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Subject: **Objection to Record of Decision on**
Federal Coal Lease Modifications COC-1362 & COC-67232
Paonia Ranger District, Grand Mesa,
Uncompahgre and Gunnison National Forests, Gunnison County, Colorado

This objection is based on previously submitted and timely, specific written comments, submitted to the Forest Service by the Institute for Policy Integrity at New York University School of Law on July 24, 2017.[1] Those comments exclusively addressed the Forest Service's failure to use the social cost of greenhouse gases in the SDEIS, and made the same fundamental arguments as this objection does now.

This objection addresses the continued failure to use the social cost of greenhouse gases in approving these coal lease modifications, as discussed on pages 9-10 of the Record of Decision and pages 128-129 of the supplemental final environmental impact statement. This failure violates NEPA's hard look requirement, as interpreted most recently by U.S. District Court for the District of Montana in *Montana Environmental Info. Ctr. v. Office of Surface Mining* (cv 15-106-M-DWM, Aug. 14, 2017)[2] (holding that failing to monetize climate costs while monetizing the economic upside of coal lease modifications was arbitrary and capricious under NEPA's hard look requirements).

The Record of Decision makes several false statements in justifying its failure to use the social cost of greenhouse gases. First, the Record acknowledges that the SFEIS presented "monetary" estimates of positive economic impacts, but then wrongly asserts that "the SFEIS does not contain information that equates with the benefit side of a cost-benefit analysis." The Record next argues that, if the Forest Service had monetized climate costs using the social cost of greenhouse gas metrics, "it would be necessary to balance these costs by also quantifying the benefits of burning coal to generate electricity, such as providing affordable, reliable electricity and the resultant benefits of having electricity in general." These statements are wrong for several reasons.

As several courts, including most recently the District Court for the District of Montana, have concluded, it is arbitrary for a NEPA analysis to tout and monetize a resource management project's economic upside while failing to treat the project's costs with proportional analytical rigor. The Forest Service asserts that its monetization of "economic impacts" is distinct from monetizing the project's benefits. As

[1] Comments on SDEIS *available at* https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4046376.
Our comments on the SDEIS were submitted jointly with the Environmental Defense Fund, the Natural Resources Defense Council, Sierra Club, and Union of Concerned Scientists. However, this objection letter is submitted solely by the Institute for Policy Integrity and is not joined by any of our co-commenters (though they may separately submit their own objections). No part of this objection letter purports to represent New York University School of Law's views, if any.
[2] *Available at* https://www.elaw.org/system/files/attachments/publicresource/MEIC_OSM_2017.pdf.

the District Court for the District Montana explained, the suggestion that an economic impact assessment is distinguishable from a cost-benefit analysis is "a distinction without a difference where, as here, the economic benefits of the action were quantified while the costs were not."[3] Here, the supplemental environmental impact statement monetizes the positive economic impacts in terms of royalty revenue, increased output and GDP contribution, and labor income.[4] It is fair to say most readers (if not all) would interpret these discussions as calculations of economic benefits.

Notably, the calculation of increased output simply multiplies the estimated annual coal production rate by the average nominal price of coal.[5] Because coal is a commodity traded in a well-functioning, competitive market, the price of coal is, in fact, the best estimate of the marginal economic benefit of burning coal. As OMB's *Circular A-4* explains, "Market prices provide rich data for estimating benefits and costs based on willingness-to-pay if the goods and services affected . . . are traded in well-functioning competitive markets."[6] The vast majority of federal coal is sold to produce electricity; therefore, the market price of coal already captures the economic benefits of coal for electricity production. Further, the market price of coal already captures the benefits of "having electricity in general," because how much consumers are willing to pay to satisfy their demand for electricity is already embedded in the competitive market prices both of electricity and of coal sold for electricity. Therefore, the Record of Decision gets its economic logic entirely backwards. The Forest Service claims that, if it were to use the social cost of greenhouse gases, it would have to engage in a new and difficult analysis of the economic benefits of burning coal; to the contrary, the Forest Service has already fully monetized the economic benefits of burning coal (by monetizing the increased coal output), and therefore it needs to provide equal treatment to the economic costs of burning coal, as measured by the social cost of greenhouse gases.

The Record of Decision is also wrong on a number of other claims regarding the social cost of greenhouse gases. It says there is a "lack of consensus on the appropriate discount rate"; in fact, there is wide consensus among economists that a 3% or lower discount rate is appropriate for inter-generational climate impacts, and OMB concluded the same in 2015.[7] The Record says that the Colorado Roadless Rule showed such a wide range of estimates of costs based on the social cost of greenhouse gases that producing a similar range here would be meaningless; in fact, the range of estimates in the Colorado Roadless Rule mostly reflect variation in the production schedule estimates, not variation in the monetization of greenhouse gases, and nearly all the range presented in the Colorado Roadless Rule showed negative climate costs. Furthermore, the average estimates of the social cost of greenhouse gases at the 3% discount rate provide an easy-to-apply central value to use in decisionmaking. The Record next claims that the social cost of greenhouse gases "does not measure the actual incremental environmental impacts of the project on the environment in a manner easily understood"; to the contrary, translating effects into dollars makes the impacts much easier for the average person to understand, compared to vague qualitative discussions or abstract numerical presentations of tons.[8] Finally, the Record says that the social cost of greenhouse gases is problematic because it focuses on the global scale as opposed to site-specific impacts. But the Forest Service explained in the Colorado

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[3] *Montana Environmental Info. Ctr. v. Office of Surface Mining*, *supra*, at n.9.
[4] See table 3-39, pages 274-279 in SEIS.
[5] See table 3-38 in SEIS.
[6] Circular A-4 at 19.
[7] Both points are articulated more fully in our original comments on the SDEIS.
[8] This point is articulated more fully in our original comments on the SDEIS.

Roadless Rule why a global presentation of climate costs is necessary and why a forest-level value would be misleading.[9]

To remedy its arbitrary failure to use the social cost of greenhouse gases, the Forest Service should re-conduct its analysis, using the social cost of greenhouse gas estimates produced by the Interagency Working Group in 2016.[10] Upon completing a new and properly balanced analysis, the Forest Service should not move forward with the proposed project unless the agency can explain why the project's benefits justify the climate costs and other environmental costs.

Sincerely,

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[9] See Colorado Roadless Rule SFEIS at E-68, available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd525072.pdf ("The SFEIS uses only the Global Boundary stance and the discount rates in the TSD due to the global nature of climate change and in response to public and agency comments.").

[10] For an explanation of why those values remain the best estimates for agencies to use despite the recent executive order disbanding the interagency working group, see Richard Revesz et al., *Best Cost Estimate of Greenhouse Gases*, 357 Science 655 (2017), DOI: 10.1126/science.aao4322.