WESTERN ENERGY **ALLIANCE**

Submitted via fax (775-861-6711)

February 16, 2025

State Director Jon Raby
Bureau of Land Management
Nevada State Office
1340 Financial Blvd.
Reno, NV 89502

RE: BLM Nevada First Quarter 2025 Oil and Natural Gas Lease Sale Notice and Protest, DOI-BLM-NV-B000-2024-0003-EA

Dear State Director Raby:

Western Energy Alliance (the Alliance) is protesting the Bureau of Land Management's (BLM) draft environmental assessment (draft EA) and finding of no significant impact (FONSI) for the Nevada first quarter 2025 oil and natural gas lease sale in accordance with 43 C.F.R. § 3120.13. However, we do commend BLM for offering more acreage than previous lease sales, at12 parcels covering 23,442.36 acres, and for holding that amount of acreage consistent from scoping, to draft and through the protest period.

Overview of Issues Being Protested

BLM's draft EA for the Nevada's first quarter 2025 oil and natural gas lease sale is arbitrary and capricious in violation of the Administrative Procedure Act (APA), Mineral Leasing Act (MLA), Federal Land Policy and Management Act (FLPMA), and National Environmental Policy Act (NEPA).

Lease Preference Analyses and Decision-Making. As a general matter, the draft EA's application of its lease preference analyses incorporated under Instruction Memorandum (IM) 2023-007 for the 12 parcels offered is inherently skewed to favor deferring parcels over offering parcels for lease. *See* BLM – draft Appendix K. BLM should continue to evaluate nominated parcels with a preference towards leasing, re-engaging nominators where necessary.

Socioeconomic Analysis. In the draft EA, BLM failed to conduct a legally sufficient socioeconomic analysis under NEPA. BLM failed to analyze and disclose the full suite of economic and other benefits of American oil and natural gas development in violation of NEPA, thus rendering its cost-benefit analysis legally deficient, arbitrary, and capricious.

Compliance with the Inflation Reduction Act (IRA). BLM failed to disclose and analyze whether the lease parcels being offered, when added cumulatively to other lease parcels offered in other states, are sufficient for BLM to meet its statutory leasing obligations under IRA.

Deferred Expressions of Interest (EOI). BLM's failure to analyze the cumulative effects of deferred Expressions of Interest (EOI) and minimal lease acreage offerings violates NEPA, APA and IRA.

Air Quality and Greenhouse Gasses.
BLM should provide more certainty around cumulative greenhouse gas (GHG) emission inputs within its projected impacts, or refrain from overestimating them. "Emissions inventories at the leasing stage are imprecise due to uncertainties . . . ." *See* draft EA Section 3.5.2. at 26. At the leasing stage, BLM cannot reasonably determine the manner in which a lease will be developed, and such determinations are subject to considerable variation due to inputs such as feasibility, geology, technology, and regulatory changes over the ten-year primary lease term.

A. BLM Failed to Explain Its Lease Preference Process and Decision-Making in Violation of NEPA, FLPMA, MLA, and APA

The draft EA relies on arbitrary and biased lease preference analyses, the application of which violates BLM's obligations under NEPA, FLPMA, MLA, APA, and their implementing regulations.

BLM's proposed leasing action is not in conformance with the governing RMPs, which allow for BLM to lease lands as part of reasonably foreseeable development. This lack of conformance is entirely contrary to BLM's obligations under FLPMA. BLM must conduct a detailed NEPA analysis, along with a corresponding public process before new stipulations can be implemented.

The development of lease stipulations needs to occur in the federal land use planning process through RMP amendments. Otherwise, the cumulative negative impacts of overly restrictive lease stipulations are not examined. BLM's own handbook provides that BLM must impose the least restrictive stipulations to protect other resources. Handbook 1624-1 at III-11. BLM's 2024 Fluid Minerals Lease and Leasing Process Rules, which give BLM broader authority to impose lease stipulations that do not conform with existing RMPs, violates NEPA and FLPMA.

B. The Draft FONSI Incorrectly Enlarges BLM's Discretionary Authority for Offering Parcels and Misapplies Recent Legal Precedent

The draft FONSI states an entirely incorrect interpretation of the legal holding in *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). Western Energy Alliance participated in the companion case and the remedy phase of this case.

In the decision cited in the draft FONSI, the court stated only that BLM must explain how its GHG analysis informed its leasing decisions. The court decision provides no legal support for BLM's statement in the draft FONSI that the MLA provides the Secretary or BLM with discretion to alter its obligations to offer parcels based on NEPA analysis. See BLM Draft FONSI – Table 1 at 4.

In the draft FONSI, BLM states, "As of the publication of this FONSI, there are no established thresholds, qualitative or quantitative, 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." *See* draft FONSI at 5. BLM continues to state, "There is also no scientific data in the record, including scientific data submitted during the comment period for this lease sale, 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." *Id.* These methodological shortcomings prevent BLM from qualitatively comparing alternatives, and BLM has therefore not exercised its discretion to tailor this lease sale to account for global climate change. *Id.*

Resultingly, BLM should continue to refrain from exercising any discretion to tailor lease sale obligations in light of climate change due to the non-existence of any valid legal authority or scientifically proven methods. Congress did not grant BLM the regulatory authority to regulate GHGs or climate or otherwise promulgate and impose a national climate policy. Congress prioritized development of 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).

BLM projects 25 productive wells will be developed across the 12 parcels nominated, with a total disturbance area of 65-100 acres. *See* Draft Table 5. BLM applies a 30-year life-of-project emission estimate for each well but does not factor in additional policies, technological advancements in production, or end-use efficiency standards, thereby severely overestimating impacts to air quality with a high degree of uncertainty. *See* draft EA at 16.

C. BLM Failed to Conduct a Legally Sufficient Socioeconomic Analysis and to Analyze the Benefits of Leasing While Arbitrarily Focusing Primarily on Renewable Energy Benefits

1. Legal Framework

Under both NEPA and FLPMA, BLM is required to integrate social science and economic information in the preparation of informed, sustainable decisions. Specifically, Section 202 of FLPMA requires BLM to integrate "physical, biological, economic, and other sciences" in developing land-use plans, 43 USC § 1712, and BLM's program level decision-making must conform to these plans. Similarly, Section 102 of NEPA requires federal agencies to "ensure the integrated use of the natural and social sciences, in . . . planning and decision-making." 42 USC § 4332(A).

NEPA implementing regulations include the requirement that BLM consider and analyze economic and social effects. NEPA regulations state that federal agencies "shall . . .identify environmental effects and values in adequate detail so the decision maker can appropriately consider such effects and values alongside economic and technical analyses." 40 C.F.R. § 1051.2(b)(2); *see also* 40 C.F.R. § 1508.(i)(4) ("Effects include ecological . . . aesthetic, historic, cultural, economic, social, or health . . .."); 40 C.F.R. § 1502.16(b) ("when the agency determines that economic or social and natural or physical environment effects are interrelated, the environmental impact statement shall discuss these effects on the human environment").

As the U.S. Court of Appeals for the D.C. Circuit recently held, BLM cannot perform a one-sided cost-benefit analysis. It must look at the costs and benefits from both perspectives, including the perspective of benefits to local economies from leasing and development, and benefits to local, state, and federal budgets from increased revenue of leasing and development. *See Interstate Nat. Gas Ass'n of Am. v. PHMSA,* 2024 U.S. App. LEXIS 20710 (D.C. Cir. Aug. 19, 2024). By relying only on one side of the cost-benefit analysis, the BLM has "failed to make a reasoned determination that the benefits . . . justify the costs." *Id.* at 5.

2. BLM Failed to Disclose and Analyze the Benefits of Leasing and Development, Violating NEPA, MLA, and FLPMA

Socioeconomics. The draft EA does not provide a legally sufficient cost-benefit analysis. The draft does not sufficiently analyze and disclose to the public the full suite of benefits of federal oil and natural gas in its socioeconomic impacts analysis. This omission violates NEPA and is arbitrary and capricious in violation of APA. The draft EA needs to be revised and updated to include these benefits to provide an accurate picture of the socioeconomic and other benefits of leasing and developing Nevada's abundant oil and natural gas resources.

The draft EA misinforms the public through a one-sided analysis that focuses on the benefits of renewable energy for GHG emissions reductions, while largely skirting the benefits of natural gas for GHG emissions reductions. *See, e.g.*, draft EA at 30-36. BLM needs to more definitively explain how natural gas significantly reduces GHG emissions, and BLM's failure to analyze the direct and indirect benefits of natural gas violates NEPA. *See Interstate Nat. Gas Ass'n of Am. v. PHMSA*, 2024 U.S. App. LEXIS 20710 (D.C. Cir. Aug. 19, 2024).

Environmental Justice. The draft EA violates NEPA for failing to disclose and analyze the benefits that flow to environmental justice (EJ) communities in the form of local jobs and revenue from local oil and natural gas development. *See* draft EA 65. BLM only briefly and superficially discusses benefits to EJ communities when stating "Wells would typically be drilled over a period of time and not at the same time. Since these parcels fall in remote regions of Nevada, it is unlikely that a large number of jobs would be created . . . . However positive indirect impacts to socioeconomics would likely be minor, given the [reasonable foreseeable development] scenario; however, bonus bids, annual rent fees and royalties may provide substantial income." *Id*.

Considering that the state of Nevada retains 48% of lease sale proceeds that accounted for $2,142,967 in state-wide revenue for 2023, the draft EA failed to include a legally sufficient cost benefit analysis to provide an accurate picture of the socio-economic benefits of leasing and developing Nevada's oil and natural gas resources. See draft EA at 65.

Natural Gas Benefits. The draft EA fails to quantify and disclose the indirect beneficial effects of the decision to lease federal natural gas, in violation of NEPA. In the latest GHG inventory, EPA highlights that new total U.S. GHG emissions are 17% below 2005 levels, mostly due to a shift to natural gas and renewable energy in the electric power sector.[1] Coal-to-gas switching was the largest driver behind GHG reductions in the United States in 2023.[2]

Further, the Energy Information Administration (EIA) shows that fuel switching to natural gas has provided 61% (653 million metric tons of carbon dioxide equivalent MMT CO_2 Eq) of the GHG reductions in the electricity sector, whereas wind and solar energy have provided only 39% (416 MMT CO_2 Eq).[3] The draft EA needs to cite to EPA's most recent GHG inventory and present this information to the public in its analysis.[4]

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[1] *Data Highlights: Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2022*, EPA, April 2024, p. 1.
[2] *Global CO2 Emissions in 2023*, International Energy Agency (IEA), February 2024, p. 14.
[3] *U.S. Energy-Related Carbon Dioxide Emissions, 2023—Report Appendix and Methodology*, EIA, April 2024, p. 11.
[4] *Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2022*, EPA, April 2024.

D. The Draft EA Fails to Analyze the Cumulative Effects of BLM's Minimal Lease Acreage Offerings

BLM failed to analyze the cumulative effects of minimal lease parcel offerings, in violation of NEPA, IRA, and APA. As explained in the draft EA, in Appendix I at page 2, IRA includes a provision that ties the amount of oil and natural gas onshore lease acreage BLM offers for sale on an annual basis to whether BLM can issue rights-of-way for wind or solar energy projects. IRA states "the Secretary may not issue a right-of-way for wind or solar energy development on Federal land unless (A) an onshore lease sale has been held during the 120-day period ending on the date of the issuance of the right-of-way for wind or solar energy development; and the sum total of acres offered for lease in onshore lease sales during the 1-year period ending on the date of the issuance of the right-of-way for wind or solar energy development is not less than the lesser of (i) 2,000,000 acres; and (ii) 50 percent of the acreage for which expressions of interest have been submitted for lease sales during that period . . .." Section 50265, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

To comply with Section 50265 of IRA, on an annual basis BLM must offer either a total of 2,000,000 acres or 50% of the acreage nominated through expressions of interest, whichever is lesser, for sale through the competitive lease sale process. BLM's failure to analyze the cumulative effects of deferred or unreviewed but eligible parcels and its small lease acreage offerings violate NEPA, IRA, and APA.

1. Failure to Disclose and Analyze Impacts of EOI Deferrals

BLM's failure to analyze the cumulative effects of deferred EOI and minimal lease acreage offerings violates NEPA, APA and IRA. *See* BLM Draft EA – Appendix L: Comment Summary and BLM Response at 8. BLM must review and offer all parcels nominated by industry through the EOI process or provide full disclosure as to why it has not done so. MLA requires the Department of the Interior to hold competitive oil and natural gas lease sales "at least quarterly" to promote responsible development of this nation's energy resources, 30 U.S.C. § 181, and requires BLM to conduct quarterly competitive oil and natural gas lease sales for lands that are eligible and available for leasing. 30 U.S.C. § 181 et seq.; 43 C.F.R. § 3120.12(a).

Under FLPMA, Congress identified "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).

Congress prioritized the leasing and development of America's abundant oil and natural gas resources in MLA and identified development as one of the principal uses of public lands under

FLPMA. BLM's decision not to offer additional parcels for lease contradicts the purpose of MLA and FLPMA.

To provide a legally viable Lease Sale EA and Decision Record, BLM needs to update the draft EA to disclose information and data to the public regarding whether eligible parcels were not offered and why. Failure to do so results in a violation of NEPA and contravenes MLA and FLPMA. BLM's proposed leasing decision and draft EA is arbitrary, capricious, and an abuse of discretion in violation of APA. 5 U.S.C. § 706(2)(A).

NFLSS records indicate that for the entire 2024 calendar year, there were at least 10 nominated parcels that remain "pending" or "submitted" with BLM across Nevada.[5] Also, since 2019 NFLSS indicates XXX nominated parcels of XXX acres remain. BLM failed to disclose the existing total EOI backlog or how many pending EOIs it arbitrarily terminated or failed to carry forward. BLM should continue to move forward with analyzing and offering parcels from this backlog.

The draft EA fails to disclose deferred EOIs for the past six years and analyze whether BLM is in compliance with IRA, merely stating, "Analyzing aggregate deferred or unoffered eligible acreage in terms of lost federal and state revenues in other BLM states is outside the purview of the proposed action." *See* BLM draft EA – Appendix L at 8. While IRA may not impose a disclosure obligation, BLM has long labored under a disclosure obligation imposed by NEPA. The draft EA fails to identify how many EOIs have been terminated or deferred on a cumulative basis prior to 2025. BLM cannot piecemeal and segregate its analysis by only analyzing EOIs received for the second quarter 2025 lease sale. BLM's statutory obligations under both NEPA and IRA are broader, and must be disclosed and analyzed in the draft EA.

BLM failed to analyze the percentage of lease acreage offered for sale compared to the aggregate of all EOIs that have been long pending and deferred by BLM. Further, BLM must inform the public of deferrals dating back at least six years per the statute of limitations. Policies since January 21, 2021, when BLM started severely restricting oil and natural gas leasing, have resulted in significant EOI decreases, lease parcel deferrals, inaction on EOIs, and a significant reduction in lease parcels offered for sale. The draft EA fails to analyze and disclose aggregate deferred or unoffered eligible acreage in terms of lost federal and state revenues. BLM must provide this information to the public and failure to do so is arbitrary and capricious and violates APA.

Given the exceedingly small amount of acreage being offered over time, especially in a state where forty-eight million acres (or 63%) is BLM-managed lands, and BLM's failure to disclose necessary lease offering data in the draft EA, it is difficult to assess whether BLM will be able

[5] https://nflss.blm.gov/s/applications, last accessed 2/7/2025.

to meet its IRA statutory requirements in 2025 or if BLM has ever met them to date. BLM has an obligation to analyze and disclose this to the public.

The draft EA also fails to disclose the adverse impacts that would result to renewable energy development if BLM does not meet its statutory leasing requirements under IRA. To comply with NEPA, FLPMA, and IRA, BLM must conduct a cumulative impacts analysis to inform the public and its own decision-making as to what extent the lease acreage being offered goes towards meeting its mandatory statutory requirements under IRA Section 50265.

2. Arbitrary and Capricious Treatment of Oil and Natural Gas Compared to Renewable Energy in Violation of APA and NEPA

BLM's failure to analyze the impacts of offering minimal parcels for oil and natural gas leasing is compounded by the fact that BLM's draft EA does not include an analysis regarding impacts on renewable energy under its IRA statutory obligations. As discussed above, BLM arbitrarily analyzes the benefits of future renewable energy deployment but does not analyze or present the benefits of offering more American oil and natural gas to market. This significant omission renders the draft EA legally untenable.

As recently held by the U.S. Court of Appeals for the D.C. Circuit, when an agency's cost-benefit analysis is unsupported by the record (*e.g.*, considers only one side or fails to consider oil and natural gas in whole) and fails to demonstrate "a reasoned determination," based on the weight of both costs and benefits, the implications posed by the agency are improperly supported and the agency action cannot legally stand. *See Interstate Nat. Gas Ass'n of Am. v. PHMSA,* 2024 U.S. App. LEXIS 20710 (D.C. Cir. Aug. 19, 2024).

Similarly, for the draft EA to be legally viable as a cost-benefit analysis under NEPA, in addition to the inclusion of environmental impacts, it should also include adequate consideration of the economic benefits of utilizing natural gas. 40 C.F.R. § 1502.22. Relevant factors (*i.e.*, economic considerations) not related to environmental quality should be identified and explained. *Id.*

By neglecting to consider the benefits for oil and natural gas development in addition to the costs, the agency has failed to make "a reasoned determination that the (non-existent) benefits…justify [the] costs." *Interstate Nat. Gas Ass'n of Am. v. PHMSA,* 2024 U.S. App. LEXIS 20710 (D.C. Cir. Aug. 19, 2024). This analysis gap is in violation of NEPA and is arbitrary and capricious in violation of APA. 40 C.F.R. § 1502.22.

In addition, BLM's decision to analyze IRA in the context of increased renewable energy usage while failing to analyze impacts on oil and natural gas leasing or BLM's ability to comply with its IRA statutory obligations is arbitrary, capricious, and an abuse of discretion in violation of APA.

BLM must update the draft EA to analyze potential benefits of oil and natural gas, not just those from renewable energy. BLM cannot capriciously choose to analyze one form of energy over another in contravention of its multiple use mandate under FLPMA. This capricious decision violates NEPA, FLPMA, APA, and Section 50265 of IRA.

Thank you for your consideration of the Alliance's protests. The Alliance urges BLM to fix these significant analytic and legal deficiencies for the Nevada first quarter 2025 lease sale and for future lease sales.

Sincerely,

Aaron Johnson
Vice President of Public and Legislative Affairs