of carbon emissions, and therefore the benefits of reducing carbon emissions, to range from \$11 to \$212 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 4, 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> (last accessed March 30, 2016). 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 5, GAO, “Regulatory Impact Analysis, Development of Social Cost of Carbon Estimates,” GAO-14-663 (July 2014), available online at <http://www.gao.gov/assets/670/665016.pdf> (last accessed Sept. 15, 2015).

**Revised Social Cost of CO<sub>2</sub>, 2010 – 2050 (in 2007 dollars per metric ton of CO<sub>2</sub>)**

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 6, EPA, Comments on Supplemental Draft EIS for the Keystone XL Oil Pipeline (June 6, 2011).

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 7, BLM, “Environmental Assessment for October 21, 2014 Oil and Gas lease Sale,” DOI-BLM-MT-0010-2014-0011-EA (May 19, 2014) at 76, available online at [http://www.blm.gov/style/medialib/blm/mt/blm\\_programs/energy/oil\\_and\\_gas/leasing/lease\\_sales/2014/oct\\_21\\_2014/july23posting.Par.25990.File.dat/MCFO%20EA%20October%202014%20Sale\\_Post%20with%20Sale%20\(1\).pdf](http://www.blm.gov/style/medialib/blm/mt/blm_programs/energy/oil_and_gas/leasing/lease_sales/2014/oct_21_2014/july23posting.Par.25990.File.dat/MCFO%20EA%20October%202014%20Sale_Post%20with%20Sale%20(1).pdf) (last accessed March 30, 2016). 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 CO<sub>2</sub>e increase. *See* Exhibit 8, 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](https://www.blm.gov/epl-front-office/projects/nepa/39064/55133/59825/DOI-BLM-ID-B010-2014-0036-EA_UPDATED_02272015.pdf) (last accessed March 30, 2016). 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 2. 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  
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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 9, Moore, C.F. and B.D. Delvane, “Temperature impacts on economic growth warrant stringent mitigation policy,” *Nature Climate Change* (January 12, 2015) at 2. In spite of uncertainty and likely underestimation of carbon costs, nevertheless, “the SCC is a useful measure to assess the benefits of CO<sub>2</sub> reductions,” and thus a useful measure to assess the costs of CO<sub>2</sub> increases. Exhibit 2.

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 and should be used to assess the significance of climate impacts, is emphasized by a recent White House report, which warned that delaying carbon reductions would yield significant economic costs. *See* Exhibit 10, 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](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 CO<sub>2</sub> accumulates in the atmosphere, delaying action increases CO<sub>2</sub> concentrations. Thus, if a policy delay leads to higher ultimate CO<sub>2</sub> concentrations, that delay produces persistent economic damages that arise from higher temperatures and higher CO<sub>2</sub> concentrations. Alternatively, if a delayed policy still aims to hit a given climate target, such as limiting CO<sub>2</sub> 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.

Exhibit 10 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. 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 WildEarth Guardians’ Statement of Reasons, Appeal of the Jim Bridger Lease Modification, IBLA No. 2016-0079.

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 11, 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](http://www.nytimes.com/2015/12/02/upshot/theres-a-formula-for-deciding-when-to-extract-fossil-fuels.html?_r=0) (last accessed March 30, 2016).

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 to assess the potential significance of any climate impacts. The agency did not. Instead, the BLM rejected the notion that a social cost of carbon analysis was appropriate, implicitly (and erroneously) concluding that there would be no cost associated with the lease modification.

In response to Guardians' scoping comments (the BLM did not provide an opportunity for comment on any draft EA), the BLM asserted that, while social cost of carbon is a "helpful tool," that an assessment of carbon costs was inappropriate "without the completion of a thorough cost-benefit analysis." EA at 26.

This response is confusing, to say the least, particularly given that the BLM did disclose other economic impacts associated with the lease modification. For instance, the agency notes that "[t]axes and royalty payments from the mining of coal in the project area would provide revenue to the state and federal government[.]" EA at 33. The EA also notes that, if the No Action Alternative were adopted, "[t]he extension of mine activities for an additional 1.5 years and associated employment and economic benefits would not occur[.]" *Id.* Here, it appears that the BLM believes it is appropriate to disclose the economic benefits associated with the lease modification, but somehow not appropriate to disclose

costs—particularly climate costs—using readily available, scientifically endorsed, and widely used methods.

Regardless, the BLM’s response is belied by the fact that social cost of carbon, while certainly providing information regarding the costs of carbon emissions, is not limited to being utilized solely as a factor in a “thorough cost benefit analysis.” Rather, using the social cost of carbon protocol provides a monetary context for the potential significance of climate impacts of an action. In this sense, this method is no different than the BLM quantifying the air quality impacts of the Jim Bridger lease modification. The BLM does not need to (and does not) undertake a deeply probing examination of the costs and benefits of air pollution, it simply discloses air quality impacts as part of its duty to disclose effects to the human environment under NEPA. Disclosing carbon costs, while involving dollar signs, sheds light on the negative impacts of climate change resulting from greenhouse gas emissions. It is unclear how the BLM has determined that such disclosure is only useful only when coupled with a “thorough cost benefit analysis.”

Although the BLM may assert that the projected carbon emissions are too small to matter (as the agency claims in the EA, the emissions represent a fraction of global greenhouse gas emissions), there is no support for this claim as the BLM has established no specific threshold of significance for greenhouse gas emission impacts under NEPA. Further, this claim is undermined by the fact that the BLM did not accurately analyze all reasonably foreseeable greenhouse gas emissions associated with the Jim Bridger lease modification. Notably, the agency failed to actually disclose greenhouse gas emissions associated with all reasonably foreseeable cumulative actions, as well as all similar actions, consistent with 40 C.F.R. § 1508.25(b)(2) and (3).

Here, although the BLM acknowledges that issuance of the lease modification will “provide access to adjacent private underground coal” (EA at 33), the EA makes no effort to disclose how much privately owned coal may be accessed and what emissions are likely to result from the mining and burning of this coal. Further, although the nearby Black Butte surface mine is also seeking a 449 acre

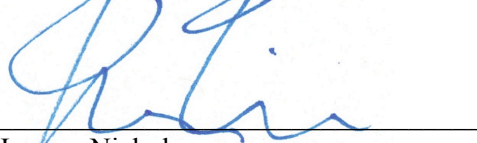
lease modification from the BLM, the agency made no effort to disclose the tons of coal that are involved in this lease modification or the greenhouse gas emissions likely to result. It is also disconcerting that, even though the BLM defines the climate analysis area as the “[g]lobe” (EA at 41), the EA completely overlooks impacts from similar actions occurring within this area. Notably, the EA fails to disclose the impacts of all BLM coal leasing occurring within the United States, including leasing occurring in Wyoming. Although nationally, a number of coal leases are under consideration by the BLM, in the Powder River Basin of northeastern Wyoming, three lease by applications—North Hilight, Maysdorf II South, and Hay Creek II—have been approved through Records of Decision, but not yet sold. *See* Exhibit 12, BLM, Information on North Hilight, Maysdorf II South, and Hay Creek II Lease by Applications, available online at [http://www.blm.gov/wy/st/en/programs/energy/Coal\\_Resources/PRB\\_Coal/lba\\_title.html](http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/lba_title.html) (last accessed March 30, 2016). Together, these leases, which are similar in timing, geography, agency control (and clearly are occurring within the scope of the global climate analysis area) contain more than 660 million tons of coal, which when burned together with coal from the Jim Bridger lease modification, stands to unleash far more carbon pollution than the lease modification alone. The greenhouse gas emissions and climate impacts of these and other similar BLM coal leasing action should have been addressed together with the impacts of the lease modification in the EA. The failure of BLM to analyze and assess the impact of these similar actions, consistent with NEPA, renders the agency’s FONSI wholly unsupported.

Notwithstanding the BLM’s failure to adequately analyze and assess all greenhouse gas emissions associated with the lease modification, the fact that the BLM has, in the context of other environmental analyses, clearly acknowledged that social cost of carbon analyses are appropriate, useful, and possible, the refusal of the agency to similarly undertake such analyses in the context of the Jim Bridger lease modification means the EA is unsupported under NEPA and cannot stand to support a FONSI and the decision by the Field Manager.

#### **IV. CONCLUSION**

For the aforementioned reasons, WildEarth Guardians requests that the IBLA set aside and remand the BLM's decision approving the modification of coal lease number WYW-154595. The BLM failed to analyzing the at the potentially significant climate impacts of the proposed lease, in turn rendering the EA and FONSI legally unsupported under NEPA..

Respectfully submitted this 30<sup>th</sup> day of March 2016



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**CERTIFICATE OF SERVICE**

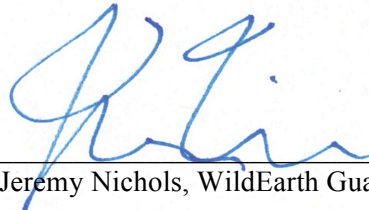
I certify that on March 30, 2016, I served this Statement of Reasons via priority mail upon:

Interior Board of Land Appeals  
Office of Hearings and Appeals  
U.S. Department of the Interior  
801 N. Quincy St., Ste. 300  
Arlington, VA 22203

U.S. Department of the Interior  
Office of the Solicitor  
Regional Solicitor, Rocky Mountain Region  
U.S. Department of Interior  
755 Parfet St., Ste. 151  
Lakewood, CO 80215

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Jeremy Nichols, WildEarth Guardians