



Institute for  
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

December 13, 2019

**To:** Wyoming State Office, Bureau of Land Management, Department of Interior  
**Subject:** Failure to Monetize Greenhouse Gas Emissions in the Environmental Assessment for the First Quarter 2020 Competitive Oil and Gas Lease Sale: Docket No. DOI-BLM-WY-0000-2020-003-EA

The Institute for Policy Integrity at New York University School of Law (“Policy Integrity”)<sup>1</sup> respectfully submits comments on the Environmental Assessment for the First Quarter 2020 Competitive Oil and Gas Lease Sale (Docket No. DOI-BLM-WY-0000-2020-0003-EA).<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 NEPA analysis and the social cost of greenhouse gases.

In the EA, BLM calculates that the leasing activity will produce 5.712 million tons of carbon dioxide-equivalent in downstream emissions on an annual basis<sup>3</sup>—a substantial amount that will contribute to numerous adverse climate impacts. While the National Environmental Policy Act (“NEPA”) requires BLM to disclose and assess the significance of the leasing’s contributions to such actual environmental impacts—and an available tool, the social cost of greenhouse gases metric, allows the agency to do exactly that—the EA fails to estimate such actual, real-world climate impacts. Yet as the social cost metrics reveal, the scenario BLM proposes would result in hundreds of millions of dollars in annual climate costs.

On pages 95 through 99, BLM makes a number of spurious arguments about the social cost of greenhouse gases in attempt to justify its choice not to monetize emissions. Specifically, BLM claims that monetizing the project’s climate costs would not yield useful information without monetizing the project’s benefits;<sup>4</sup> this is false. First, NEPA requires an assessment of a project’s significance; when quantification or monetization is the best way available way to make such an assessment, or if other effects are monetized, the agency should quantify and monetize all of a project’s effects to

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

<sup>2</sup> BUREAU OF LAND MGMT., FIRST QUARTER 2020 COMPETITIVE OIL AND GAS LEASE SALE ENVIRONMENTAL ASSESSMENT (DOI-BLM-WY-0000-2020-0003-EA) (Nov. 13 2019) [hereinafter “EA”].

<sup>3</sup> EA at 60.

<sup>4</sup> *Id.* at 95.

the extent practicable.<sup>5</sup> Regardless of whether BLM can monetize all other effects, monetizing the action's climate effects both is very simple and provides useful context to assess the significance of the action's contributions to climate change. Indeed, applying the social cost of greenhouse gases merely requires BLM to conduct simple arithmetic (multiplication) once it has quantified a project's emissions. Once translated into the common metric of dollars, it is much easier for the public and decisionmakers to contextualize and assess the significance of action's contributions to climate change. BLM's presentation of the action's emissions as 1.1% of the State's direct greenhouse gas emissions<sup>6</sup> or 0.4% of indirect emissions covered by Wyoming's BLM planning documents<sup>7</sup> misleadingly trivializes the significance of the action.<sup>8</sup> By contrast, translating 5.712 million metric tons per year of emissions into at least \$291 million in annual climate damages<sup>9</sup> would actually give context to the action's contributions to real-world effects like property damage, lost agricultural productivity, and health impacts.

Second, while BLM acknowledges that in RMPs incorporated by reference into the EA, the agency did account for economic benefits of mineral development in the region,<sup>10</sup> BLM still argues that it would be inappropriate to consider monetary climate damages. By omitting any comparable monetized accounting of climate costs, BLM arbitrarily treats costs and benefits differently in violation of NEPA.<sup>11</sup> Attempts like BLM's here to disclaim these previously-recognized benefits as "economic impacts" is misleading, and have been characterized by a federal court as "a distinction without a difference."<sup>12</sup> While NEPA does not always require a full and formal cost-benefit analysis,<sup>13</sup> agencies' approaches to assessing costs and benefits in NEPA analysis must be balanced and reasonable.<sup>14</sup> Because underlying resource management plans quantify and monetize economic

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<sup>5</sup> See Joint Comments on Problems with the Quantification of Greenhouse Gas Emissions and Failure to Monetize Climate Damages in the Supplemental Env'tl. Assessment for the May 2015–Aug. 2016 Sold and Issued Leases 4 (DOI-BLM-WY-0000-2019-0007-EA) (Apr. 22, 2019), attached [hereinafter "Joint Comments"].

<sup>6</sup> EA at 87.

<sup>7</sup> *Id.* at 92.

<sup>8</sup> See *Southwestern Elec. Power Co. v. EPA*, 920 F.3d 999, 1032 (5th Cir. 2019) (recognizing that 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>9</sup> The federal Interagency Working Group has provided a monetized estimate of the damages associated with an incremental increase in carbon emissions, with a central estimate of \$42 (in 2007\$) per metric ton of carbon emitted in 2020. 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* 16 (2016). Adjusted for inflation using the CPI Inflation Calculator, that equals approximately \$51 in 2018\$. Multiplying 5.712 million metric tons by \$51 yields over \$291 million in undiscounted climate-related damages. Because the social cost of carbon increases each year, *id.*, this value represents a low-end estimate of the value of emissions from this lease sale, as 5.712 million metric tons in annual emissions will have a greater social cost with each passing year.

<sup>10</sup> EA at 95; see also, e.g., BUREAU OF LAND MGMT., BUFFALO FIELD OFFICE 2019 SUPPLEMENTAL RESOURCE MANAGEMENT PLAN AMENDMENT (DOI-BLM-WY-P070-2019-0002-RMP-EIS) (May 2019) at 3-27 (monetizing \$346.3 million per year in federal revenue).

<sup>11</sup> See, e.g., *Mont. Env'tl. Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1094–99 (D. Mont. 2017); *High Country Conservation Advocates v. United States Forest Serv.*, 52 F. Supp. 3d 1174, 1191 (D. Colo. 2014) (vacating oil and gas leasing plans under NEPA after the government quantified the plans' economic benefits but not their climate costs).

<sup>12</sup> *MEIC v. OSM*, 274 F. Supp. 3d at 1097 n.9.

<sup>13</sup> 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.").

<sup>14</sup> 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'n v. Marsh*, 568

benefits,<sup>15</sup> it is arbitrary and capricious for BLM to not treat the climate impacts of leasing activity with the same level of rigor. In fact, a number of agencies, including the Department of the Interior, have used the social cost of greenhouse gases to assess a project's climate impacts for NEPA assessment,<sup>16</sup> and courts have upheld the use of the metric in project analysis.<sup>17</sup>

BLM provides only general information on the effects of climate change,<sup>18</sup> but does nothing to assess the significance or magnitude of the project's contribution to those climate impacts. In fact, BLM denies that there is any such methodology to do so.<sup>19</sup> Courts have held that agencies must assess "the degree that each factor will be impacted," and that just volume estimates are insufficient and do not meet the requirements of NEPA.<sup>20</sup> BLM further claims that mitigating climate change by reducing greenhouse gas emissions is not its responsibility.<sup>21</sup> However, under NEPA, BLM is required to analyze the nature and magnitude of both global and local effects on the environment of a given project.<sup>22</sup> Finally, BLM cites the Fourth National Climate Assessment to deflect from its responsibility to provide such analysis.<sup>23</sup> BLM's use of the Assessment's conclusions is intended to mislead the reader into thinking that year-to-year emissions—or project-level emissions—do not contribute to "the net amount of carbon" emitted into the atmosphere. This is false.<sup>24</sup>

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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.").

<sup>15</sup> See *supra* note 10.

<sup>16</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).

<sup>17</sup> See Joint Comments at 5.

<sup>18</sup> See EA at 15 ("This EA incorporates an analysis of the contributions of the proposed action to GHG emissions and a general discussion of potential impacts to climate.").

<sup>19</sup> EA at 95 ("[T]here are no current criteria or thresholds that determine a level of significance for social cost of carbon monetary values.").

<sup>20</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."); see also *Or. Natural Res. Council v. Bureau of Land Mgmt.*, 470 F.3d 818 (9th Cir. 2006). Similarly, the U.S. Court of Appeals for the D.C. Circuit has found that merely listing "the quantity of . . . heat, chemicals, and radioactivity released" is insufficient under NEPA if the agency "does not reveal the meaning of those impacts in terms of human health or other environmental values." *Natural Resources Def. Council v. U.S. Nuclear Reg. Comm'n*, 685 F.2d 459, 487 (D.C. Cir. 1982), *rev'd sub nom. on other grounds Baltimore Gas & Elec. Co. v. Natural Resources Def. Council*, 462 U.S. 87, 106–07 (1983) ("agree[ing] with the Court of Appeals that NEPA requires an EIS to disclose the significant health, socioeconomic and cumulative consequences of the environmental impact of a proposed action," but finding that the specific "consequences of effluent releases" could be assessed at a subsequent stage in the particular proceeding under review); Joint Comments at 7.

<sup>21</sup> EA at 98 ("While GHG emissions resulting from individual decisions can certainly be modified or potentially prevented by analyzing and selecting reasonable alternatives that appropriately respond to the action's purpose and need, BLM has limited decision authority to meaningfully or measurably prevent the cumulative climate change impacts that result from global emissions.").

<sup>22</sup> 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).

<sup>23</sup> EA at 98 ("In trying to model climate changes under varying scenarios involving emission levels, the Fourth National Climate Assessment concludes: 'Ultimately, however, the magnitude of human induced climate change depends less on the year-to-year emissions than it does on the net amount of carbon, or cumulative carbon, emitted into the atmosphere.'").

<sup>24</sup> 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

BLM asserts that its climate analysis in the EA is consistent with a recent opinion of the U.S. District Court for the District of Montana, which found that BLM violated NEPA in the Final EISs for the Buffalo and Miles City resource management plans.<sup>25</sup> However, BLM has plainly violated that precedent. As that court found, BLM must include “an analysis of the environmental consequences of downstream combustion of coal, oil, and gas open to development.”<sup>26</sup> As discussed above, providing quantified estimates of emissions or a general discussion of climate change impacts does not adequately communicate the consequences of fossil fuel leasing. The opinion also provides that BLM shall “consider climate change impacts to make a reasoned decision on the amount of recoverable [resources] made available.”<sup>27</sup> But, BLM effectively dismisses the climate impacts of the 2020 First Quarter leasing by failing to assess the magnitude of those impacts through monetization. The attached comments on the Buffalo and Miles City supplemental resource management plans further explain why BLM must monetize climate impacts using the social cost of greenhouse gases metric and are hereby incorporated by reference.

Policy Integrity also attaches our April 2019 comments on a supplemental EA from BLM on similar fossil fuel leases. Among other problems with the climate analysis identified by those April comments, the comments explain that *WildEarth Guardians v. Zinke* does not fully resolve whether BLM must monetize climate damages in an EA like the draft prepared First Quarter 2020 Wyoming oil and gas leases. Rather, per the court’s order, BLM must “reassess” whether the social cost of greenhouse gas protocol would “contribute to informed decisionmaking,” and that “one day soon,” monetizing climate damages may be “a necessary component of NEPA analyses.”<sup>28</sup> Indeed, as the attached April 2019 comments explain, that day has already arrived. For the same reasons given by our comments in the context of the May 2015-August 2016 Wyoming oil and gas leases, BLM must also now monetize the climate damages of the First Quarter 2020 Wyoming oil and gas leases. BLM should consider all relevant arguments expressed in the attached comments to be comments made on the draft supplemental EA for May 2015-August 2016 Wyoming oil and gas leases as well.

Sincerely,

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#### **Attachments:**

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cumulative, non-linear ways. 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; *See e.g.*, Interagency Working Group on the Social Cost of Greenhouse Gases, Technical Support Document (2010) at 28 (“The SCC increases over time because future emissions are expected to produce larger incremental damages as physical and economic systems become more stressed in response to greater climatic change.”).

<sup>25</sup> *Western Organization of Resource Councils et al. v. BLM* 2018 WL 1475470 at \*18 (D. Mont., March 26, 2018).

<sup>26</sup> *Id.* at \*40.

<sup>27</sup> *Id.* at \*46.

<sup>28</sup> *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 79 n.31 (D.D.C. 2019).

Joint Comments on Problems with the Quantification of Greenhouse Gas Emissions and Failure to Monetize Climate Damages in the Supplemental Environmental Assessment for the May 2015-August 2016 Sold and Issued Leases, DOI-BLM-WY-0000-2019-0007-EA

Joint Comments on Comments on Failure to Monetize Greenhouse Gas Emissions in the Draft Supplemental Environmental Impact Statements on Remand