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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

WESTERN ORGANIZATION OF RESOURCE COUNCILS, *et al.*,

Plaintiffs,

vs.

U.S. BUREAU OF LAND MANAGEMENT, *et al.*,

Defendants,

STATE OF WYOMING,

Intervenor-Defendant.

Case No. 16-cv-21-BMM

STATE OF WYOMING'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

The Western Organization of Resource Councils and other like-minded organizations (the Interest Groups) assert that the Bureau of Land Management (Bureau) violated the National Environmental Policy Act (NEPA) when it issued a revised Resource Management Plan (RMP) for the Buffalo, Wyoming Field Office in 2015.[1] While the Interest Groups put forward a number of discrete arguments, they essentially boil down to the assertion that the Bureau did not adequately consider the impacts of climate change and greenhouse gas emissions prior to issuing the RMP. This suit is the latest in a long string of lawsuits brought by the Interest Groups and similar entities in a thinly-veiled attempt to slow, reduce, and ultimately halt the extraction of coal, oil, and natural gas from the Powder River Basin, which stretches across portions of Wyoming and Montana.

As an initial matter, should the Interest Groups wish to effect policy change such as this, they should pursue their goals in the halls of Congress rather than in federal court. *Grunewald v. Jarvis*, 776 F.3d 893, 903 (D.C. Cir. 2015) ("NEPA is 'not a suitable vehicle' for airing grievances about the substantive policies adopted by any agency, as 'NEPA was not intended to resolve fundamental policy disputes.'") (citation omitted). In any event, each of the Interest Groups' arguments

[1] The Interest Groups advance similar arguments against the Bureau's issuance of an RMP for the Miles City, Montana Field Office. In this memorandum, the State of Wyoming limits its input to the arguments related to the 2015 Buffalo RMP.

lacks merit. Accordingly, the State of Wyoming respectfully requests that this Court deny the Interest Groups' motion for summary judgment.

BACKGROUND

I. Statutory and Regulatory Background.

A. The National Environmental Policy Act.

NEPA establishes a process that federal agencies use to consider the environmental consequences of their actions. *See* 42 U.S.C. §§ 4321-4370h. In particular, NEPA requires federal agencies to prepare a detailed "environmental impact statement" (EIS) for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). An EIS must include a "detailed [written] statement" concerning "the environmental impact of the proposed action" and "any adverse environmental effects which cannot be avoided." *Id.* An EIS should inform the decision-maker and the public of reasonable alternatives to the proposed action. *Id.*; *see also* 40 C.F.R. §§ 1502.1, 1508.11.

That said, while NEPA ensures informed public decision-making, NEPA does not require an agency to arrive at a particular decision. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Instead, "NEPA imposes only procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions." *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756-57 (2004). "Most

important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail." 40 C.F.R. § 1500.1(b).

B. The Process for Leasing Federal Land to Mine Coal.

The leasing of federal land to mine coal is a lengthy process that "implicate[s] a large number of overlapping statutory mandates." *Natural Res. Def. Council, Inc. v. Jamison*, 815 F. Supp. 454, 456 (D.D.C. 1992). The first step occurs under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 to 1787, with the preparation of an RMP. When preparing an RMP, the Bureau is guided by FLPMA's mandate that the public lands be managed for multiple use and sustained yield. 43 U.S.C. § 1701(a)(7). The Bureau's decision on how to meet that mandate is reflected in the individual RMPs. (*See, e.g.*, BUF1372). A given RMP might cover issues as diverse as recreational activities to the control of invasive species. (*See* BUF1420).

With regard to coal, at the RMP stage the Bureau identifies land that should be open or closed to future coal development. (Dkt. No. 79 at 3). This decision does not authorize site-specific activity. *See id*. Indeed, the Bureau can never be certain at the RMP stage which land, if any, will be leased for coal extraction. That is determined at later stages. The Bureau is required to prepare an EIS in conjunction with the preparation of an RMP. 43 C.F.R. § 1601.0-6.

The next step is the lease application process. The Mineral Leasing Act, 30 U.S.C. §§ 181-196, and the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. §§ 1201-1328, prescribe the process for leasing federal land for surface coal mining in Wyoming and elsewhere. First, an applicant must nominate land for the Bureau to open for leasing. 43 C.F.R. § 3425.1. The Bureau then evaluates the application and determines whether or not to lease the nominated land. *Id*. As part of this process, the Bureau analyzes the environmental impacts of mining on the nominated land through NEPA, either through an EIS or an Environmental Assessment. *Id*. §§ 3425.3-3425.4. If the Bureau decides to lease the land nominated by an applicant, it conducts a competitive lease sale. *Id*. § 3422.

Next, a successful bidder prepares a mine plan and submits the plan to the Office of Surface Mining (OSM). 30 U.S.C. § 207(c); 30 C.F.R. § 746.11(a). The mine plan must assure compliance with federal law, including SMCRA. 30 C.F.R. § 746.13. OSM then recommends to the Secretary of the Interior whether to approve or disapprove the mine plan. *Id*. OSM must base its recommendation to the Secretary of the Interior on information that the agency prepared in compliance with NEPA – the third time in this process that an agency will have engaged in a NEPA analysis. *Id*. "An approved mine plan shall remain in effect until modified, cancelled or withdrawn[.]" 30 C.F.R. § 746.17(b).

II. The 2015 Buffalo RMP and EIS.

The Bureau decided to issue the 2015 Buffalo RMP to account for changed conditions in the planning area and to evaluate new information. (BUF1413). In particular, but not exclusively, the Bureau issued the 2015 Buffalo RMP to "incorporate appropriate management actions and practices to conserve Greater Sage-Grouse and its habitat[.]" (*Id.*). Among the other reasons the Bureau issued the 2015 Buffalo RMP – the so-called "purpose and need" of the RMP – was to "[r]ecognize the Nation's need for domestic sources of minerals[,]" including coal. (*Id.*). The Bureau identified these needs through its own analysis, through issues identified during public involvement in the "scoping" process, and through collaboration with state, local, and federal agencies. (BUF1413-14).

In conjunction with the preparation of the 2015 Buffalo RMP, the agency also prepared an extensive EIS in order to comply with the requirements of NEPA. (*See, e.g.*, BUF1372). In the multi-thousand-page EIS, the Bureau considered the direct, indirect, and cumulative impacts of the proposed RMP. The agency examined impacts to air and water quality, climate change, visual resources, socio-economics, and transportation, among others. (BUF1330-49). The EIS reflects years of study, during which the public was afforded opportunities to participate in the decision-making process. The Bureau conducted this effort to satisfy NEPA's directive of ensuring informed decision-making and promoting public participation

in the process. Various federal agencies will conduct further work under NEPA only if a private entity chooses to apply for a coal lease in the future.

As required by NEPA, the EIS "describes and analyzes alternatives for the planning and management of public lands and resources administered by [the Bureau], within the Buffalo planning area." (BUF1372). "The planning area is located in north-central Wyoming and consists of approximately 7.4 million acres of federal, state, and private land." (*Id*.). Prior to the issuance of the 2015 Buffalo RMP, lands administered by the Bureau in the planning area were governed according to a 1985 Buffalo RMP, as updated in 2001 and amended in 2003. (*Id*.). The 2015 Buffalo RMP replaced these plans. (*Id*.).

With regard to coal, the Bureau did not conduct a brand-new analysis of which lands were best suited for coal extraction in the 2015 Buffalo RMP because the agency already conducted that analysis in 2001 and made a determination. (BUF1423). Because this determination – known as "coal screening" – merely identifies areas of land that are suitable for mining coal, the Bureau determined that is was not necessary to duplicate this review. (*Id*.; BUF1438, 1546). Should an entity apply to lease any of this land, the Bureau will then review "current, site-specific data, and reapply[] the coal screens as necessary, before determining if those lands would be acceptable for further consideration for leasing." (BUF2231). "Prior to offering a coal tract for sale, the unsuitability criteria will be reviewed, a

tract-specific [] NEPA analysis will be completed, and there will be an opportunity for public comment." (BUF1438).

Throughout the course of preparing the 2015 Buffalo RMP and the EIS, the Bureau coordinated and collaborated extensively with a variety of interested parties. (BUF1425). This included consultation with the affected counties, conservation districts, Wyoming state agencies, federal agencies, and the Northern Cheyenne tribe. (BUF1426-27). It also included a number of public meetings and the solicitation and review of comments submitted by the public. (BUF1425-26).

III. Procedural Background.

The Interest Groups allege that the Bureau failed to adequately comply with NEPA prior to issuing the Record of Decision that approved the Miles City, Montana RMP and the Buffalo, Wyoming RMP. (Dkt. No. 1). Wyoming moved this Court to intervene in order to protect the State's interests related to the Buffalo RMP. On April 4, 2017, this Court granted Wyoming's motion to intervene. (Dkt. No. 45). Wyoming now offers this memorandum for the Court's consideration, which focuses solely on issues related to the Bureau's EIS that analyzed the anticipated impacts of the 2015 Buffalo RMP.

ARGUMENT

I. Standard of Review.

This Court reviews the Interest Groups' arguments under the scope and standard of review set forth in the Administrative Procedure Act, 5 U.S.C. § 701 to

706. *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 891 (9th Cir. 2002). Under this standard, agency actions may be set aside only if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id*. (citations omitted). "[T]his standard is highly deferential, presuming the agency action to be valid." *Cal. Wilderness Coal. v. U.S. Dep't of Energy*, 631 F.3d 1072, 1084 (9th Cir. 2011) (quotations and citation omitted). The Court must "not substitute [its] judgment for that of the agency." *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (citations omitted). Instead, the Court may

> reverse a decision as arbitrary and capricious only if the agency relied on factors Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Id. (quotations, citation omitted).

II. The Bureau complied with the National Environmental Policy Act.

The Interest Groups allege that the Bureau violated NEPA when the agency approved the 2015 Buffalo RMP. (Dkt. No. 72-1). In so doing, the Interest Groups misunderstand the requirements of NEPA at the RMP stage. This Court should deny their motion as a result.

A. The Bureau considered a reasonable range of alternatives.

The Interest Groups contend that the Bureau violated NEPA by not considering a sufficient range of alternatives. (Dkt. No. 72-1 at 7-16). Specifically,

the Interest Groups believe that the Bureau was required to consider an alternative that would have reduced coal development from current levels and an alternative that would have reduced methane emissions from oil and gas development. (*Id*.). These arguments lack merit.

1. NEPA did not require the Bureau to consider an alternative that would result in less coal extraction.

In support of their argument that NEPA required the Bureau to consider an alternative that reduced coal development, the Interest Groups argue that the alternatives considered by the Bureau in the EIS "were identical to one another" in terms of coal development. (Dkt. No. 72-1 at 8). The Interest Groups oversimplify the situation.

The Bureau considered four alternatives in the EIS. (BUF1512). Alternative A, which is the statutorily-required "no action" alternative, would have left the current management plan in place. (BUF1520-23). Alternative B, known as the Resource Conservation Alternative, emphasized "conservation of physical, biological, heritage and visual resources, and areas with wilderness characteristics with constraints on resource uses." (BUF1523). "Relative to all alternatives, Alternative B [would have conserved] the most land area … and [was] the most restrictive to motorized vehicle use and mineral development." (*Id*.). Alternative C, known as the Resource Development Alternative, emphasized "resource uses by limiting conservation measures[.]" (BUF1527). "Relative to all other alternatives,

Alternative C [would have conserved] the least land … and [was] the least restrictive to motorized vehicle use and mineral development." (*Id*.). Finally, Alternative D, the preferred alternative, allowed for "resource use if the activity [could] be conducted in a manner that conserves" key resources. (BUF1531). Alternative D emphasized "moderate constraints on resource uses to reduce impacts to resource values." (*Id*.). In short, the four alternatives are far from identical and offer different approaches for the public's consideration and comment consistent with the requirements of NEPA.

The Interest Groups implicitly argue that these distinctions are irrelevant because each alternative would result in roughly the same amount of coal available to lease. (*See* Dkt. No. 72-1 at 7-16). Therefore, the Interest Groups contend, the Bureau violated NEPA. (*Id*.). This line of logic was directly refuted by a recent district court decision that was affirmed by the Court of Appeals for the Ninth Circuit. In *Western Watersheds Project v. Kenna*, the plaintiff advanced an argument identical to the one advanced by the Interest Groups here. *W. Watersheds Project v. Kenna*, No. CV-10-1096-PHX-SMM, 2011 WL 5855095 (D. Ariz. Nov. 22, 2011), *aff'd*, 610 F. App'x 604 (9th Cir. 2015). In *Kenna*, the plaintiff challenged the Bureau's NEPA analysis of an RMP. Specifically, the plaintiff argued that the Bureau's alternatives analysis was insufficient because none of the alternatives considered a reduction in the amount of livestock grazing. *Kenna*,

2011 WL 5855095, at *14. Switch out livestock grazing for coal, and *Kenna* is essentially identical to this case.

The court in *Kenna* rejected the plaintiff's argument and found that the alternatives considered by the Bureau were sufficient because they considered "different degrees of recreation, motorized vehicle use, and natural resource preservation." *Id*. at *17. That is precisely what happened here. (BUF1512-34). The court went on to say that NEPA did not require the Bureau to consider a variety of livestock grazing plans in the EIS beyond the Bureau's "guarantee that individual grazing leases will be made in accordance with the range management goals referenced in the RMP." *Kenna*, 2011 WL 5855095, at *17-18. Again, that is the situation here. (*See* BUF1438, 1546). And lastly, the court held that the Bureau's "decision to renew grazing permits is not appropriately discussed in the RMP because allocation of grazing is done on an individual basis." *Kenna*, 2011 WL 5855095, at *18-19. The same is true here with regard to coal leases. (*See* BUF1438, 1546). This Court should follow *Kenna* and reject the Interest Groups' argument.

2. NEPA did not require the Bureau to consider an alternative that would have required measures to reduce methane emissions.

Next, the Interest Groups argue that the Bureau violated NEPA by not considering an alternative that would require measures to reduce methane emissions from oil and gas development activities. (Dkt. No. 72-1 at 13-16). The

federal Defendants readily disposed of this argument by pointing out that the Interest Groups failed to acknowledge that, under every alternative, the EIS recognized that the Bureau would "require lessees to conduct operations in a manner that minimizes adverse impacts to other resources and other land uses and users," including "reduc[ing] the impacts of … greenhouse gas emissions associated with [the Bureau's] actions" by implementing "mitigation measures within [the Bureau's] authority. (Dkt. No. 79 at 19). In other words, the Interest Groups fail to acknowledge that the Bureau has the ability to impose mitigation measures at a later stage in the leasing process. Indeed, the Bureau can impose such mitigation measures **far** more effectively later in the process, once more details are known about the proposed activity in question. And the law entitles the Bureau to take this approach. *Kenna*, 610 F. App'x at 606-07 (recognizing the ability of the Bureau to defer analysis to a later stage). The Interest Groups' argument fails as a result.

B. The Bureau took a hard look at the potential impacts of climate change and greenhouse gas emissions.

The Interest Groups also contend that the Bureau violated NEPA by not taking a "hard look" at greenhouse gas emissions and climate change in the EIS. (Dkt. No. 72-1 at 16-32). The Interest Groups put forward the following allegations: (1) the Bureau did not look at the so-called "downstream" effects of fossil fuel combustion; (2) the Bureau did not look at the "cumulative effects" on

the climate; and (3) the Bureau understated the impacts of methane emissions. (*Id*.). These arguments lack merit.

1. NEPA did not require the Bureau to consider the "downstream" effects of the 2015 Buffalo RMP.

The Interest Groups argue that NEPA required the Bureau to consider the "downstream" effects of the fossil fuels that **may** be extracted under the 2015 Buffalo RMP. (Dkt. No. 72-1 at 16-21). In other words, the Bureau should have considered the environmental impact of burning the coal, oil, and natural gas that is available to lease within the Buffalo RMP planning area. But this argument ignores the reality that there is no way for the Bureau to know how much fossil fuel will eventually be extracted and then combusted from the planning area. Take coal, for example. Coal will only be mined if industry applies for a lease, obtains the lease, applies for a mine plan, and gets the necessary approvals. *See supra* at 8-10. That is far too much uncertainty for the Bureau to act on at the RMP stage. (*See* Dkt. No. 79 at 23 n.2). Rather, the Bureau has chosen to analyze these effects at the leasing stage, when the agency will have far more information and certainty. This is appropriate. *Kenna*, 610 F. App'x at 606-07.

The Interest Groups rely primarily on two cases to support their argument that NEPA requires the Bureau to consider the downstream effects of the 2015 Buffalo RMP at this stage. (Dkt. No. 72-1 at 17) (discussing *High Country Conserv. Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174 (D. Colo. 2014) and

Mid States Coal. for Progress v. Surface Transp. Bd., 345 F.3d 520 (8th Cir. 2003)). The decision of the Colorado District Court in *High Country* offers little for this Court to consider beyond the district court's decision to adopt the Eighth Circuit's reasoning in *Mid States*. And *Mid States* is readily distinguishable from the facts in the instant case. Accordingly, neither case should guide this Court's analysis.

In *Mid States*, the Surface Transportation Board prepared an EIS that considered the environmental impacts of a "proposal to construct approximately 280 miles of new rail line to reach the coal mines of Wyoming's Powder River Basin." *Mid States*, 345 F.3d at 532. The Eighth Circuit found that the Surface Transportation Board violated NEPA by not considering the potential environmental impacts that would result from an increased supply of Powder River Basin coal, particularly due to its low cost and environmental benefits. *Id*. at 548-50. While that scenario seems somewhat analogous to the facts in the case at bar, in reality that is far from the truth.

There are a number of key distinctions between *Mid States* and this case. First, the stated goal of the new rail line in *Mid States* was to **increase** the availability of Powder River Basin coal and **lower** its price by removing a rail capacity bottleneck between the abundant coal supply in the Powder River Basin and the demand for Powder River Basin coal in the United States. *Id*. at 549. The Surface Transportation Board identified that goal in the draft EIS, and the *Mid*

States court relied heavily on that fact in coming to its decision. *Id*. at 550. That is not the situation here. The purpose of the 2015 Buffalo RMP with regard to coal is merely to identify areas where coal **may** be leased in the future. (*See, e.g.*, BUF1438). None of the alternatives envisioned that the amount of coal mined in the Buffalo planning area would increase as a result of the 2015 Buffalo RMP. (Dkt. No. 72-1 at 9). Indeed, the Interest Groups recognize this fact. (*Id.*). This distinction alone is enough to render *Mid States* inapposite.

Also, in *Mid States* an increase in the consumption of Powder River Basin coal was reasonably foreseeable because of the anticipated efficiencies created by the new rail line. In fact, the Surface Transportation Board predicted this would occur in the agency's EIS. *Mid States*, 345 F.3d at 549. If the Surface Transportation Board approved the rail project, more Powder River Basin coal would come to market at a cheaper price. *See id*. at 548. Not so here. The goal of the preferred alternative was not to increase the availability of Powder River Basin coal. (BUF1531). In short, a change in availability and price based on the 2015 Buffalo RMP alone was not reasonably foreseeable. That is a totally different scenario than the one considered by the Eighth Circuit in *Mid States*. And indeed, at least two courts, including the Eighth Circuit, have distinguished *Mid States* and limited its applicability on similar foreseeability grounds. *Ark. Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 431 F.3d 1096 (8th Cir. 2005); *Sierra Club v. Clinton*, 746 F. Supp. 2d 1025 (D. Minn. 2010).

In *Arkansas Wildlife*, the United States Army Corps of Engineers prepared an EIS to consider the potential impacts related to a water usage plan that the Corps estimated would cost over three hundred million dollars. *Ark. Wildlife*, 431 F.3d at 1098-99. The plaintiffs alleged that the Corps "improperly deferred the study of cumulative impacts of reasonably foreseeable action" in the EIS and relied on *Mid States* to support their argument. *Id*. at 1102. In response, the Eighth Circuit rejected the plaintiffs' argument and limited the applicability of its ruling in *Mid States*. *Id*. Specifically, the Eighth Circuit limited the applicability of *Mid States* to cases where an agency: (1) recognized that a particular outcome was reasonably foreseeable; (2) stated that it would consider the impacts from that reasonably foreseeable outcome; and (3) then failed to do so. *Id*. (finding reliance on *Mid States* to be misplaced where these factors are not present). Here, the Bureau never said that it would consider downstream impacts. Thus, a key element necessary to apply *Mid States* does not exist here. This Court should refuse to follow *Mid States* in this case for this reason.

In *Sierra Club*, the State Department prepared an EIS to consider the potential impacts of authorizing the construction of two pipelines that were designed to carry petroleum products between Canada and the United States." *Sierra Club*, 746 F. Supp. 2d at 1028-29. Relying on *Mid States*, the plaintiffs alleged that the State Department failed to adequately consider the effect that increased availability of crude oil from the tar sands of Canada would have on the

development of alternative energy sources, like wind and solar, in the United States. *Id*. at 1046. The district court rejected this argument, based on the fact that, unlike in *Mid States*, "there has been no showing that it is reasonably foreseeable that the oil being transported through the AC Pipeline will increase overall oil consumption in the United States." *Id*. That is precisely the situation here, where it is not reasonably foreseeable that the 2015 Buffalo RMP will increase coal consumption in the United States. This Court should reject any reliance on *Mid States* for the reasons spelled out in *Sierra Club*.

In sum, the facts that led to the Eighth Circuit's decision in *Mid States* are not present in this case. As a result, the decision is inapposite and should not guide this Court's analysis. The Interest Groups' argument fails as a result.

2. NEPA did not require the Bureau to use the Interest Groups' preferred cost-benefit models.

The Interest Groups next argue that the Bureau failed to adequately consider the cumulative effects of greenhouse gas emissions from the 2015 Buffalo RMP. (Dkt. No. 72-1 at 21-27). Once again, the Interest Groups ignore the reality that such an analysis is not practical at this stage and should be conducted at the leasing stage. (Dkt. No. 79 at 21). And their argument that NEPA required the Bureau to consider cost-benefit models like a "carbon budget" and the "social cost of carbon" does not hold water. (*Contra* Dkt. No. 72-1 at 25-27).

The Interest Groups' argument with respect to the social cost of carbon protocol falls short for several reasons. First, an examination using the social cost

of carbon protocol would not have been productive. As an economist pointed out in a previous case, different groups value the social cost of emitting a ton of carbon dioxide from anywhere between $5 and $800. *High Country*, 52 F. Supp. 3d at 1190 (citation omitted). Such a wide range does not provide an agency with a useful tool to determine the social cost of greenhouse gas emissions. And while in the past EPA suggested that one agency should use the protocol during its review of a controversial pipeline's application for one permit, the White House Council on Environmental Quality (CEQ) does not direct agencies to use this protocol in conducting all NEPA analyses. *Id*. The same logic applies to the "carbon budget."

In any event, NEPA does not demand a cost-benefit analysis of every proposed action. NEPA requires a hard look at particular and cumulative environmental impacts of proposed actions. 42 U.S.C. § 4332(C). CEQ only requires that if an agency considers a cost-benefit analysis relevant, it should be included in the environmental analysis. 40 C.F.R. § 1502.23. The "carbon budget" and "social cost of carbon" protocol attempt to monetize the wide-ranging impacts of greenhouse gas emissions on the environment. Here, the Bureau did not find a cost-benefit analysis to be relevant. (*See* BUF5069-70, 5072). Accordingly, NEPA did not require the Bureau to consider it. 40 C.F.R. § 1502.23. For these reasons, the Interest Groups' argument lacks merit.

3. The Bureau properly considered the impacts of methane emissions.

The Interest Groups next argue that the Bureau understated the impacts of methane emissions that may result from resource extraction in the Buffalo planning area under the 2015 Buffalo RMP. (Dkt. No. 72-1 at 27-32). As discussed by the federal Defendants, the EIS estimated the quantity of potential methane emissions and provided that information to the public in the EIS. (Dkt. No. 79 at 30-31). In so doing, the Bureau fostered informed decision-making, as required by NEPA. (*Id*.). The Interest Groups' argument fails as a result.

C. The Bureau considered the cumulative impacts on air quality.

The Interest Groups argue that the Bureau failed to adequately consider the cumulative impacts of coal, oil, and gas development on air quality in the EIS. (Dkt. No. 72-1 at 32-33). This breaks down into two sub-arguments. First, that the Bureau improperly relied upon existing National Ambient Air Quality Standards in its analysis. Second, that the Bureau failed to take existing sources of air pollution into account. The Interest Groups are mistaken.

As to the first sub-argument, the Bureau took a hard look at impacts to air quality in the EIS. (*See* Dkt. No. 79 at 31-32). The Bureau determined that none of the alternatives considered in the EIS would exceed the existing National Ambient Air Quality Standards or the standards imposed by Wyoming's Department of Environmental Quality. (*See id*.). In so doing, the Bureau provided sufficient

information to allow for informed decision-making. The Interest Groups provide no law to show otherwise. (Dkt. No. 72-1 at 32-33). Their argument fails as a result.

As to the second sub-argument, the Interest Groups assert that NEPA required the Bureau to consider emissions that occur outside of the Buffalo planning area. (Dkt. No. 72-1 at 33) (arguing that the EIS should have considered emissions originating in Montana). Again, the Interest Groups provide no legal support for their position. The federal Defendants, on the other hand, provided this Court with case law showing that the Bureau has broad discretion to identify the geographic scope of its cumulative impacts analysis. (Dkt. No. 79 at 33). The Bureau properly exercised that discretion by limiting its cumulative impacts analysis to the area covered by the 2015 Buffalo RMP. Accordingly, the Interest Groups' argument lacks merit.

CONCLUSION

The Interest Groups ask this Court to vacate the 2015 Buffalo RMP as part of their overall effort to limit mineral as well as oil and gas development on federal land in Wyoming. Wyoming worked tirelessly with the Bureau and others to ensure that the 2015 Buffalo RMP achieves a reasonable balance between conservation and development. Upsetting that balance will adversely impact Wyoming's sovereignty, industry, and revenues. The State of Wyoming respectfully requests that this Court deny the Interest Groups' motion for summary

judgment for the reasons expressed in the federal Defendants' memorandum and the reasons discussed above.

Dated this 18th day of August, 2017.

FOR DEFENDANT-INTERVENOR

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