



*Submitted via [eplanning.blm.gov](https://eplanning.blm.gov)*

**December 19, 2024**

**State Director Andrew Archuleta**

Bureau of Land Management  
Wyoming State Office  
5353 Yellowstone Road  
Cheyenne, WY 82009

**RE: BLM Wyoming's June 2022 Corrective Lease Sale Analysis  
Draft EA and FONNSI, DOI-BLM-WY-0000-2024-0007-EA**

**Dear State Director Archuleta:**

Western Energy Alliance (the Alliance) submits these comments on the Bureau of Land Management's (BLM) draft Environmental Assessment (draft EA) and Finding of No New Significant Impact (draft FONNSI) for the Wyoming June 2022 Corrective Lease Sale Analysis in accordance with 43 C.F.R. § 3120.42(b).

The Alliance represents member companies operating in Wyoming, who are most directly and substantially impacted by BLM's decision-making for the draft EA. Our members have a profound interest in pursuing orderly development and achieving maximum recovery of oil and natural gas, while attaining the highest environmental benefit, including protection of groundwater resources.

The Alliance disputes the Court's conclusion in *Wilderness Society et al. v. DOI et al.*, No. 1:22-cv-1871 (CRC)(D.D.C.) that the initial EA for the June 2022 Wyoming BLM oil and gas lease sale did not comply with the National Environmental Policy Act (NEPA). However, the Alliance appreciates the opportunity to comment on BLM's additional analysis and agrees that it conforms with the D.C. District Court's order in that case.

In submitting these comments, the Alliance incorporates its original comments on the original 2022 lease sale EA, DOI-BLM-WY-0000-2021-0003-EA.

**General Overview of Comments**

BLM complied with the Court's order regarding additional analysis regarding the impacts of the decision on greenhouse gases, Greater Sage Grouse (GrSG) and mule deer and other big game, and groundwater resources. BLM's analysis thoroughly analyzes the additional considerations

requested by the Court. It relies on technical data and its conclusions are reasonable and within BLM's discretion. The Alliance urges BLM to proceed with issuance of the FONNSI expeditiously in compliance with the Court's order requiring issuance within 180 days of its Order and to select the Proposed Action to affirm BLM's decision.

Contrary to plaintiffs' assertions in *Wilderness Society et al. v. DOI et al.*, BLM cannot refuse to lease lands that have been determined "open" to leasing in the relevant resource management plans (RMPs) where leasing is consistent with existing management provisions and incorporates relevant timing limitations, stipulations, and any other protective mechanisms for the benefit of local resources.

## Comments

### **A. The Draft EA Complies with the Court's Order to Complete Additional Analysis Regarding Greenhouse Gases by Thoroughly Explaining Why a Quantitative Analysis Did Not and Cannot Inform its Decision to Offer the Parcels for Lease**

BLM adequately complied with the Court's order to "do more" to explain how BLM's GHG analysis informed its decision to accept the Modified Proposed Action. As the Court noted, BLM can comply with NEPA by explaining why social cost of carbon estimates are not helpful to BLM in determining "significance" of any predicted emissions.

In compliance with this Order, BLM's FONNSI explained that BLM lacks the data and tools to estimate specific, climate-related effects from the sale. As of the publication of the FONNSI, BLM explained that there are no established qualitative or quantitative thresholds for NEPA analysis to assess the greenhouse gas emissions or social cost of an action in terms of the action's effect on the climate, incrementally or otherwise. BLM also explained that there is also no scientific data in the record that would allow the BLM, in the absence of an agency carbon budget or similar standard, to evaluate the significance of the greenhouse gas emissions from this proposed lease sale.

BLM further explained that these methodological shortcomings also prevent BLM from qualitatively comparing alternatives and, therefore, that BLM has not exercised its discretion to tailor this lease sale to account for global climate change. Therefore, BLM complied with the Court's order.

Although not fatal to its explanation, BLM does misstate the law regarding its obligations under the Federal Land Policy and Management Act (FLPMA) and the Mineral Leasing Act

(MLA) by asserting that BLM can refuse to comply with the MLA's directive to offer available lands for lease based on climate concerns. See FONNSI, p. 6, citing *Wilderness Soc'y v. Dept. of the Interior*, No. 22-cv-1871 (CRC), 2024 U.S. Dist. LEXIS 51011, at \*91-92 (D.D.C. Mar. 22, 2024). The MLA contains a mandatory requirement that BLM must hold quarterly lease sales of eligible lands. 30 U.S.C. §226(b). BLM provides no authority for its conclusion that it can refuse to offer eligible lands for lease based on GHG concerns. Further, refusal to lease lands that are "open" for oil and gas leasing based on GHG concerns would violate FLPMA by taking actions inconsistent with the provisions of an existing land use plan, completed pursuant to NPEA including a public notice and comment process, which would be contrary to law under 5 U.S.C. § 706(2).

Congress did not grant BLM the authority to regulate GHGs or climate or otherwise promulgate and impose a national climate policy. Congress prioritized development of U.S. oil and natural gas resources in MLA and FLPMA. In FLPMA, Congress identifies "mineral exploration and production" as one of the "principal or major uses" of public lands. 43 U.S.C. § 1702(l). FLPMA contains an express declaration of Congressional policy that BLM manage public lands "in a manner which recognizes the Nation's need for domestic sources of minerals, [and other commodities] from the public lands." 43 U.S.C. § 1701(a)(12). Thus, although BLM misstates the law regarding BLM's authority to refuse to offer parcels for lease based on GHG effects, its analysis regarding GHG impacts wholly complies with the Court's order.

### **B. The Draft EA Complies with the Court's Order Regarding Additional Analysis of Impacts to GrSG by Thoroughly Explaining its Decision to Offer the Parcels for Lease While Considering Current GrSG Data**

Although the Alliance disputes that BLM's initial analysis was insufficient under NEPA and FLPMA, the draft FONNSI and draft EA comply with the Court's order regarding additional analysis of the impacts of the leasing decision on GrSG.

The Court order directs BLM to further explain its conclusion that the effects of the leasing decision are consistent with the effects analyzed in the governing RMPs and Plan Amendments in light of all available evidence. BLM complied with this order by further explaining that BLM's governing RMPs incorporate the State of Wyoming GrSG core area strategy, which is based on the principle that conservation of important GrSG habitat facilitates both conservation and economic activities that are important to Wyoming's economy.

Consistent with these governing land use plans, BLM complied with the Court's order by explaining that BLM adequately analyzed GrSG impacts, including by:

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- Categorizing all lease parcels as containing PHMA, GHMA, or non-habitat.
- Identifying any leases within 1, 2, 3, 4, and 5.28 miles of an active or occupied GrSG lek, consistent with the Wyoming Core Area Strategy
- Identifying any leases within 1, 2, 3, 4, and 5.28 miles of PHMAs
- Identifying any leases within the Wyoming Game and Fish Department 2021-2022 Greater Sage Grouse Job Completion Report Local Working Group Areas.
- Discussing the results of the 2021-2022 Wyoming Game and Fish Department 2021-2022 Greater Sage Grouse Job Completion Report Local Working Group Areas
- Analyzing each parcel offered in relation to that lease's location and proximity to important habitat (including priority habitat and connectivity areas), existing leks, existing energy development or other human disturbance, and applicability of existing mitigation measures.
- Analyzing and discussing the sufficiency of mitigation measures, including timing and NSO stipulations to mitigate any GrSG impacts.

After this extensive, parcel by parcel analysis, BLM reasonably concluded there would be no additional impacts to GrSG beyond those identified in the original EA and FONSI. Therefore, its analysis of GrSG impacts complies with the Court's order.

### **C. BLM Complied with the Court's Order Regarding Additional Analysis of Mule Deer and other Large Game by Reasonably Forecasting the Effects of the Leasing Decision on these Species**

Again, the Alliance disagrees that BLM's analysis of potential impacts to mule deer and big game in the initial analysis was insufficient. Regardless, the draft FONSI and draft EA comply with the Court's order regarding the impacts of the leasing decision on these species.

The Court order requires BLM to use available evidence to reasonably forecast how these lease sales will affect mule deer or other big game. BLM fully complied with the Court order by estimating the acreage of potential mule deer habitat that could be impacted by potential surface disturbance from on-lease development.

BLM then concluded that the lease sale would impact less than 0.00097-0.00193% of mule deer herd unit range. When BLM expanded its analysis to include potential mule deer avoidance (1-mile buffer) from pads, the potential impact would be less than 17% (approx. 16.84%) of mule deer herd unit range. BLM also noted that its estimate likely overestimates potential impacts. Therefore, BLM adequately analyzed, and reasonably concluded, that potential effects to mule deer are minimal and has complied with the Court's order.

## **D. BLM Complied with the Court's Order Regarding Additional Analysis of Groundwater Resources**

Finally, BLM adequately complied with the Court's order regarding groundwater resources. As an initial matter, the Alliance strongly disputes the Court's conclusion that either the Alliance's previous comments or the Tisherman study raised "credible evidence" regarding enforcement of well construction regulations.

In any case, BLM's analysis complies with the Court's order to address the Court's unsupported concerns regarding revocation of the "2015 Rule" as well as the Tisherman Study. BLM provided context for the Tisherman studies' conclusions while also clarifying that BLM is not aware of any reported actual impacts to usable water zones related to the wells referenced in that study. Nor has any party provided any evidence of any compromised water sources.

BLM explained the conclusions of the Tisherman study in light of BLM's regulatory framework and actual operations in Wyoming. BLM also thoroughly explained the state and federal regulations and drilling approval procedures, including pre-and post-groundwater monitoring and testing requirements, mechanical integrity testing, and how they are adequate to protect groundwater resources.

The Alliance states that although the Tisherman study is correct that many wells in the Powder River Basin have long sections of uncemented wellbore adjacent to freshwater aquifers, the study's conclusion that "existing federal wells in the Powder River Basin are not protecting usable water" is unequivocally false. Onshore Order No. 2 requires wells designed to "protect and/or isolate all usable water zones." Contrary to the Tisherman study's assertions, cement casing is not the only method for compliance with federal and state regulations. In practice, protection of freshwater zones has been repeatedly attained in the Powder River Basin with carefully engineered and monitored drilling practices that use cement appropriately where needed, in connection with other protections and mitigation measures, which BLM acknowledges.

Finally, although not necessary to comply with NEPA, BLM analyzed groundwater resources in the vicinity of the leases in this EA and concluded that future wells on those leases were not expected to produce from zones that contain usable water sources or that are being used as a source of drinking water or for agricultural resources. Thus, BLM's analysis complies with the Court's order.

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## Conclusion

The FONNSI and Draft EA comply with BLM's statutory mandate to hold quarterly lease sales and to analyze the effects of said sales under NEPA.

Please do not hesitate to reach out to me with any questions.

**Sincerely,**



**Kathleen M. Sgamma**