July 18, 2019

To: Bureau of Land Management, Department of the Interior

Subject: Comments on Failure to Monetize Greenhouse Gas Emissions in the Moneta Divide Natural Gas and Oil Development Project Draft Environmental Impact Statement

Submitted by: Environmental Defense Fund, Institute for Policy Integrity at NYU School of Law, Montana Environmental Information Center, Sierra Club, Union of Concerned Scientists, WildEarth Guardians[1]

The following comments focus on the failure of the Bureau of Land Management (BLM) to monetize climate damages in the Moneta Divide Natural Gas and Oil Development Project draft environmental impact statement (DEIS).[2] The Moneta Divide project proposes "to develop new and enhance existing facilities for the exploration and production of oil and gas resources."[3] The project will expand well drilling in Fremont and Natrona counties, Wyoming, at an average rate of 280 to 325 new wells per year.[4] BLM estimates direct and downstream greenhouse gas emissions for several decades into the future, with total emissions peaking at 67.5 million metric tons of carbon dioxide-equivalent emissions in the project's fifteenth year.[5] Over the project's lifetime, it would be responsible for billions of tons of greenhouse gas emissions. Yet the DEIS does not include a monetized estimate of any of the actual, real-world climate damages those emissions will produce. When compared to the no action alternative,[6] the scenario that BLM proposes would result in billions of dollars in additional climate impacts. For example, 67.5 million metric tons emitted from the project in a single year would cause over $4.5 billion in year 2035 alone.[7]

BLM uses faulty reasoning to defend why it has chosen not to use the social cost of greenhouse gases metric to monetize the plan's emissions.[8] BLM's arguments are wrong, and these comments explain why

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[1] Our organizations may separately and independently submit other comments on other issues raised by the EA.

[2] Bureau of Land Management, Moneta Divide Natural Gas and Oil Development Project Draft Environmental Impact Statement (2019) [hereinafter DEIS].

[3] DEIS at ES-1.

[4] DEIS at 1-6.

[5] DEIS at 4-77 (reporting direct emissions of 5.765 million metric tons in year 15, using 20-year global warming potentials) and 5-23 (reporting downstream emissions of 6.17E+07, or 61.7 million metric tons, in year 15, using 20-year global warming potentials). Reporting these estimates in no way endorses them as accurate or complete, but instead simply shows that, even using BLM's estimates, the monetized damages are highly significant.

[6] DEIS at 1-5.

[7] This calculation assumes that the project's fifteenth year would be 2035. The central estimate for the social cost of carbon by the Interagency Working Group is $55 per ton in year 2007$ for year 2035 emissions. Interagency Working Group on the Social Cost of Greenhouse Gases, *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis* at 25 tbl. A1 (2016) (calculating the central estimate at a 3% discount rate), https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/scc_tsd_final_clean_8_26_16.pdf [hereinafter 2016 TSD]. Converted to 2018$ using the CPI inflation calculator, that equals over $68 per ton. 67.5 million tons * $68 per ton = $4.59 billion. In a cost-benefit analysis, this figure would be discounted back to net present value from the perspective of year 2019, using a 3% discount rate.

[8] *See* DEIS at 4-79.

BLM's reasoning is flawed and how BLM has violated its obligations under the National Environmental Policy Act (NEPA). Specifically, we make the following points:

1. Application of the social cost of greenhouse gases is not limited to rulemakings; NEPA requires agencies to fully and accurately estimate environmental, public health, and social welfare differences between alternatives, and the social cost of greenhouse gases is the best available tool to compare the climate impacts of alternatives;
2. Executive Order 13,783 does not bar agencies from using the same methodology and inputs applied by the Interagency Working Group (IWG) to develop its best estimates of social cost of greenhouse gases and, in fact, by requiring agencies to use best practices, the Executive Order would point agencies toward the same or higher values of global climate damages as calculated by the IWG;
3. Although NEPA does not require a formal cost-benefit analysis, the statute does require a "reasonably thorough discussion" and "necessary contextual information" on real-world climate impacts and their significance. The social cost of greenhouse gases provides such information;
4. BLM monetized a number of other effects of the action, including the project's total output based on the value of the resources, and must give climate effects the same consideration. When an agency monetizes a proposed action's potential benefits—as BLM does here—the potential climate costs must be treated with proportional rigor. Additionally, simply because not every effect can be monetized does not mean that monetization is not a useful analytical tool.

We explain each of these points in turn below.

I. BLM Must Monetize the Social Cost of Greenhouse Gases in Its EA

The National Environmental Policy Act (NEPA), the statute under which environmental impact statements are required, directs agencies to fully and accurately analyze the environmental, public health, and social welfare differences between proposed alternatives, and to contextualize that information for decision-makers and the public. NEPA requires a more searching analysis than merely disclosing the amount of pollution. Rather, BLM must examine the "ecological[,]… economic, [and] social" impacts of those emissions, including an assessment of their "significance."[9] By failing to use available tools, such as the social cost of carbon, to analyze the significance of emissions, BLM is violating NEPA.

Monetizing Climate Damages Fulfills the Obligations and Goals of NEPA

When a project has climate consequences that must be assessed under NEPA, monetizing the climate damages fulfills an agency's legal obligations under NEPA in ways that simple quantification of tons of greenhouse gas emissions cannot. NEPA requires "hard look" consideration of beneficial and adverse effects of each alternative option for major federal government actions. The U.S. Supreme Court has called the disclosure of impacts the "key requirement of NEPA," and held that agencies must "consider and disclose the *actual environmental effects*" of a proposed project in a way that "brings those effects to bear on [the agency's] decisions."[10] Courts have repeatedly concluded that an environmental impact

[9] 40 C.F.R. §§ 1508.8(b), 1502.16(a)-(b).

[10] *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 96 (1983) (emphasis added); *see also* 40 C.F.R. § 1508.8(b) (requiring assessment of the "ecological," "economic," "social," and "health" "*effects*") (emphasis added).

statement must disclose relevant climate effects.[11] NEPA requires "a reasonably thorough discussion of the significant aspects of the probable environmental consequences," to "foster both informed decisionmaking and informed public participation."[12] In particular, "[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impact analysis that NEPA requires," and it is arbitrary to fail to "provide the necessary contextual information about the cumulative and incremental environmental impacts."[13] Furthermore, the analyses included in environmental assessments and impact statements "cannot be misleading."[14] An agency must provide sufficient informational context to ensure that decisionmakers and the public will not misunderstand or overlook the magnitude of a proposed action's climate risks compared to the no action alternative. As this section explains, by only quantifying the volume of greenhouse gas emissions, agencies fail to assess and disclose the actual climate consequences of an action and misleadingly present information in ways that will cause decisionmakers and the public to overlook important climate consequences. Using the social cost of greenhouse gas metrics to monetize climate damages fulfills NEPA's legal obligations in ways that quantification alone cannot.

BLM Must Assess Actual Incremental Climate Impacts, Not Just the Volume of Emissions

The tons of greenhouse gases emitted by a project are not the "actual environmental effects" under NEPA. Rather, the actual effects and relevant factors are the incremental climate impacts caused by those emissions, including:[15]

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[11] As the Ninth Circuit has held: "[T]he fact that climate change is largely a global phenomenon that includes actions that are outside of [the agency's] control . . . does not release the agency from the duty of assessing the effects of *its* actions on global warming within the context of other actions that also affect global warming." *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008); *see also Border Power Plant Working Grp. v. U.S. Dep't of Energy*, 260 F. Supp. 2d 997, 1028-29 (S.D. Cal. 2003) (failure to disclose project's indirect carbon dioxide emissions violates NEPA).

[12] *Ctr. for Biological Diversity*, 538 F.3d at 1194 (citations omitted).

[13] *Id.* at 1217.

[14] *High Country Conservation Advocates v. U.S. Forest Service*, 52 F. Supp. 3d 1174, 1182 (D. Colo. 2014); *accord. Johnston v. Davis*, 698 F.2d 1088, 1094-95 (10th Cir. 1983) (disapproving of "misleading" statements resulting in "an unreasonable comparison of alternatives"); *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 446 (4th Cir. 1996) ("For an EIS to serve these functions" of taking a hard look and allowing the public to play a role in decisionmaking, "it is essential that the EIS not be based on misleading economic assumptions"); *see also Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983) (holding that an agency's "skewed cost-benefit analysis" was "deficient under NEPA"); *see generally Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148-49 (D.C. Cir. 2011) (criticizing an agency for "inconsistently and opportunistically fram[ing] the costs and benefits of the rule" and for "fail[ing] adequately to quantify the certain costs or toe explain why those costs could not be quantified").

[15] These impacts are all included to some degree in the three integrated assessment models (IAMs) used by the IWG (namely, the DICE, FUND, and PAGE models), though some impacts are modeled incompletely, and many other important damage categories are currently omitted from these IAMs. *Compare* Interagency Working Group on the Social Cost of Carbon, *Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis* at 6-8, 29-33 (2010), https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf [hereinafter 2010 TSD]; *with* Peter Howard, *Omitted Damages: What's Missing from the Social Cost of Carbon* (Cost of Carbon Project Report, 2014), http://costofcarbon.org/files/Omitted_Damages_Whats_Missing_From_the_Social_Cost_of_Carbon.pdf. For other lists of actual climate effects, including air quality mortality, extreme temperature mortality, lost labor productivity, harmful algal blooms, spread of west nile virus, damage to roads and other infrastructure, effects on urban drainage, damage to coastal property, electricity demand and supply effects, water supply and quality effects, inland flooding, lost winter recreation, effects on agriculture and fish, lost ecosystem services from coral reefs, and wildfires, *see* EPA, *Multi-Model Framework for Quantitative Sectoral Impacts Analysis: A Technical Report for the Fourth National Climate Assessment* (2017); U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment* (2017); EPA, *Climate Change in the United States: Benefits of Global Action* (2015); Union of Concerned Scientists, *Underwater: Rising Seas, Chronic Floods, and the Implications for U.S. Coastal Real Estate* (2018).

- property lost or damaged by sea-level rise, coastal storms, flooding, and other extreme weather events, as well as the cost of protecting vulnerable property and the cost of resettlement following property losses;
- changes in energy demand, from temperature-related changes to the demand for cooling and heating;
- lost productivity and other impacts to agriculture, forestry, and fisheries, due to alterations in temperature, precipitation, CO_2 fertilization, and other climate effects;
- human health impacts, including cardiovascular and respiratory mortality from heat-related illnesses, changing disease vectors like malaria and dengue fever, increased diarrhea, and changes in associated pollution;
- changes in fresh water availability;
- ecosystem service impacts;
- impacts to outdoor recreation and other non-market amenities; and
- catastrophic impacts, including potentially rapid sea-level rise, damages at very high temperatures, or unknown events.

Even in combination with a general, qualitative discussion of climate change, by calculating only the tons of greenhouse gases emitted or a percent comparison to sectoral or national emissions, an agency fails to meaningfully assess the actual incremental impacts to property, human health, productivity, and so forth.[16] An agency therefore falls short of its legal obligations and statutory objectives by focusing just on volume estimates. Similarly, courts have held that just quantifying the acres of timber to be harvested or the miles of road to be constructed does not constitute a "description of *actual* environmental effects," even when paired with a qualitative "list of environmental concerns such as air quality, water quality, and endangered species," when the agency fails to assess "the degree that each factor will be impacted."[17]

By monetizing climate damages using the social cost of greenhouse gas metrics, BLM can satisfy the legal obligations and statutory goals to assess the incremental and actual effects bearing on the public interest. The social cost of greenhouse gas methodology calculates how the emission of an additional unit of greenhouse gases affects atmospheric greenhouse concentrations, how that change in atmospheric concentrations changes temperature, and how that change in temperature incrementally contributes to the above list of economic damages, including property damages, energy demand effects, lost agricultural productivity, human mortality and morbidity, lost ecosystem services and non-market amenities, and so forth.[18] The social cost of greenhouse gas tool therefore captures the factors that actually affect public welfare and assesses the degree of impact to each factor, in ways that just estimating the volume of emissions cannot.

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[16] *See High Country*, 52 F. Supp. 3d at 1190 ("Beyond quantifying the amount of emissions relative to state and national emissions and giving general discussion to the impacts of global climate change, [the agencies] did not discuss the impacts caused by these emissions."); *Mont. Envtl. Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1096–99 (D. Mont. 2017) (rejecting the argument that the agency "reasonably considered the impact of greenhouse gas emissions by quantifying the emissions which would be released if the [coal] mine expansion is approved, and comparing that amount to the net emissions of the United States").

[17] *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 995 (9th Cir. 2004) ("A calculation of the total number of acres to be harvested in the watershed is . . . not a sufficient description of the actual environmental effects that can be expected from logging those acres."); *see also Oregon Natural Res. Council v. Bureau of Land Mgmt.*, 470 F.3d 818 (9th Cir. 2006).

[18] 2010 TSD, *supra* note 15, at 5.

Climate Damages Depend on Stock and Flow, But Volume Estimates Only Measure Flow

The climate damage generated by each additional ton of greenhouse gas emissions depends on the background concentration of greenhouse gases in the global atmosphere. Once emitted, greenhouse gases can linger in the atmosphere for centuries, building up the concentration of radiative-forcing pollution and affecting the climate in cumulative, non-linear ways.[19] As physical and economic systems become increasingly stressed by climate change, each marginal additional ton of emissions has a greater, non-linear impact. The climate damages generated by a given amount of greenhouse pollution is therefore a function not just of the pollution's total volume but also the year of emission, and with every passing year an additional ton of emissions inflicts greater damage.[20]

As a result, focusing just on the volume or rate of emissions, as BLM does here,[21] is insufficient to reveal the incremental effect on the climate. The change in the rate of emissions (flow) must be assessed given the background concentration of emissions (stock). A percent comparison to national emissions is perhaps even more misleading. A project that adds 23 million additional tons per year of carbon dioxide would have contributed to 0.43% of total U.S. carbon dioxide emissions in the year 2012.[22] In the year 2014, that same project with the same carbon pollution would have contributed to just 0.41% of total U.S. carbon dioxide emissions—a seemingly smaller relative effect, since the total amount of U.S. emissions increased from 2012 to 2014.[23] However, because of rising background concentrations of global greenhouse gas stock, and because of growing stresses in physical and economic systems, the marginal climate damages per ton of carbon dioxide (as measured by the social cost of carbon) increased from $33 in 2012 to $35 in 2014 (in 2007$).[24] Consequently, those 23 million additional tons would have caused marginal climate damages costing $759 million in the year 2012, but by 2014 that same 23 million tons would have caused $805 million in climate damages. To summarize: the percent comparison to national emissions misleadingly implied that a project adding 23 million more tons of carbon dioxide would have a relatively less significant effect in 2014 than in 2012, whereas monetizing climate damages would accurately reveal that the emissions in 2014 were much more damaging than the emissions in 2012—almost $50 million more. In this same way, BLM's comparison here of direct average annual emissions to Wyoming emissions (6.2%) misleadingly suggests that the project's contribution to climate change is static and small, while in fact a continuing stream of 4.3 million metric tons per year in direct emissions will inflict marginally increasing damage each year as background concentrations rise. Comparing project emissions to a state inventory reveals nothing about the significance of the project's contributions to actual environmental impacts.

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[19] Carbon dioxide also has cumulative effects on ocean acidification, in addition to cumulative radiative-forcing effects.

[20] *See* 2010 TSD, *supra* note 15, at 33 (explaining that the social cost of greenhouse gas estimates grow over time).

[21] DEIS at tbls. 4-33, 4-34, 5-4.

[22] Total U.S. carbon dioxide emissions in 2012 were 5,366.7 million metric tons (for all greenhouse gases, emissions were 6,529 MMT CO2 eq). *See* EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2016* at ES-6, tbl. ES-2 (2018).

[23] Total U.S. carbon dioxide emissions in 2014 were 5,568.8 million metric tons (and for all greenhouse gases, 6,763 MMT CO2 eq.) *Id.*

[24] Interagency Working Group on the Social Cost of Greenhouse Gases, *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis* at 25 tbl. A1 (2016) (calculating the central estimate at a 3% discount rate), https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/scc_tsd_final_clean_8_26_16.pdf [hereinafter 2016 TSD].

Capturing how marginal climate damages change as the background concentration changes is especially important because NEPA requires assessing both present and future impacts.[25] Marginal climate damages caused by this project's additional emissions depend not just on the rate of other emissions, but crucially also on how this project adds to the background concentration of greenhouse gases, which may continue to rise even if the national or worldwide rate of emissions decreases in the short term. Considering the Moneta Divide Project will extend oil and gas drilling for 65 years into the future—to a point when each additional ton of greenhouse gas emissions will inflict four times as much damage as it would today[26]—it is misleading to report just the rate of emissions without discussing the significance of the emissions' contribution to actual environmental impacts. For example, reporting year 30 downstream emissions as "2.14E+07" makes them appear not much different from year 2 downstream emissions of "1.59E+07."[27] But in fact, 15.9 million metric tons of carbon dioxide-equivalent emissions will cause about $843 million in damages when emitted in year 2022, while 21.4 million metric tons will cause $1.8 billion in climate damages when emitted in year 2050.[28]

By factoring in projections of the increasing global stock of greenhouse gases as well as increasing stresses to physical and economic systems, the social cost of greenhouse gas metrics enable accurate and transparent comparisons of projects with varying greenhouse gas emissions over time.

Monetization Provides the Required Informational Context that Volume Estimates Lack

NEPA requires sufficient informational context. Yet without proper context, numbers like a 6.2% increase in total Wyoming emissions from the project's estimated direct emissions[29] will be misinterpreted by people as meaningless, as zero. Indeed, in a country of over 300 million people and over 6.5 billion tons of annual greenhouse gas emissions, it is far too easy to make highly significant effects appear relatively trivial.[30] For example, presenting all weather-related deaths as less than 0.1% of total U.S. deaths makes the risk of death by weather event sound trivial, but in fact that figure represents over 2,000 premature deaths per year[31]—hardly an insignificant figure.[32] As the U.S. Court of Appeals for the Fifth Circuit recently observed, even a seemingly "very small portion" of a "gargantuan

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[25] NEPA requires agencies to weigh the "relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity," as well as "any irreversible and irretrievable commitments of resources." 42 U.S.C. § 4332(2)(C).

[26] *See* 2016 TSD at Table A1 (listing the social cost of carbon for year 2019 emissions as $41 per ton, assuming a linear social cost of carbon growth rate of 2.02% annually from 2050 [when the SCC value is ~$80/ton], the social cost of carbon in 2084 would be $162.11).

[27] DEIS at 5-23.

[28] Using the IWG's central estimates, adjusted to 2018$, the social cost of carbon is $53 per ton for year 2022 emissions, and $85 per ton for year 2050 emissions. These damage figures are calculated from the perspective of the year of emissions, and have not been discounted back to present value.

[29] DEIS at 4-79, tbl 4-34.

[30] As California's CEQA guidance explains, "A project's incremental contribution may be cumulatively considerable even if it appears relatively small compared to statewide, national or global emissions." Final Adopted Text for Revisions to the CEQA Guidelines, *available at* https://perma.cc/P4S7-XAMF [http://resources.ca.gov/ceqa/docs/2018_CEQA_FINAL_TEXT_122818.pdf].

[31] *Compare* Nat'l Ctr. for Health Stat., Ctrs. for Disease Control & Prevention, *Death Attributed to Heat, Cold, and Other Weather Events in the United States, 2006-2010* at 1 (2014) (reporting about 2000 weather-related deaths per year) *with* Nat'l Ctr. for Health Stat., *Deaths and Mortality*, https://www.cdc.gov/nchs/fastats/deaths.htm (reporting about 2.7 million U.S. deaths per year total).

[32] The public willingness to pay to avoid mortality is typically estimated at around $9.6 million (in 2016$). E.g., 83 Fed. Reg. 12,086, 12,098 (Mar. 19, 2018) (U.S. Coast Guard rule using the Department of Transportation's value of statistical life in a recent analysis of safety regulations). Losing 2,000 lives prematurely to weather-related events is equivalent to a loss of public welfare worth over $19 billion per year.

source of [harmful] pollution" may nevertheless "constitute[ ] a gargantuan source of [harmful] pollution on its own terms."[33] In other words, percentages can be misleading and can be manipulated by the choice of the denominator; what matters is the numerator's actual contribution to total harm.

Economic theory explains why monetization is a much better tool than volume estimates or percent comparisons to provide the necessary contextual information on climate damages. For example, many decisionmakers and interested citizens would wrongly reduce down to zero the climate risks associated with 6.2% of Wyoming emissions.[34] As Professor Cass Sunstein has explained—drawing from the work of recent Nobel laureate economist Richard Thaler—a well-documented mental heuristic called "probability neglect" causes people to irrationally reduce small probability risks entirely down to zero.[35] People have significant "difficulty understanding a host of numerical concepts, especially risks and probabilities."[36] Characterizing an annual contribution of over 4 million metric tons of carbon dioxide equivalent on average per year from direct oil and gas activity as just 6.2% of Wyoming's emissions misleadingly makes the climate impacts appear vanishingly small. By comparison, by applying the social cost of carbon dioxide (about $51 per ton for year 2020 emissions in 2017$[37]), decisionmakers and the public can readily comprehend that a 4 million ton increase of carbon dioxide emitted just in the year 2020 will generate over $204 million in climate damages in that year alone, from just operational emissions.[38]

Similarly, many people will be unable to distinguish the significance of project alternatives or scenario analyses with different emissions,[39] or even to distinguish the 4.3 MMt of average direct emissions per year[40] from the 4.32E+07 metric tons of downstream emissions calculated for year 6.[41] As the Environmental Protection Agency's website explains, "abstract measurements" of so many tons of greenhouse gases can be rather inscrutable for the public, unless "translat[ed] . . . into concrete terms you can understand."[42] Abstract volume estimates fail to give people the required informational context due to another well-documented mental heuristic called "scope neglect." Scope neglect, as explained by Nobel laureate Daniel Kahneman, among others, causes people to ignore the size of a problem when estimating the value of addressing the problem. For example, in one often-cited study, subjects were unable to meaningfully distinguish between the value of saving 2,000 migratory birds from drowning in uncovered oil ponds, as compared to saving 20,000 birds.[43]

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[33] *Southwestern Elec. Power Co. v. EPA*, No. 15-60821, 2019 WL 1577740 at *22 (5th Cir., Apr. 12, 2019).

[34] EA at 4-13.

[35] Cass R. Sunstein, *Probability Neglect: Emotions, Worst Cases, and Law*, 112 Yale L. J. 61, 63, 72 (2002).

[36] Valerie Reyna & Charles Brainerd, *Numeracy, Ratio Bias, and Denominator Neglect in Judgments of Risk and Probability*, 18 Learning & Individual Differences 89 (2007).

[37] 2016 TSD, *supra* note 24.

[38] This calculation in no way accepts BLM's quantification of emissions as accurate or complete. In a proper cost-benefit analysis, future costs and benefits would be discounted to present value.

[39] Although the DEIS does not include emissions estimates from the no action alternative, it can be assumed that they would be a small fraction of those from the proposed action, which would generate approximately five times as many wells as currently exist. See DEIS at 1-5.

[40] DEIS at tbl. 4-34.

[41] DEIS at tbl. 5-23.

[42] EPA, *Greenhouse Gas Equivalencies Calculator*. *Available at* https://web.archive.org/web/20180212182940/ https:/www.epa.gov/energy/greenhouse-gas-equivalencies-calculator (last updated Sept. 2017) ("Did you ever wonder what reducing carbon dioxide (CO_2) emissions by 1 million metric tons means in everyday terms? The greenhouse gas equivalencies calculator can help you understand just that, translating abstract measurements into concrete terms you can understand.").

[43] Daniel Kahneman et al., *Economic Preferences or Attitude Expressions? An Analysis of Dollar Responses to Public Issues*, 19 J. Risk & Uncertainty 203, 212-213 (1999).

Scope neglect means many decisionmakers and members of the public would be unable to meaningfully distinguish between the climate risks of 4.3 MMt in average direct annual emissions and the climate risks of 4.32E+07 metric tons of downstream emissions. To begin, presenting downstream emissions in scientific notation[44] may be confusing for many readers and may make emissions appear much smaller than they actually are. Readers may not understand that 4.32E+07 (year 6 downstream emissions) is actually ten times larger than 4.02E+06 (year 1 downstream emissions) and ten times larger than 4.3 MMt (average direct annual emissions). Moreover, even if readers understand that 4.32E+07 represents 43.2 million metric tons, they might not understand the practical difference between that figure and 4.3 million metric tons in operational emissions. While decisionmakers and the public certainly can discern that one number is higher, without any context it may be difficult to weigh the relative magnitude of the climate risks. In contrast, the different climate risks would have been readily discernible through application of the social cost of greenhouse gas metrics. In this example, while the difference between 4.32E+07 metric tons and 4.3 MMt has been obscured, in fact 4.32E+07 tons will cause almost $2 billion more in climate damages than 4.3 MMt.[45]

In general, non-monetized effects are often irrationally treated as worthless.[46] On several occasions, courts have struck down administrative decisions for failing to give weight to non-monetized effects.[47] Most relevantly, in *Center for Biological Diversity v. NHTSA*, the U.S. Court of Appeals for the Ninth Circuit found it arbitrary and capricious to give zero value "to the most significant benefit of more stringent [fuel economy] standards: reduction in carbon emissions."[48] Monetizing climate damages provides the informational context required by NEPA, whereas a simple tally of emissions volume and rote, qualitative, generic description of climate change are misleading and fail to give the public and decisionmakers the required information about the magnitude of discrete climate effects.[49]

BLM claims that is has given sufficient context to the project's emissions by providing a qualitative "narrative" about general climate trends in combination with its volumetric estimates and comparison of the project's direct emissions to a state inventory.[50] Yet telling readers that climate change will generally affect, for example, water supply, reveals nothing about the magnitude of this project's contributions to such environmental impacts. Contrary to BLM's claims, presenting direct emissions as 4.3 MMt or 6.2% of Wyoming's emissions, and presenting downstream emissions as, for example, 4.32E+07,[51] does not present the issue to the public in a way "relatable to their everyday life."[52] Such figures are abstract, lack context, and on their own are misleading. Money is a much more "relatable," "engaging," and "relevant" scale for the public to understand, and monetizing the damages actually assesses the significance of project's contributions. Despite BLM's claim that "it is not possible at this

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[44] See DEIS at 5-23.

[45] 43.2 million metric tons – 4.3 million metric tons = 38.9 million metric tons. 38.9 million metric tons * $51 per ton = $1.98 billion.

[46] Richard Revesz, *Quantifying Regulatory Benefits*, 102 Cal. L. Rev. 1424, 1434-35, 1442 (2014).

[47] *See id.* at 1428, 1434.

[48] 538 F.3d at 1199.

[49] *See* 42 U.S.C. § 4332(2)(B) (requiring agencies to "identify and develop methods and procedures . . . which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations").

[50] See DEIS at 4-79 ("The fact that climate impacts associated with GHG emissions were not expressed in terms of monetary values does not mean that climate impacts were ignored in this EIS.").

[51] Note also that BLM does not even attempt to contextualize downstream emissions by comparing them to state or national inventories. BLM therefore fails even its own standards for contextualization. But as explained in these comments, comparisons to such inventories are misleading and do not adequately contextualize the project's impacts as required by NEPA.

[52] DEIS at 4-79.

time to link projected GHG emissions associated with the Proposed Action to specific environmental impacts within the air quality analysis area,"[53] that is precisely what the social cost of greenhouse gas metrics do. Without this information, decisionmakers and the public are at a loss for how to understand to what extent the Moneta Divide project will contribute to climate damages.

BLM also complains that the "Social Cost of GHG estimates would only provide the impact at the global scale."[54] The global scale actually is the proper framework for analysis given the global nature of climate change and the requirement under NEPA that "all agencies of the Federal Government *shall* . . . recognize the worldwide and long-range character of environmental problems."[55] (See also attached comments to BLM on the problems with the so-called "interim" social cost of carbon estimates, explaining why a global perspective of climate change is required.) To the extent BLM feels that additional assessments of the project's contributions to regional or local climate impacts is necessary, BLM should supplement its analysis with additional qualitative and quantitative evaluations of how climate change will affect the region and the project. But any requirement to also assess regional or local impacts in no way relieves BLM of its statutory obligations to assess the global impacts. And since, as BLM seems to admit, the social cost of greenhouse gas metrics are the best way to "provide the impact at the global scale," BLM should use these tools to monetize the project's global impacts and provide the context required by NEPA.

Climate Effects Must Be Monetized If Other Costs and Benefits Are Monetized

Though NEPA does not always require a full and formal cost-benefit analysis,[56] agencies' approaches to assessing costs and benefits must be balanced and reasonable. Courts have warned agencies, for example, that "[e]ven though NEPA does not require a cost-benefit analysis," an agency cannot

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[53] DEIS at 4-78.

[54] DEIS at 4-80.

[55] 42 U.S.C. § 4332(2)(f) (emphasis added). Furthermore, the Act requires agencies to, "where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment." *Id.*; *see also Environmental Defense Fund v. Massey*, 986 F.2d 528, 535 (D.C. Cir. 1993) (confirming that Subsection F is mandatory); Natural Resources Defense Council v. NRC, 647 F.2d 1345, 1357 (D.C. Cir. 1981) ("This NEPA prescription, I find, looks toward cooperation, not unilateral action, in a manner consistent with our foreign policy."); *cf.* Council on Environmental Quality, Guidance on NEPA Analysis for Transboundary Impacts (1997), *available at* http://www.gc.noaa.gov/documents/transguide.pdf; Exec. Order No. 12,114, *Environmental Effects Abroad of Major Federal Actions*, 44 Fed. Reg. 1957 §§ 1-1, 2-1 (Jan. 4, 1979) (applying to "major Federal actions . . . having significant effects on the environment outside the geographical borders of the United States," and enabling agency officials "to be informed of pertinent environmental considerations and to take such considerations into account . . . in making decisions regarding such actions").

[56] 40 C.F.R. § 1502.23 ("[T]he weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis."); *but see e.g.*, *Sierra Club v. Sigler*, 695 F.2d 957, 978-79 (5th Cir. 1983) (holding that NEPA "mandates at least a broad, informal cost-benefit analysis," and so agencies must "fully and accurately" and "objectively" assess environmental, economic, and technical costs); *Chelsea Neighborhood Ass'ns v. U.S. Postal Serv.*, 516 F.2d 378, 387 (2d Cir. 1975) ("NEPA, in effect, requires a broadly defined cost-benefit analysis of major federal activities."); *Calvert Cliffs' Coordinating Comm. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1113 (D.C. Cir. 1971) ("NEPA mandates a rather finely tuned and 'systematic' balancing analysis" of "environmental costs" against "economic and technical benefits"); *Nat'l Wildlife Fed. v. Marsh*, 568 F. Supp. 985, 1000 (D.D.C. 1983) ("The cost-benefit analysis of NEPA is concerned primarily with environmental costs. . . . A court may examine the cost-benefit analysis only as it bears upon the function of insuring that the agency has examined the environmental consequences of a proposed project.").

selectively monetize benefits in support of its decision while refusing to monetize the costs of its action.[57]

In *High Country Conservation Advocates v. Forest Service*, the U.S. District Court of Colorado found that it was "arbitrary and capricious to quantify the *benefits* of the lease modifications and then explain that a similar analysis of the *costs* was impossible when such an analysis was in fact possible."[58] The court explained that, to support a decision on coal mining activity, the agencies had "weighed several specific economic benefits—coal recovered, payroll, associated purchases of supplies and services, and royalties," but arbitrarily failed to monetized climate costs using the readily available social cost of carbon protocol.[59] Similarly, in *Montana Environmental Information Center v. Office of Surface Mining* (*MEIC v. OSM*), the U.S. District Court of Montana followed the lead set by *High Country* and likewise held an environmental assessment to be arbitrary and capricious because it quantified the benefits of action (such as employment payroll, tax revenue, and royalties) while failing to use the social cost of carbon to quantify the costs.[60]

High Country and *MEIC v. OSM* were simply the latest applications of a broader line of case law in which courts find it arbitrary and capricious to apply inconsistent protocols for analyzing some effects compared to others, especially when the inconsistency obscures some of the most significant effects.[61]

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[57] *High Country Conservation Advocates*, 52 F. Supp. 3d at 1191; *accord. MEIC v. Office of Surface Mining*, 274 F. Supp. 3d at 1094-99 (holding it was arbitrary for the agency to quantify benefits in an EIS while failing to use the social cost of carbon to quantify costs, as well as arbitrary to imply there would be no effects from greenhouse gas emissions).

[58] 52 F. Supp. 3d at 1191.

[59] *Id.*

[60] 274 F. Supp. 3d at 1094-99 (also holding that it was arbitrary to imply that there would be zero effects from greenhouse gas emissions).

[61] Other cases from different courts that have declined to rule against failures to use the social cost of carbon in NEPA analyses are all distinguishable by the scale of the action or by whether other effects were quantified and monetized in the analysis. *See League of Wilderness Defenders v. Connaughton*, No. 3:12-cv-02271-HZ (D. Ore., Dec. 9, 2014*); EarthReports v. FERC*, 15-1127, (D.C. Cir. July 15, 2016); *WildEarth Guardians v. Zinke*, 1:16-CV-00605-RJ, at 23-24, (D. N.M. Feb. 16, 2017).

In *WildEarth Guardians v. Zinke*, while the U.S. District Court for the District of Columbia stopped short of requiring BLM to use the social cost of carbon, it issued its holding on very narrow grounds. Specifically, the court declined to side with plaintiffs that "it was arbitrary and capricious for BLM to discuss the economic benefits of oil and gas drilling without quantifying their economic costs" by using the social cost of carbon protocol. No. 16-1724, 2019 WL 1273181, *22 (D.D.C. Mar. 19, 2019). However, the court did *not* hold that BLM's acted consistently in choosing to monetize benefits without monetizing costs; rather, it held that BLM's treatment of economic benefits was so "sparse[]" and "cursory" that the precedent established in *High Country Conservation Advocates v. Forest Service* could be differentiated. *Id*. But several important distinguishing arguments apply. First, the inconsistent treatment of costs and benefits is not the only reason why agencies should use the social cost of greenhouse gases to assess climate damages in NEPA reviews. The court never considered whether using the social cost of greenhouse gases was necessary or appropriate to fulfill the obligations and goals of NEPA: to assess a project's actual real-world impacts, to weigh the intensity and significance of a project's contributions to such impacts, and to give meaningful context to the information presented. Second, the court's consideration was incomplete on the issue of inconsistent treatment of costs and benefits. It is not clear why the paltry size of the lease's economic benefits should excuse BLM from inconsistently treating costs and failing to apply a readily available and easy-to-use tool to monetize the lease's hugely significant climate costs. *High Country*'s ruling turned not on the size of the monetized benefits but on the inconsistent treatment of costs and benefits. Furthermore, the court overlooked other portions of the original EAs and the tiered EISs that monetized and relied on larger economic benefits to much greater extent. Thus, the court's attempts to distinguish *High Country* do not hold up. The D.C. District Court also deferred to BLM's so-called "reasoned explanations," *id.* at *23, yet failed to recognize that in *High Country*, the District of Colorado also considered and dismissed the post-hoc attempt to argue that the social cost of carbon protocol was too imprecise or controversial to use because of the range of estimates. 52 F. Supp. 3d 1174, 1192 (D. Colo. 2014). Finally, the court in *WildEarth v. Zinke* never discussed other important case law, such as *MEIC v. OSM*. Ultimately, the court instructed BLM on remand to "reassess" whether the social cost of greenhouse gas protocol would "contribute to informed decisionmaking" and ensure more accurate analysis as required by NEPA, *id.* at n.31. The court

For example, in *Center for Biological Diversity v. National Highway Traffic Safety Administration*, the U.S. Court of Appeals for the Ninth Circuit ruled that, because the agency had monetized other uncertain costs and benefits of its vehicle fuel efficiency standard—like traffic congestion and noise costs—its "decision not to monetize the benefit of carbon emissions reduction was arbitrary and capricious."[62] Specifically, it was arbitrary to "assign[ ] no value to *the most significant benefit* of more stringent [vehicle fuel efficiency] standards: reduction in carbon emissions."[63] When an agency bases a decision on cost-benefit analysis, it is arbitrary to "put a thumb on the scale by undervaluing the benefits and overvaluing the costs."[64] Similarly, the U.S. Court of Appeals for the District of Columbia Circuit has chastised agencies for "inconsistently and opportunistically fram[ing] the costs and benefits of the rule [and] fail[ing] adequately to quantify certain costs or to explain why those costs could not be quantified"[65]; and the U.S. Court of Appeals for the Tenth Circuit has remanded an environmental impact statement because "unrealistic" assumptions "misleading[ly]" skewed comparison of the project's positive and negative effects.[66]

The DEIS monetizes economic benefits similar to those highlighted in *High Country* and *MEIC*, including government revenues, such as taxes and royalties.[67] BLM seemingly tries to skirt the precedent set by *MEIC v. OSM* by claiming that taxes and royalties are "regional economic impacts" and not costs or benefits.[68] There are several problems with BLM's argument. First, in *MEIC v. OSM*, the District Court of the District of Montana dismissed this same argument as "a distinction without a difference."[69] Despite BLM's attempts to use terminology to distinguish the impacts it wants to monetize from those impacts it would prefer not to monetize, NEPA regulations group all these impacts under the same category of "effects": economic and social impacts are listed as "effects" alongside ecological and health impacts, and all these effects must be discussed in as much detail as possible in an adequate NEPA review.[70] Whether an effect is a cost, benefit, or transfer, if monetization is the best way to assess that effect's significance and contextualize the precise impacts, then monetization is the best way to comply with NEPA's obligations.

Second, despite the paragraph disclaiming that regional economic impacts are not benefits, the rest of the DEIS treats effects like taxes and royalties as benefits by touting them without any mention of offsetting losses that would occur in other regions or sectors. If this project causes a region or sector to gain a job and associated income, that may be a transfer or purely regional/sectoral impact to the extent it comes at the expense of a job lost in some other region or sector. But the DEIS never mentions—let alone quantifies—such offsetting losses outside the project's particular region and sector. NEPA does not require a crabbed view of impacts confined to only the immediate vicinity around a project or to only one sector of the economy. If BLM truly believes the project will result in no economic benefit when viewed from a national perspective, it should say so clearly; instead, the DEIS touts millions in alleged economic upside, with no mention of any offsetting downside.

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believed that "the protocol may one day soon be a necessary component of NEPA analyses," *id.*—and, indeed, that day has already arrived.

[62] 538 F.3d 1172, 1203 (9th Cir. 2008).

[63] *Id.* at 1199.

[64] *Id.* at 1198.

[65] *Bus. Roundtable v. SCC*, 647 F.3d 1144, 1148-49 (D.C. Cir. 2011)

[66] *Johnston v. Davis*, 698 F.2d 1088, 1094–95 (10th Cir. 1983)

[67] DEIS at XX, tbl 4-151.

[68] DEIS at 4-79.

[69] 274 F. Supp. 3d. at 1096 n.9.

[70] 40 C.F.R. §1508.8.

Third, the DEIS does, in fact, monetize not just the regional economic impact; the DEIS also monetizes what guidelines on economic analysis would identify as the social benefits of the project's oil and gas development. Specifically, the DEIS monetizes the project's "overall economic output."[71] Despite also referring to this as the "local output," it is clear from the text of the DEIS and Appendix Q that the figure of "$1.2 billion per year during the 65-year production period"[72] comes from multiplying the average annual gas and oil production estimated for Alternative 2 by the Energy Information Administration's 2017 market prices for gas and oil (and also multiplying by a so-called "output multiplier" of 1.2).[73] In a competitive market, like for oil and natural gas, the market price is typically thought to reflect aggregate willingness to pay based on social utility. Therefore, in calculating and reporting output, BLM has presented a monetized estimate of the supposed social benefits of the Moneta Divide project. Consequently, BLM must also use readily available tools to monetize the social costs of the oil and gas development. It is arbitrary to apply inconsistent protocols for analysis of some effects compared to others, and to monetize some effects but not others that are equally monetizeable.

II. The Social Cost of Greenhouse Gas Metric Is Appropriate for a Plan with Emissions of this Magnitude

The DEIS claims that "it is not possible at this time to link projected GHG emissions associated with the Proposed Action to specific environmental impacts."[74] The DEIS argues that because *Circular A-4* does not apply to "oil and gas project development decisions," and because the social cost of greenhouse gas methodology was originally developed for use the rulemaking context, the metrics cannot be applied in this instance.[75] These arguments are wrong. The social cost of greenhouse gas protocol is exactly such a tool to monetize the incremental climate impacts of specific projects or plans, and its use is not limited to rulemakings. Numerous other agencies have had no trouble applying the manageable range of estimates of the social cost of greenhouse gases to assess the significance of the climate impacts of their actions, including projects that are only expected to last a few years. In fact, the social cost of greenhouse gases metric is designed to analyze any action or policy on a year-by-year basis, as it measures the impacts of one additional unit of emissions in a given year. NEPA requires BLM to use its judgment and available tools, and the agency cannot use uncertainty as a red herring to escape its statutory obligations.

Monetization Is Appropriate and Useful in Any Decision with Significant Climate Impacts, Not Just Regulations

Though the federal Interagency Working Group on the Social Cost of Greenhouse Gases originally developed its estimates of the social cost of greenhouse gases to harmonize the metrics used by agencies in their various regulatory impact analyses, there is nothing in the numbers' development that would limit applications to other decisionmaking contexts. The social cost of greenhouse gases measures the marginal cost of any additional unit of greenhouse gases emitted into the atmosphere. The government action that precipitated that unit of emissions—a regulation, the granting of a permit, or a project approval—is irrelevant to the marginal climate damages caused by the emissions. Whether

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[71] DEIS at 4-454.

[72] DEIS at 4-454.

[73] *See* DEIS at tbls. Q-7 & Q-8 (from which a figure of $1.15 billion in annual output can be calculated); *compare* DEIS at 4-454 (reporting production period direct output of $1.2 billion per year, based on EIA prices).

[74] DEIS at 4-78. The quote continues to refer to "impacts within the air quality analysis area." To the extent that BLM's point was that it need only consider impacts within a local area, that is incorrect; as explained above, NEPA requires agencies to consider the worldwide nature of environmental problems.

[75] DEIS at 4-79.

emitted by a leaking pipeline or the extraction process, whether emitted because of a regulation or a resource management decision, whether emitted in Alaska or Maine, the marginal climate damages per unit of emissions remain the same. Indeed, the social cost of greenhouse gases has been used by many federal and state agencies in environmental impact reviews[76] and in resource management decisions.[77]

The Social Cost of Greenhouse Gas Metrics Provides a Tool to Assess the Significance of Individual Physical Impacts

The social cost of greenhouse gas methodology is well suited to measure the marginal climate damages of individual projects. These protocols were developed to assess the cost of actions with "marginal" impacts on cumulative global emissions, and the metrics estimate the dollar figure of damages for one extra unit of greenhouse gas emissions. This marginal cost is calculated using integrated assessment models. These models translate emissions into changes in atmospheric greenhouse concentrations, atmospheric concentrations into changes in temperature, and changes in temperature into economic damages. A range of plausible socio-economic and emissions trajectories are used to account for the scope of potential scenarios and circumstances that may actually result in the coming years and decades. The marginal cost is attained by first running the models using a baseline emissions trajectory, and then running the same models again with one additional unit of emissions. The difference in damages between the two runs is the marginal cost of one additional unit. The approach assumes that the marginal damages from increased emissions will remain constant for small emissions increases relative to gross global emissions. In other words, the monetization tools are in fact perfectly suited to measuring the marginal effects of individual projects or other discrete agency actions.

Some of the incremental impacts on the environment that the social cost of greenhouse gas protocol captures—and which the DEIS fails to meaningfully analyze—include property lost or damaged; impacts to agriculture, forestry, and fisheries; impacts to human health; changes in fresh water availability; ecosystem service impacts; impacts to outdoor recreation and other non-market amenities; and some catastrophic impacts, including potentially rapid sea-level rise, damages at very high temperatures, or unknown events.[78] A key advantage of using the social cost of greenhouse gas tool is that each physical

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[76] For example, in August 2017, the Bureau of Ocean Energy Management called the social cost of carbon "a useful measure to assess the benefits of CO2 reductions and inform agency decisions," and applied the metric in an environmental impact statement to monetize the emissions difference of about 5 million metric tons per year between the proposed oil and gas development project and the no-action baseline, *Draft Environmental Impact Statement—Liberty Development Project in the Beaufort Sea, Alaska* at 3-129, 4-50 (2017). More generally, agencies have used IWG's social cost of greenhouse gas estimates not only in scores of rulemakings but also in NEPA analyses for resource management decisions. *See* Peter Howard & Jason Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 Columbia J. Envtl. L. 203, 270-84 (2017) (listing all uses by federal agencies through July 2016).

[77] States have used the social cost of greenhouse gases in decisions about electricity planning. *See* Iliana Paul et al., *The Social Cost of Greenhouse Gases and State Policy: A Frequently Asked Questions Guide* (Policy Integrity Report, 2017), http://policyintegrity.org/files/publications/SCC_State_Guidance.pdf.

[78] These impacts are all included to some degree in the three integrated assessment models (IAMs) used by the IWG (namely, the DICE, FUND, and PAGE models), though some impacts are modeled incompletely, and many other important damage categories are currently omitted from these IAMs. *Compare* Interagency Working Group on the Social Cost of Carbon, *Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis* at 6-8, 29-33 (2010), https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf [hereinafter 2010 TSD]; *with* Peter Howard, *Omitted Damages: What's Missing from the Social Cost of Carbon* (Cost of Carbon Project Report, 2014), http://costofcarbon.org/files/Omitted_Damages_Whats_Missing_From_the_Social_Cost_of_Carbon.pdf. For other lists of actual climate effects, including air quality mortality, extreme temperature mortality, lost labor productivity, harmful algal blooms, spread of west nile virus, damage to roads and other infrastructure, effects on urban drainage, damage to coastal property, electricity demand and supply effects, water supply and quality effects, inland flooding, lost winter recreation, effects on agriculture and fish, lost ecosystem services from coral reefs, and wildfires, *see* EPA, *Multi-Model*

impact—such as sea-level rise and increasing temperatures—need not be assessed in isolation. Instead, the social cost of greenhouse gas tool conveniently groups together the multitude of climate impacts and, consistent with NEPA regulations,[79] enables agencies to assess whether all those impacts are cumulatively significant and to then compare those impacts with other impacts or alternatives using a common metric.

The Tons of Greenhouse Gas Emissions at Stake Here Are Clearly Significant

BLM quantifies upstream and downstream greenhouse gas emissions from this plan, amounting to millions of metric tons per year.[80] But BLM refuses to take the straightforward next step of applying the social cost of greenhouse gas values to those quantified tons. BLM instead attempts to diminish the significance of the greenhouse gas emissions by summarizing Alternative 2's climate impact as merely a "*Potential* contribution to changes in precipitation, temperature, and soil moisture."[81]

While there may not be a bright-line test for significance, the emissions BLM estimates for this project are clearly significant and warrant monetization. This is especially true since, once emissions have been quantified, the additional step of monetization through application of the Interagency Working Group's 2016 estimates entails a simple arithmetic calculation.[82] It is difficult to understand how NEPA's mandate that an agency take a "hard look" at the environmental impacts of its actions can be satisfied if BLM fails to analyze the impacts of the greenhouse gas emissions that it quantifies.

In *High Country*, the District Court for the District of Colorado found that it was arbitrary for the Forest Service not to monetize the "1.23 million tons of carbon dioxide equivalent emissions [from methane] the West Elk mine emits annually."[83] That suggests a threshold for monetization well below what BLM estimates here.[84] In *MEIC v. OSM*, the District Court for the District of Montana found it was arbitrary for the Office of Surface Mining not to monetize the 23.16 million metric tons, which constituted "approximately 0.35 percent of the total U.S. emissions."[85] In *Center for Biological Diversity*, the Ninth Circuit found that it was arbitrary for the Department of Transportation not to monetize the 35 million metric ton difference in lifetime emissions from increasing the fuel efficiency of motor vehicles:[86] given the estimated lifetime of vehicles sold in the years 2008-2011 (sometimes estimated at about 15 years on average), this could represent as little 2 million metric tons per year. In a recent environmental impact statement from the Bureau of Ocean Energy Management published in August 2017, the agency explained that the social cost of carbon was "a useful measure" to apply to a NEPA analysis of an action anticipated to have a difference in greenhouse gas emissions compared to the no-action baseline of

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Framework for Quantitative Sectoral Impacts Analysis: A Technical Report for the Fourth National Climate Assessment (2017); U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment* (2017); EPA, *Climate Change in the United States: Benefits of Global Action* (2015); Union of Concerned Scientists, *Underwater: Rising Seas, Chronic Floods, and the Implications for U.S. Coastal Real Estate* (2018).

[79] 40 C.F.R. § 1508.27(b)(7) (explaining that actions can be significant if related to individually insignificant but cumulatively significant impacts).

[80] DEIS at 4-77, tbl 4-33.

[81] DEIS at 2-87.

[82] Agencies simply need to multiply their estimate of tons in each year by the IWG's 2016 values for the corresponding year of emissions (adjusted for inflation to current dollars). If the emissions change occurs in the future, agencies would then discount the products back to present value.

[83] 52 F. Supp. 3d at 1191 (quoting an e-mail comment on the draft statement for the quantification of tons).

[84] *See* DEIS at 4-79.

[85] *MEIC v. Office of Surface Mining* at 36-37.

[86] 538 F.3d at 1187.

about 25 million metric tons over a 5-year period,[87] or about 5 million metric tons per year. BLM's estimates of emissions from this project are comparable to or exceed the emissions from other projects and cases where monetization of emissions has been found useful or legally required. The direct emissions alone clearly warrant monetization, as do the substantial downstream emissions.

Under any reasonable application of the social cost of greenhouse gas metrics, the upstream and downstream emissions from fossil fuel development per the Moneta Divide DEIS will cause billions of dollars in climate damages. Tellingly, BLM had no problem concluding that it was appropriate to monetize, for example, $70.7 million in federal royalties or $70 million in revenue from county ad valorem tax.[88] A potential climate cost of billions of dollars is also clearly significant, particularly in the context of a document the very purpose of which is to evaluate a project's *environmental* impacts.[89]

Monetizing Climate Damages Is Appropriate and Useful Regardless of Whether Every Effect Can Be Monetized in a Full Cost-Benefit Analysis

BLM's claim that it cannot use the social cost of greenhouse gas metrics because NEPA does not require cost-benefit analysis,[90] is a non-sequitur. Using the social cost of greenhouse gas metrics does not require subtracting the leases' monetized climate costs from the monetized economic benefits in a cost-benefit analysis. Rather, BLM should use the social cost of greenhouse gases because NEPA requires agencies to use readily available tools to better contextualize environmental effects, just as BLM has monetized certain economic impacts like labor income and royalties to contextualize the leases' alleged upsides.

Monetizing one key impact still provides useful information for decisonmakers and the public even when monetizing other impacts is not feasible. The social cost of greenhouse gases enables a more accurate and transparent comparison of alternatives along the dimension of climate impacts even if other costs and benefits cannot be quantified, and "breakeven analysis" could provide a framework for making decisions when some effects but not others are monetized. Climate damages can and should be monetized even if other costs and benefits are harder to quantify or monetize and so must be discussed qualitatively. Many effects can readily be quantified and monetized, and agencies should generally do so when feasible; other effects, like water quality, are notoriously difficult to quantify and monetize, due to the geographically idiosyncratic nature of individual water bodies. Greenhouse gases, by comparison, have the same impact on climate change no matter where they are emitted, and those impacts are readily monetized using the social cost of greenhouse methodology. Regardless of whether all other effects can be monetized, using the social cost of greenhouse gases provides useful and necessary information to the public and decisionmakers. In particular, whether or not other effects are monetized, using the social cost of greenhouse gases will facilitate comparison between alternative options along the dimension of climate change. As discussed above, different alternatives could have varying greenhouse gas consequences over time, and monetization provides the best means of comparing project alternatives along the dimension of climate change.

Moreover, analytical frameworks exist to weigh qualitative effects alongside monetized effects. NEPA regulations, for example, first state that if there are "important qualitative considerations," then the

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[87] BOEM, *Liberty Development and Production Plan Draft EIS* at 3-129, 4,50 (2017) (89,940,000 minus 64,570,000 is about 25 million).

[88] DEIS at 4-451, tbl 4-151.

[89] See California CEQ guidance ("economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment.").

[90] DEIS at 4-79.

ultimate "weighing of the merits and drawbacks of the various alternatives" should not be displayed exclusively as a "monetary cost-benefit analysis." Nevertheless, NEPA regulations further acknowledge that when monetization of costs and benefits is "relevant to the choice among environmentally different alternatives," "that analysis" can be presented alongside "any analyses of unquantified environmental impacts, values, and amenities."[91] In other words, the monetization of some impacts does not require the monetization of all impacts.

The Office of Management and Budget's *Circular A-4*[92] guidance to agencies on conducting economic analysis also provides a framework for weighing monetized and qualitative costs and benefits, called break-even analysis:

> It will not always be possible to express in monetary units all of the important benefits and costs. When it is not, the most efficient alternative will not necessarily be the one with the largest quantified and monetized net-benefit estimate. In such cases, you should exercise professional judgment in determining how important the non-quantified benefits or costs may be in the context of the overall analysis. If the non-quantified benefits and costs are likely to be important, you should carry out a "threshold" analysis to evaluate their significance. Threshold or "break-even" analysis answers the question, "How small could the value of the non-quantified benefits be (or how large would the value of the non-quantified costs need to be) before the rule would yield zero net benefits?" In addition to threshold analysis you should indicate, where possible, which non-quantified effects are most important and why.[93]

Even without using something as formal as a break-even analysis, it is clear that monetizing climate damages provides useful information whether or not every effect can be monetized in a full cost-benefit analysis.

III. BLM Should Use the Interagency Working Group's 2016 Estimates of the Social Cost of Carbon and the Social Cost of Methane

In 2016, the IWG published updated central estimates for the social cost of greenhouse gases: $50 per ton of carbon dioxide, $1440 per ton of methane, and $18,000 per ton of nitrous oxide (in 2017 dollars for year 2020 emissions).[94] Agencies must continue to use estimates of a similar or higher[95] value in their analyses and decisionmaking. A recent Executive Order disbanding the IWG does not change the fact that the IWG estimates still reflect the best available data and methodologies.

IWG's Methodology Is Rigorous, Transparent, and Based on Best Available Data

Beginning in 2009, the IWG assembled experts from a dozen federal agencies and White House offices to "estimate the monetized damages associated with an incremental increase in carbon emissions in a given year" based on "a defensible set of input assumptions that are grounded in the existing scientific

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[91] 40 C.F.R. § 1502.23.

[92] Though *Circular A-4* focus on agencies' regulatory analyses under Executive Order 12,866, the document nevertheless more generally has distilled best practices on economic analysis and is a useful guide to all agencies undertaking an assessment of costs and benefits.

[93] OMB, CIRCULAR A-4 at 2 (2003).

[94] U.S. Interagency Working Group on the Social Cost of Greenhouse Gases, "Technical support document: Technical update of the social cost of carbon for regulatory impact analysis under executive order 12866 & Addendum: Application of the methodology to estimate the social cost of methane and the social cost of nitrous oxide" (2016), available at https://obamawhitehouse.archives.gov/omb/oira/social-cost-of-carbon.

[95] See, e.g., Richard L. Revesz et al., Global Warming: Improve Economic Models of Climate Change, 508 NATURE 173 (2014) (explaining that current estimates omit key damage categories and, therefore, are very likely underestimates).

and economic literature."[96] IWG's methods combined three frequently used models built to predict the economic costs of the physical impacts of each additional ton of carbon.[97] The models together incorporate such damage categories as: agricultural and forestry impacts, coastal impacts due to sea level rise, impacts from extreme weather events, impacts to vulnerable market sectors, human health impacts including malaria and pollution, outdoor recreation impacts and other non-market amenities, impacts to human settlements and ecosystems, and some catastrophic impacts.[98] IWG ran these models using a baseline scenario including inputs and assumptions drawn from the peer-reviewed literature, and then ran the models again with an additional unit of carbon emissions to determine the increased economic damages.[99] IWG's social cost of carbon estimates were first issued in 2010 and have been updated several times to reflect the latest and best scientific and economic data.[100]

Following the development of estimates for carbon dioxide, the same basic methodology was used in 2016 to develop the social cost of methane and social cost of nitrous oxide—estimates that captures the distinct heating potential of methane and nitrous oxide emissions.[101] These additional metrics used the same economic models, the same treatment of uncertainty, and the same methodological assumptions that IWG applied to the social cost of carbon, and these new estimates underwent rigorous peer-review.[102]

IWG's methodology has been repeatedly endorsed by reviewers. In 2014, the U.S. Government Accountability Office concluded that IWG had followed a "consensus-based" approach, relied on peer-reviewed academic literature, disclosed relevant limitations, and adequately planned to incorporate new information through public comments and updated research.[103] In 2016 and 2017, the National Academies of Sciences issued two reports that, while recommending future improvements to the methodology, supported the continued use of the existing IWG estimates.[104] And in 2016, the U.S. Court of Appeals for the Seventh Circuit held that the Department of Energy's reliance on IWG's social cost of carbon was reasonable.[105] It is, therefore, unsurprising that leading economists and climate policy experts have endorsed the Working Group's values as the best available estimates.[106]

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[96] IWG, *Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866* (2010) ("2010 TSD"). *Available at* https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf.

[97] *Id.* at 5. These models are DICE (the Dynamic Integrated Model of Climate and the Economy), FUND (the Climate Framework for Uncertainty, Negotiation, and Distribution), and PAGE (Policy Analysis of the Greenhouse Effect).

[98] *Id.* at 6-8.

[99] *Id.* at 24-25.

[100] IWG, *Technical Update of the Social Cost of Carbon* at 5–29 (2016). *Available at* https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/ scc_tsd_final_clean_8_26_16.pdf.

[101] *See* 2016 IWG Addendum at 2.

[102] *Id.* at 3.

[103] Gov't Accountability Office, *Regulatory Impact Analysis: Development of Social Cost of Carbon Estimates* 12-19 (2014). Available at http://www.gao.gov/assets/670/665016.pdf.

[104] Nat'l Acad. Sci., Engineering & Med., *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide* 3 (2017), https://www.nap.edu/read/24651/chapter/1; Nat'l Acad. Sci., Engineering & Med., *Assessment of Approaches to Updating the Social Cost of Carbon: Phase 1 Report on a Near-Term Update* 1–2 (2016); https://www.nap.edu/read/21898/chapter/1.

[105] *Zero Zone,* 832 F.3d at 679.

[106] See, e.g., Richard Revesz et al., *Best Cost Estimate of Greenhouse Gases*, 357 Science 655 (2017); Michael Greenstone et al., *Developing a Social Cost of Carbon for U.S. Regulatory Analysis: A Methodology and Interpretation*, 7 Rev. Envtl. Econ. & Pol'y 23, 42 (2013); Richard L. Revesz et al., *Global Warming: Improve Economic Models of Climate Change*, 508 Nature 173 (2014) (co-authored with Nobel Laureate Kenneth Arrow, among others).

Furthermore, uncertainty over the values or range of values included in the IWG's social costs of greenhouse gases metric is *not* a reason to abandon the social cost of greenhouse gas methodologies;[107] quite the contrary, uncertainty supports higher estimates of the social cost of greenhouse gases, because most uncertainties regarding climate change entail tipping points, catastrophic risks, and unknown unknowns about the damages of climate change. Because the key uncertainties of climate change include the risk of irreversible catastrophes, applying an options value framework to the regulatory context strengthens the case for ambitious regulatory action to reduce greenhouse gas emissions. Dismissing the social cost of greenhouse gases metric because there is a range of potential estimates has been rejected by the Ninth Circuit in *Center for Biological Diversity*—"while . . . there is a range of values, the value of carbon emissions reduction is certainly not zero"[108]—but the range of values recommended by the Interagency Working Group[109] and endorsed by the National Academies of Sciences[110] is rather manageable. In 2016, the IWG recommended values at discount rates from 2.5% to 5%, calculated as between $12 and $62 for year 2020 emissions.[111] Numerous federal agencies have had no difficulty either applying this range in their environmental impact statements or else focusing on the central estimate at a 3% discount rate.[112] Most recently, in August 2017, the Bureau of Ocean Energy Management applied the IWG's range of estimates calculated at three discount rates (2.5%, 3%, and 5%) to its environmental impact statement for an offshore oil development plan,[113] and called this range of estimates "a useful measure to assess the benefits of CO_2 reductions and inform agency decisions."[114]

A Recent Executive Order Does Not Change the Requirements to Monetize Climate Damages

In March 2017, President Trump disbanded the IWG and withdrew their technical support documents.[115] Nevertheless, Executive Order 13,783 assumes that federal agencies will continue to "monetiz[e] the value of changes in greenhouse gas emissions" and instructs agencies to ensure such estimates are "consistent with the guidance contained in OMB Circular A-4."[116] Consequently, while federal agencies no longer benefit from ongoing technical support from the IWG on use of the social cost of greenhouse gases, by no means does the new Executive Order imply that agencies should not monetize important effects in their environmental impact statements. The Executive Order does not prohibit agencies from relying on the same choice of models as the IWG, the same inputs and assumptions as the IWG, the same statistical methodologies as the IWG, or the same ultimate values as derived by the IWG. To the

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[107] *Center for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1200 (9th Cir. 2008) ("[W]hile the record shows that there is a range of values, the value of carbon emissions reductions is certainly not zero.").

[108] 538 F.3d at 1200.

[109] *See* Interagency Working Group on the Social Cost of Greenhouse Gases, *Technical Update* (2016) (hereinafter 2016 TSD).

[110] *See* National Academies of Sciences, *Assessment of Approaches to Updating the Social Cost of Carbon* (2016) (hereinafter First NAS Report) (endorsing continued near-term use of the IWG numbers; in 2017, the NAS recommended moving to a declining discount rate, *see* National Academies of Sciences, *Valuing Climate Damages* (2017) (hereinafter Second NAS Report).

[111] 2016 TSD. The values given here are in 2007$. The IWG also recommended a 95th percentile value of $123.

[112] BLM, *Envtl. Assessment—Waste Prevention, Prod. Subject to Royalties, and Res. Conservation* at 52 (2016); BLM, *Final Envtl. Assessment: Little Willow Creek Protective Oil and Gas Lease*, DOI-BLM-ID-B010-2014-0036-EA, at 82 (2015); Office of Surface Mining, *Final Envtl. Impact Statement—Four Corners Power Plant and Navajo Mine Energy Project* at 4.2-26 to 4.2-27 (2015) (explaining the social cost of greenhouse gases "provide[s] further context and enhance[s] the discussion of climate change impacts in the NEPA analysis."); U.S. Army Corps of Engineers, *Draft Envtl. Impact Statement for the Missouri River Recovery Mgmt. Project* at 3-335 (2016); U.S. Forest Serv., *Rulemaking for Colorado Roadless Areas: Supplemental Final Envtl. Impact Statement* at 120-123 (Nov. 2016) (using both the social cost of carbon and social cost of methane relating to coal leases); NHTSA EIS, *Available at* http://www.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/FINAL_EIS.pdf at 9-77.

[113] BOEM, *Liberty Development Project: Draft Environmental Impact Statement*, at 4-247 (2017).

[114] *Id.* at 3-129.

[115] Exec. Order No. 13,783 § 5(b), 82 Fed. Reg. 16,093 (Mar. 28, 2017).

[116] *Id.* § 5(c).

contrary, because the Executive Order requires consistency with Circular A-4, as agencies follow the Circular's standards for using the best available data and methodologies, they will necessarily choose similar data, methodologies, and estimates as the IWG, since the IWG's work continues to represent the best available estimates.[117] The Executive Order does not preclude agencies from using the same range of estimates as developed by the IWG, so long as the agency explains that the data and methodology that produced those estimates are consistent with Circular A-4 and, more broadly, with standards for rational decisionmaking.

Similarly, the Executive Order's withdrawal of the Council on Environmental Quality's guidance on greenhouse gases,[118] does not—and legally cannot—remove agencies' statutory requirement to fully disclose the environmental impacts of greenhouse gas emissions. As the Council on Environmental Quality explained in its withdrawal, the "guidance was not a regulation," and "[t]he withdrawal of the guidance does not change any law, regulation, or other legally binding requirement."[119] In other words, when the guidance originally recommended the appropriate use of the social cost of greenhouse gases in environmental impact statements,[120] it was simply explaining that the social cost of greenhouse gases is consistent with longstanding NEPA regulations and case law, all of which are still in effect today.

Notably, some agencies under the Trump administration have continued to use the IWG estimates even following the Executive Order. For example, in August 2017, the Bureau of Ocean Energy Management called the social cost of carbon "a useful measure" and applied it to analyze the consequences of offshore oil and gas drilling.[121] And in July 2017, the Department of Energy used the IWG's estimates for carbon and methane emissions to analyze energy efficiency regulation, describing the social cost of methane as having "undergone multiple stages of peer review."[122]

Two agencies have developed new "interim" values of the social cost of greenhouse gases following the Executive Order. Relying on faulty economic theory, these "interim" estimates drop the social cost of carbon from $50 per ton in year 2020 down to as little as $1 per ton, and drop the social cost of methane from $1420 per ton in year 2020 down to $58. These "interim" estimates are inconsistent with accepted science and economics; the IWG's 2016 estimates remain the best available estimates. The IWG's methodology and estimates have been repeatedly endorsed by reviewers as transparent, consensus-based, and firmly grounded in the academic literature. By contrast, the "interim" estimates ignore the interconnected, global nature of our climate-vulnerable economy, and obscure the devastating effects that climate change will have on younger and future generations. BLM should not use the "interim" social cost of greenhouse gas estimates because of their methodological flaws, as described more fully in the attached comments which we have previously submitted to BLM on its misleading use of the unsupported "interim" values.

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[117] *See* Richard L. Revesz et al., *Best Cost Estimate of Greenhouse Gases*, 357 SCIENCE 6352 (2017) (explaining that, even after Trump's Executive Order, the social cost of greenhouse gas estimate of around $50 per ton of carbon dioxide is still the best estimate).

[118] Exec. Order 13,783 § 3(c)

[119] 82 Fed. Reg. 16,576, 16,576 (Apr. 5, 2017).

[120] *See* CEQ, *Revised Draft Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* at 16 (Dec. 2014), *available at* https://obamawhitehouse.archives.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance_searchable.pdf ("[A]lthough developed specifically for regulatory impact analyses, the Federal social cost of carbon, which multiple Federal agencies have developed and used to assess the costs and benefits of alternatives in rulemakings, offers a harmonized, interagency metric that can provide decisionmakers and the public with some context for meaningful NEPA review.").

[121] *Draft Environmental Impact Statement—Liberty Development Project in the Beaufort Sea, Alaska* at 3-129.

[122] Energy Conservation Program: Energy Conservation Standards for Walk-In Cooler and Freezer Refrigeration Systems, 82 Fed. Reg. 31,808, 31,811, 31,857 (July 10, 2017).

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*No part of this document purports to present New York University School of Law's views, if any.

Attachments:

Joint Comments to BLM on the Failure to Appropriately Value the Social Cost of Methane in the Rescission or Revision of Certain Requirements for Waste Prevention and Resource Conservation