



Institute *for*  
**Policy Integrity**

NEW YORK UNIVERSITY SCHOOL OF LAW

September 14, 2020

**To:** Bureau of Land Management, Colorado State Office

**Subject:** Comments on Failure to Monetize Greenhouse Gas Emissions in the Environmental Assessments for the December 2020 Colorado Oil and Gas Lease Sale (DOI-BLM-CO-F020-2020-0041-EA, DOI-BLM-CO-050-2020-0037-EA)

The Institute for Policy Integrity at New York University School of Law (“Policy Integrity”)<sup>1</sup> respectfully submits comments on the Bureau of Land Management’s (“BLM”) two draft Environmental Assessments for the proposed December 2020 oil and gas lease sale in Colorado.<sup>2</sup> Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity regularly submits comments to federal agencies on the social cost of greenhouse gases and assessments under the National Environmental Policy Act (“NEPA”).

In these Environmental Assessments, BLM projects that the proposed lease sales will result in more than 24 million metric tons of carbon-dioxide equivalent in total downstream emissions under the high reasonable foreseeable development scenario.<sup>3</sup> Yet without assessing the impact of these emissions on climate change and the health and welfare harms caused by climate change such as mortality or property damage, BLM nonetheless concludes that such emissions are insignificant.<sup>4</sup> This cursory and conclusory

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<sup>1</sup> This document does not purport to represent the views, if any, of New York University School of Law.

<sup>2</sup> Royal Gorge Field Office, Environmental Assessment for the December 2020 Competitive Oil & Gas Lease Sale (Docket No. DOI-BLM-CO-F020-2020-0041-EA) (Aug. 2020) [hereinafter “Royal Gorge EA”]; White River Field Office, Little Snake Field Office & Kremmling Field Office, Preliminary Environmental Assessment for the December 2020 Competitive Oil & Gas Lease Sale (Docket No. DOI-BLM-CO-050-2020-0037-EA) (Aug. 2020) [hereinafter “Kremmling EA”].

<sup>3</sup> See Royal Gorge EA at 45 (projecting 13.62 million metric tons in downstream emissions); Kremmling EA at 41 (projecting 9.29 million metric tons from Kremmling Field Office parcels and 1.51 million metric tons from Little Snake Field Office parcels). Policy Integrity does not endorse the accuracy of these projections. Indeed, as Policy Integrity explains in separate comments filed to these same Environmental Assessments, significant evidence, including recent trends in the oil-and-gas sector, indicates that drilling on these parcels may be limited throughout the duration of the proposed leases.

<sup>4</sup> Finding of No Significant Impact for Kremmling EA 1 (Aug. 2020) (concluding that proposed lease sale “would not have a significant effect on the quality of the human environment, individually, or cumulatively

assessment does not satisfy BLM’s obligation under NEPA to meaningfully assess the significance of environmental harms including effects on climate change. And the agency disregards an available tool—the social cost of greenhouse gases—that allows for such an assessment.

Mere quantification of greenhouse gas emissions is insufficient under NEPA without an assessment of the harm that those emissions will cause. 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.”<sup>5</sup> The “impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires,” and it is arbitrary and capricious not to “provide the necessary contextual information about the[se] cumulative and incremental environmental impacts.”<sup>6</sup>

The tons of greenhouse gases emitted by a project are not the “actual environmental effects” that must be assessed under NEPA. Rather, the actual effects are the incremental climate impacts caused by those emissions, including property lost or damaged by sea-level rise, coastal storms, flooding, and other extreme weather events, and human health impacts including mortality from heat-related illnesses and changing disease vectors like malaria and dengue fever.<sup>7</sup> Simply quantifying emissions is not enough: By calculating only the tons of greenhouse gases emitted, an agency fails to meaningfully assess the actual incremental impacts to property, human health, productivity, and so forth.<sup>8</sup> To provide an analogous

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with other actions in the general area”); *accord* Finding of No Significant Impact for Royal Gorge EA 1 (Aug. 2020).

<sup>5</sup> *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 96 (1983) (emphasis added).

<sup>6</sup> *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008); *see also id.* (“[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.”).

<sup>7</sup> For a more complete discussion 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).

<sup>8</sup> *See, e.g., Ctr. for Biological Diversity*, 538 F.3d at 1216–17 (rejecting analysis under NEPA when agency “quantifie[d] the expected amount of [carbon dioxide] emitted” but failed to “evaluate the incremental impact that these emissions will have on climate change or on the environment more generally,” noting that this approach impermissibly failed to “discuss the *actual* environmental effects resulting from those emissions” or “provide the necessary contextual information about the cumulative and incremental environmental impacts” that NEPA requires); *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1190 (D. Colo. 2014) (“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

example, 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.”<sup>9</sup>

BLM’s limited justification for declaring insignificant the greenhouse gas emissions from this proposed lease sale does not pass muster. Specifically, the agency highlights that emissions from this lease sale—or from “any single geographic subunit ... or source”—are “dwarfed by the large number of comparable national and subnational contributors.”<sup>10</sup> However, comparisons to national emission figures inappropriately make highly significant effects appear relatively trivial. The mere fact that climate change is a global phenomenon does not mean that individual projects cannot themselves have substantial climate effects, nor does it absolve agencies of their obligation under NEPA to assess those impacts.<sup>11</sup> As the U.S. Court of Appeals for the Fifth Circuit observed, even a seemingly “very small portion” of a “gargantuan source of [harmful] pollution” may nevertheless “constitute[] a gargantuan source of [harmful] pollution on its own terms.”<sup>12</sup> In other words, percentage comparisons can be misleading and can be manipulated by the choice of the denominator. Without further analysis, therefore, BLM lacks a reasonable basis to conclude that the emissions from this proposal are insignificant.

BLM’s failure to meaningfully consider the impact of the greenhouse gas emissions from the proposed lease sale on climate damages is particularly arbitrary and irrational because an available and widely-used tool—the social cost of greenhouse gases—allows for precisely such an assessment. The social cost of greenhouse gases 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 social and economic damages.<sup>13</sup> The social cost of greenhouse gases 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. In fact, various agencies

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by these emissions.”); *Mont. Env'tl. 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”); *California v. Bernhardt*, No. 4:18-CV-05712-YGR, 2020 WL 4001480, at \*36 (N.D. Cal. July 15, 2020) (“Mere quantification [of greenhouse gas emissions] is insufficient.”).

<sup>9</sup> *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.”).

<sup>10</sup> Kremmling EA at 42; *accord* Royal Gorge EA at 46.

<sup>11</sup> *California*, 2020 WL 4001480, at \*36 (“[F]raming sources as less than 1% of global emissions is dishonest and a prescription for climate disaster.” (citation omitted)).

<sup>12</sup> *Sw. Elec. Power Co. v. EPA*, 920 F.3d 999, 1032 (5th Cir. 2019).

<sup>13</sup> Interagency Working Group on the Social Cost of Carbon, *Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis* 5 (2010).

(including Department of the Interior subagencies) have used the social cost of greenhouse gases to assess a project's climate impacts under NEPA.<sup>14</sup>

Applying the social cost of greenhouse gases is straightforward and provides information that would be very useful to BLM's assessment here. Specifically, using the central value identified by the federal Interagency Working Group on the Social Cost of Carbon, the methodology reveals that the proposed lease sale would cause nearly \$1.4 billion in total climate harms.<sup>15</sup> This substantial cost helps disclose the intensity and significance of the Project's climate impacts pursuant to NEPA and would bear heavily on assessing whether the lease sale would have significant environmental impacts.

BLM's few excuses for not applying the social cost of greenhouse gases are meritless. The agency's first reason—that the tool was developed for cost-benefit analyses of proposed rules and not specifically for NEPA assessments<sup>16</sup>—is inapposite. Indeed, there is nothing in the development of the social cost of greenhouse gases that limits its application to other contexts. The social cost of greenhouse gases measures the marginal cost of *any* additional unit of a greenhouse gas emitted into the atmosphere. The type of government action that precipitated that unit of emissions—whether a regulation, project approval, granting of a permit, or anything else—does not affect the marginal climate damages caused.

Nor is BLM correct to suggest that the use of the social cost of greenhouse gases would effectively and inappropriately turn NEPA assessments into cost-benefit analyses.<sup>17</sup> Even if other impacts are not monetized, using the social cost of greenhouse gases is the best method to assess the significance of a project's climate-related impacts as NEPA requires. Applicable regulations acknowledge that when monetization of costs or 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.”<sup>18</sup> In other words, contrary to BLM's suggestion, the inability to monetize some

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<sup>14</sup> See, e.g., Bureau of Ocean Energy Mgmt., Final Environmental Impact Statement of Cook Inlet Planning Area Oil and Gas Lease Sale 244 (BOEM 2016-069) (Dec. 23, 2016); see also Peter Howard & Jason Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 Colum. J. Envtl. L. 203, 270–84 (2017) (listing all uses by federal agencies through mid-2016, including numerous NEPA assessments).

<sup>15</sup> The 2016 Interagency Working Group's central estimate of the social cost of carbon for year 2025 emissions is \$46 in 2007\$. Interagency Working Group on the Social Cost of Carbon, *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis 4* (2016). Adjusted for inflation, that equals approximately \$57 in 2019\$. 24.41 million metric tons of CO<sub>2</sub>e\* \$57 = \$1.391 billion. In a proper cost benefit analysis, that calculation of costs from year 2025 emissions would be discounted back to present value.

<sup>16</sup> Kremmling EA at 42–43. The Royal Gorge EA contains no discussion of the social cost of greenhouse gases.

<sup>17</sup> See *id.* at 43.

<sup>18</sup> 40 C.F.R. § 1502.23. Under a recently-finalized rule from the Council on Environmental Quality set to take effect today, this subsection of the Code of Federal Register was not substantively altered but was renumbered to 40 C.F.R. § 1502.22. Policy Integrity in no way concedes the legality of these amendments, but simply mentions them here for the sake of clarity.

impacts should not preclude the monetization of other impacts—like climate damages—that can be readily monetized. This is especially so since applying the social cost of greenhouse gases requires simple arithmetic (multiplication) once BLM has quantified a project’s emissions.

Policy Integrity hereby attaches its June 2020 comments on BLM’s draft Environmental Assessment for the Lila Canyon mine lease modifications—submitted jointly with seven other groups—which provides further detail on the social cost of greenhouse gases and rebuts additional arguments that BLM has offered against the methodology in prior determinations. As the attached comments further explain, and as detailed above, it would be arbitrary and capricious for BLM to proceed with the lease sale without further analysis of its climate impacts, which the social cost of greenhouse gases would facilitate.

Sincerely,

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Iliana Paul, Policy Analyst  
Max Sarinsky, Attorney  
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Attached:

Joint Comments on the Failure to Monetize Greenhouse Gas Emissions in the Draft Environmental Assessment for the Lila Canyon Mine Lease Modifications (DOI-BLM-UT-G020-2018-0039-EA)