

Shiloh S. Hernandez
Western Environmental Law Center
103 Reeder's Alley
Helena, Montana 59601
(406) 204-4861
hernandez@westernlaw.org

Counsel for Plaintiffs

Samantha Ruscavage-Barz (NM Bar #23276)
WildEarth Guardians
516 Alto St.
Santa Fe, NM 87501
(505) 401-4180
sruscavagebarz@wildearthguardians.org
Admitted pro hac vice

Counsel for Plaintiff WildEarth Guardians

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

WILDEARTH GUARDIANS and
MONTANA ENVIRONMENTAL
INFORMATION CENTER,

Plaintiffs,

vs.

DAVID BERNHARDT, et al.

Defendants.

Case No. CV 17-80-BLG-SPW-TJC

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY**

Pursuant to L.R. 7.4, Plaintiffs WildEarth Guardians and Montana Environmental Information Center (collectively, “Conservation Groups”) provide this Court with the attached supplemental authority, *State of California v. Bernhardt*, No. 18-CV-5712-YGR (N.D. Cal. July 15, 2020). *State of California* is relevant to the Conservation Groups’ claim regarding Federal Defendants’ failure to use the social cost of carbon. (Doc. 81 at 17-24; Doc. 71 at 24-30; *cf.* Doc. 77 at 18-19.)

There, the court held that the Bureau of Land Management (BLM) violated the Administrative Procedure Act (APA) and National Environmental Policy Act (NEPA) when it promulgated a rule (the “Rescission Rule”) rescinding its prior rule regulating methane waste from oil and gas operations. *State of California*, No. 18-CV-5712-YRG, slip op. at 40-53.

In particular, the court held that BLM improperly ignored the social cost of greenhouse gases (there, methane) and failed to adequately assess the impacts of greenhouse gas emissions. The court explained that the social cost of greenhouse gases (methane and carbon) “was developed [by the Interagency Working Group (IWG)] over several years through robust scientific and peer-reviewed analyses and public processes, and represents the *best available science* on this issue.” *Id.* at 30 (emphasis added). The court further explained:

While [President Trump’s] Executive Order 13783 may have withdrawn the relevant technical support documents for political

reasons, it did not and could not erase the scientific and economic facts that formed the foundation for that estimate—facts that BLM now ignores. In other words, the President did not alter by fiat what constitutes the best available science.

Id. at 32-33 (internal citation omitted). The court then clarified that no provisions in Executive Order 13783 provided any non-arbitrary basis for rejecting the IWG’s social cost of greenhouse gases. *Id.* at 33-36.

The court held that BLM’s climate change analysis that did not use the IWG’s social cost of greenhouse gases violated NEPA. *Id.* at 45-47. The court explained that “mere quantification [of greenhouse gas emissions] is insufficient.”

Id. at 46. The court explained:

BLM cannot ignore scientifically robust methods that exist to assess the actual effects of greenhouse gas emissions by again insisting they are too speculative or not “reasonably foreseeable.” *See CBD v. NHTSA*, 538 F.3d at 1200 (citing a range of values for carbon emissions reductions, and noting that it “is certainly not zero”). BLM concedes as much by purporting to estimate the *domestic* social cost of methane in the 2018 EA to fulfill its duty to take a hard look. It is arbitrary for an agency to quantify an agency’s benefits while ignoring its costs where tools exist to calculate those costs. *See High Country*, 52 F. Supp. 3d at 1192.

Id. at 46 (internal citation omitted). Thus, the court concluded that “BLM has filed to satisfy its ‘hard look’ obligation under NEPA with respect to the Rescission’s impact on climate.” *Id.* at 47.

Respectfully submitted this 23rd day of July, 2020.

/s/ Shiloh Hernandez
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