Shannon Anderson, Wyo. Bar No. 6-4402
Powder River Basin Resource Council
934 N. Main St.,
Sheridan, WY 82801
(307) 672-5809
sanderson@powderriverbasin.org

Counsel for Respondent-Intervenors Center for Biological Diversity, et al.
(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

WESTERN ENERGY ALLIANCE and PETROLEUM ASSOCIATION OF WYOMING, Petitioners, vs. JOSEPH R. BIDEN, Jr., *et al.*, Federal Respondents, CENTER FOR BIOLOGICAL DIVERSITY, *et al.* (Conservation Groups), and ALTERRA MOUNTAIN COMPANY, *et al*. (Business Coalition), Intervenor-Respondents,	)	Case No. 0:21-cv-00013-SWS [Lead Case]

STATE OF WYOMING, Petitioner, vs. UNITED STATES DEPARTMENT OF INTERIOR, *et al.*, Federal Respondents, CENTER FOR BIOLOGICAL DIVERSITY, *et al*. (Conservation Groups), and ALTERRA MOUNTAIN COMPANY, *et al*. (Business Coalition), Intervenor-Respondents,	)	Case No. 0:21-cv-00056-SWS

CONSERVATION GROUPS' RESPONSE TO
PETITIONERS' MOTIONS FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The motions for preliminary injunction filed by Petitioners Western Energy Alliance and Petroleum Association of Wyoming (collectively, WEA) and the State of Wyoming should be denied because they ask this Court to enter an unprecedented and improper order requiring the Federal Respondents (collectively, BLM) to encumber public lands with new oil and gas leases. The purpose of a preliminary injunction is to maintain the status quo and prevent irreparable harm before the case can be decided on the merits. Petitioners, however, seek to compel BLM to hold oil and gas lease sales, and apparently to issue new leases, while this litigation is ongoing. Petitioners fail to cite any precedent where a court has granted such relief, and the Tenth Circuit has ruled that courts cannot order BLM to conduct such leasing.

Moreover, Petitioners cannot make the showing required for a preliminary injunction. On the merits, BLM is exercising well-established discretionary authority by taking a "look before you leap" approach and temporarily postponing sales of new oil and gas leases pending a comprehensive review of the federal oil and gas program. That review was prompted by reports criticizing the program for shortchanging taxpayers, and by court decisions repeatedly invalidating flawed federal leasing decisions. Further, Petitioners cannot show irreparable harm in the absence of an injunction because their claimed benefits from the postponed lease sales will be recovered if they prevail on the merits. In fact, deferring those sales may actually benefit Petitioners as oil and gas prices rebound from historic lows.

BACKGROUND

BLM stewards public lands under the principle of "multiple use management." Norton v. S. Utah Wilderness All., 542 U.S. 55, 58 (2004). This mission requires balancing "the many competing uses to which land can be put, 'including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical

values.'" Id. (alteration in original) (quoting 43 U.S.C. § 1702(c)). As part of that balancing, oil and gas development is authorized under the Mineral Leasing Act of 1920 (MLA), which provides that federal minerals "may be leased" by the Interior Department. 30 U.S.C. § 226(a).

The federal oil and gas program, however, is plagued by a host of well-documented problems. The Government Accountability Office (GAO) has repeatedly criticized the Interior Department for charging below-market royalty rates and other fiscal terms that shortchange states and taxpayers, for poor regulatory oversight and enforcement, and for allowing abuses of lease suspensions, inefficient noncompetitive leasing, and insufficient reclamation bonding. Ex. 1, Thomas Delehanty Decl. ¶ 6. Federal oil and gas development also contributes significantly to global climate change, yet existing BLM land management plans largely fail to address the issue. Id. ¶¶ 7–8. Further, numerous BLM lease sales have been invalidated in recent years by courts for National Environmental Policy Act (NEPA) violations and other legal flaws. Id. ¶ 4.

Recognizing these problems, President Biden on January 27, 2021 ordered a temporary pause on issuance of new federal oil and gas leases while the Interior Department conducts a "comprehensive review" of leasing and permitting practices. Exec. Order No. 14008, 86 Fed. Reg. 7,619, 7,624–25 (Jan. 27, 2021). The President issued this directive "in light of the Secretary of the Interior's broad stewardship responsibilities over the public lands," and ordered that the leasing pause be conducted "to the extent consistent with applicable law." Id.

Subsequently, several BLM offices postponed lease sales in March, April, and June 2021 to allow for additional analysis and NEPA review. See WEA Mot. for Prelim. Inj. 7–11, ECF No. 41 (WEA); Wyo. Prelim. Inj. Mem. 8–10, ECF No. 45 in Case No. 21-cv-56 (Wyo.) (listing postponed sales). Petitioners challenge those postponements.

ARGUMENT

I. STANDARD FOR PRELIMINARY INJUNCTION

"[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (per curiam) (quoting 11A Charles Alan Wright, et al., Fed. Practice and Procedure § 2948 (2d ed. 1995)). "Because a preliminary injunction is an extraordinary remedy, 'the right to relief must be clear and unequivocal.'" Chem. Weapons Working Grp., Inc. v. U.S. Dep't of the Army, 111 F.3d 1485, 1489 (10th Cir. 1997) (quoting SCFC ILC, Inc. v. Visa USA, Inc., 936 F.2d 1096, 1098 (10th Cir. 1991)). "A plaintiff seeking a preliminary injunction must establish that [a] he is likely to succeed on the merits, that [b] he is likely to suffer irreparable harm in the absence of preliminary relief, that [c] the balance of equities tips in his favor, and that [d] an injunction is in the public interest." Winter v. Nat. Res. Def. Council, 555 U.S. 7, 20 (2008). When a movant fails to meet its burden on any of these four requirements, its request must be denied. Id. Petitioners cannot satisfy this test.

II. PETITIONERS CANNOT SHOW A LIKELIHOOD OF SUCCESS ON THE MERITS.

A. Petitioners' Preliminary Injunction Motions Seek More Relief Than They Would Be Entitled Following a Decision on the Merits.

Petitioners' motions should be denied because they ask this Court to drastically alter the status quo and order BLM to encumber public lands with new leases while this litigation is ongoing. Such an injunction is improper because it would grant Petitioners more relief than they would be entitled from a victory on the merits. See Hicks v. Jones, 332 Fed. Appx. 505, 508 (10th Cir. 2009) (A preliminary injunction may be "appropriate to grant intermediate relief of the same character as that which may be granted finally.") (quoting DeBeers Consol. Mines v. United States, 325 U.S. 212, 220 (1945).

The purpose of a preliminary injunction is "to preserve the relative positions of the parties until" a decision on the merits. Univ. of Tex. v. Camenisch, 451 U.S. 390, 395 (1981). For that reason, "mandatory preliminary injunctions" that compel agency action, or injunctions that "afford the movant all the relief that it could recover" on the merits, are disfavored and must be even "more closely scrutinized." Schrier v. Univ. of Colo., 427 F.3d 1253, 1258 (10th Cir. 2005); O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft, 389 F.3d 973, 975 (10th Cir. 2004) (internal quotations omitted). But a preliminary injunction is not appropriate where, as here, it would grant relief beyond what Petitioners are likely to achieve on the merits.

Specifically, Petitioners seek to compel BLM to hold lease sales, and apparently to issue new leases. WEA 28–29, 34; Wyo. 37–40, 49 (both asserting irreparable harm absent issuance of new leases, and requesting BLM be ordered to conduct leasing). But Petitioners fail to offer any precedent where a court has ordered BLM to hold a lease sale or issue oil and gas leases, let alone as preliminary injunctive relief. To the contrary, the Tenth Circuit has held that, in light of BLM's broad discretion over mineral leasing, "federal courts do not have the power to order competitive leasing. By law that discretion is vested absolutely in the federal government's executive branch and not in its judiciary." Wyoming ex rel. Sullivan v. Lujan, 969 F.2d 877, 882 (10th Cir. 1992); Marathon Oil Co. v. Babbitt, 966 F. Supp. 1024, 1026 (D. Colo. 1997), aff'd, 166 F.3d 1221 (10th Cir. 1999); see also United States ex rel. McLennan v. Wilbur, 283 U.S. 414, 419 (1931) (declining to issue mandamus relief in light of Department's discretion over whether to issue leases); see pp. 6–11, infra (describing BLM's discretion under the MLA). Ordering BLM to auction off and issue new leases while this case is pending would be unprecedented and contrary to controlling caselaw.

The Administrative Procedure Act (APA) further demonstrates why Petitioners cannot

show a likelihood of obtaining such relief on the merits. Most of Petitioners' claims rely on APA Section 706(2), which authorizes a court to "hold unlawful and set aside" final agency actions found to be invalid. 5 U.S.C. § 706(2); see WEA 12–13; Wyo. 13–16. The typical remedy under Section 706(2), however, is to "set aside" the action and remand to the agency for further consideration—not for the court to order the agency to take a different action. See, e.g., High Country Conservation Advocates v. U.S. Forest Serv., 951 F.3d 1217, 1228–29 (10th Cir. 2020). Thus, even if Petitioners ultimately prevailed on the merits, the appropriate relief would be to set aside the announcements postponing the proposed sales and to remand to BLM—to prepare a NEPA analysis, for example—rather than an order directing that lease sales must take place.

Petitioners also seek relief under APA Section 706(1), which authorizes a court to "compel agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. § 706(1), but "only where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take." Norton, 542 U.S. at 64. As the Supreme Court explained, "when an agency is compelled by law to act within a certain time period, but the manner of its action is left to the agency's discretion, a court can compel the agency to act, but has no power to specify what the action must be." Id. at 65.

Here, Wyoming asserts that the absence of a NEPA analysis for the lease sale postponements is a failure to act, redressable under Section 706(1). Wyo. 17. Even under such a theory, Wyoming's Section 706(1) remedy would merely be preparation of a NEPA analysis—not a court order specifying that BLM hold a lease sale. Norton, 542 U.S. at 65. Similarly, were this Court to rule that postponing lease sales is tantamount to a Federal Land Policy and Management Act (FLPMA) withdrawal, Wyo. 20–22, the remedy would be to require compliance with statutory withdrawal procedures rather than ordering leases to be issued. See

Mountain States Legal Found. v. Hodel, 668 F. Supp. 1466, 1476 (D. Wyo. 1987); Mountain States Legal Found. v. Andrus, 499 F. Supp. 383, 397 (D. Wyo. 1980) (neither case cited by Wyoming ordering issuance of leases).

Moreover, Petitioners' argument that BLM failed a Section 706(1) nondiscretionary duty under the MLA to hold quarterly lease sales also does not support their requested relief. Even if this claim were successful, the relief would be to direct that BLM proceed with the lease sale decision making process, including environmental analysis and administrative appeals—not to require BLM to offer any particular leases, or to actually issue such leases. Pp. 22–23, infra; W. Energy All. v. Salazar, No. 10-cv-0226, 2011 WL 3737520, at *6 (D. Wyo. June 29, 2011) (mandatory duty imposed by similar MLA provision only required BLM to make a decision on whether to issue leases, not to issue them). Because an order requiring BLM to issue leases would be improper under any circumstance, Petitioners cannot show a likelihood of success on the merits that would justify such relief.[1]

B. Petitioners Cannot Show a Likelihood of Success on Their MLA Claims.

Petitioners' claims that postponing the March, April and June lease sales was contrary to law, and an unlawful "failure to act" under the MLA, Wyo. 16–17, 23–25; WEA 14–17, fail because they mischaracterize BLM's duties under that statute.

The MLA provides that federal lands "may be leased" for oil and gas. 30 U.S.C. § 226(a)

[1] Wyoming's effort to challenge a purported nationwide leasing moratorium, see, e.g, Wyo. 1, also fails because it does not identify any agency directive actually imposing such a moratorium. See Citizens for Responsibility and Ethics in Washington v. Fed. Election Comm'n, 380 F. Supp. 3d 30, 44–45 (D.D.C. 2019) (rejecting attempt to challenge agency policy where evidence did not establish existence of the policy). Because it is not tied to a specific final agency action, Wyoming's nationwide moratorium theory is barred as an improper programmatic challenge by Lujan v. National Wildlife Federation, 497 U.S. 871, 879, 890 (1990). Further, as addressed by BLM and other parties, Petitioners' claims that BLM's lease sale postponements violate FLPMA and are arbitrary and capricious, are meritless. Wyo. 20–23, 25–27; WEA 21–25.

(emphasis added). Courts have made clear that this language leaves BLM with broad discretion to not offer leases. See Udall v. Tallman, 380 U.S. 1, 4 (1965) (holding MLA "left the Secretary discretion to refuse to issue any lease at all on a given tract"); Haley v. Seaton, 281 F.2d 620, 625 (D.C. Cir. 1960) (legislative intent of "may be leased" language was "to give the Secretary of the Interior discretionary power, rather than a positive mandate to lease").

The Supreme Court, in fact, has upheld a national oil and gas moratorium under the MLA. McLennan, 283 U.S. at 419, aff'g Wilbur v. United States ex rel. Barton, 46 F.2d 217, 218 (D.C. Cir. 1930) (Hoover administration ordered pause to conserve federally owned oil). In McLennan, the Supreme Court accepted the Interior Department's argument that the MLA "empower[s]" Interior to issue leases but does not compel them. Id. at 419–20. This controlling precedent would authorize even Petitioners' overbroad characterization of BLM's actions here.

Petitioners nevertheless assert that by postponing lease sales, BLM violates a provision of the MLA (enacted in 1987) stating that "lease sales shall be held for each State where eligible lands are available at least quarterly." 30 U.S.C. § 226(b)(1)(A); see WEA 14–17; Wyo. 23–25.

The 1987 amendments, however, did not alter the MLA's central "may be leased" language, see 30 U.S.C. § 226(a), nor did Congress intend to overturn McLennan. Pp. 10–11, infra (discussing legislative history). Rather, the quarterly lease sale language was added to the MLA in connection with amendments requiring that oil and gas leases be offered primarily through competitive auctions. Prior to 1987, leasing was accomplished primarily on an over-the-counter basis, without competitive bidding. Salazar, 2011 WL 3737520, at *4. The quarterly leasing provision ensured that competitive auctions would occur on a regular basis when Interior wanted to offer leases for sale, but left BLM with broad discretion to determine when public lands are not eligible and available.

Here, Petitioners offer no evidence that public lands are eligible and available in the states where lease sales have been postponed. Lands are eligible and available for leasing when they are: (a) not barred from leasing by statute or regulation, (b) "open to leasing in the applicable resource management plan," and (c) "all statutory requirements and reviews have been met, including compliance with the National Environmental Policy Act (NEPA)."[2] As BLM explained to a court in 2017, lands become eligible and available when they are "selected for lease at BLM's discretion after compliance with all relevant statutory requirements." Br. of United States as Amicus Curiae, W. Energy All. v. Zinke, No. 17-2005, 2017 WL 1383853, at *2 (10th Cir. April 12, 2017); see also W. Energy All. v. Zinke, 877 F.3d 1157, 1162 (10th Cir. 2017) (discussing issue in dicta while addressing appeal from denial of intervention).

Thus, the MLA does not require BLM to hold quarterly lease sales unless the agency has determined that it wants to offer lands for lease in a particular state, and it has completed the necessary NEPA review and other statutory requirements to support that decision. These requirements were not yet met at the time BLM postponed the March, April and June 2021 lease sales, so those lands were not eligible and available for leasing. BLM had not made a final determination to lease any of these lands, and had not completed its NEPA compliance for those sales. Nor is there anything unusual about postponing lease sales. Under the prior administration, for example, BLM canceled at least 12 scheduled sales where it determined additional consideration and analysis was required. Delehanty Decl. ¶¶ 3–4 & Attachs. 1 (showing 10

[2] BLM Manual MS-3120.11 (2013), https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual3120.pdf; BLM Handbook H-3101-1, § I.A.1, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_h3101-1.pdf; BLM Instruction Memorandum 2018-034 n.6 (2018), https://www.blm.gov/policy/im-2018-034. 43 C.F.R. § 3120.1-1, cited by WEA, lists categories of lands that may be available and subject to competitive leasing, but it does not make these categories automatically eligible and available for leasing.

postponed lease sales), 2 (Cowan Decl. ¶ 7 describing two additional postponements).

Petitioners disagree with BLM over the meaning of "eligible and available," but the Court owes deference to the agency's reasonable and long-standing interpretation of this statutory term. See Barnhart v. Walton, 535 U.S. 212, 222 (2002). Moreover, Petitioners' arguments are meritless. Petitioners contend that lands are eligible and available whenever: (a) a statute, regulation, or resource management plan (RMP) does not prohibit their leasing, and (b) a company nominates them for leasing. See WEA 14–15; Wyo. 4–5, 25. Thus, according to Petitioners, whenever BLM has the legal authority to lease, it must hold a lease sale whenever any company proposes lands for leasing in that state. Their reading would turn the MLA on its head by letting oil and gas companies impose a "mandatory, non-discretionary obligation" on BLM to offer leases for sale. WEA 15. That is not how the MLA works. See pp. 1–2, 8, supra.

WEA also quotes an article stating that in 1989, Interior Department attorneys opined in a memo that "the quarterly sale requirement is mandatory." WEA 16 (quoting Thomas Sansonetti & William Murray, A Primer on the Federal Oil and Gas Leasing Reform Act of 1987 and its Regulations, 25 Land & Water L. Rev. 375, 386 n.97 (1990)). Although WEA fails to provide a copy of the purported memo, the article's statement—which says nothing about the meaning of eligible and available—is not inconsistent with BLM's long-standing interpretation of that term. To the contrary, the article notes that the 1987 amendments did not alter the MLA's "may be leased" language, and explains that "nowhere in the legislative history of the [1987 amendments] did Congress suggest that it modified the Secretary's discretion in any way." Primer at 388 n.112.[3] As noted above, that pre-1987 leasing discretion included the authority to adopt a

[3] As a result, even if BLM had offered a different interpretation of the quarterly leasing provision at some point in the past, as WEA suggests, that reading would have failed Chevron step one because it would conflict with Congress's clearly stated intent in adopting the 1987 amendments.

nationwide moratorium. McLennan, 283 U.S. at 419–20; see also Primer at 388 n.112 (citing McLennan in explaining that amendments did not affect Department's pre-1987 discretion).

There is no evidence in the legislative history that Congress intended the 1987 amendments to overturn or limit the Supreme Court's McLennan decision and other established precedent recognizing BLM's discretion not to lease. Just the opposite: the history demonstrates "that Congress did not intend to affect the Secretary [of the Interior]'s discretion in determining which lands would be suitable for leasing." Salazar, 2011 WL 3737520, at *5 n.10. Congress sought to reform the MLA because the existing non-competitive leasing process had been rife with abuse. See 133 Cong. Rec. S 8322-04, 1987 WL 940033 (Jul. 13, 1987) (statement of Senate sponsor Sen. Melcher); H.R. Rep. 100-378 at 7–8 (Delehanty Decl. Attach. 15). In moving to a competitive leasing system, the sponsors of the 1987 amendments made clear that Congress did not intend to limit the Secretary's existing discretion not to lease.[4] Interior Department testimony also reflected the Department's understanding that the amendments did "not change the Secretary's discretion not to lease lands."[5]

City of Arlington v. Fed. Commc'n Comm'n, 133 S. Ct. 1863, 1868 (2013) ("If the intent of Congress is clear, that is the end of the matter") (quoting Chevron USA, Inc. v. Nat. Res. Def. Council, 467 U.S. 837, 842–43 (1984)).

[4] For instance, in the Senate committee hearing, Senator Melcher stated that his bill "does not change the Secretary's discretion in refusing to lease, because there are overriding reasons why he should not lease." Sen. Hr'g 100-464 at 108 (June 30, 1987) (Delehanty Decl. Attach. 14) (emphasis added); see also H.R. Hr'g 100-11 at 67, 83 (July 28, 1987) (Delehanty Decl. Attach. 13) (comments by bill sponsor Rep. Rahall reflecting his understanding that Department would retain discretion "to reject lease offers . . . on the basis of land management considerations"); H.R. Rep. No. 100-378 at 11 (Oct. 15, 1987) (Delehanty Decl. Attach. 15) (quarterly leasing to occur "where appropriate," and competitive leasing process was "[s]ubject to the Secretary's discretionary authority" over leasing).

[5] H.R. Hr'g 100-11 at 67 (Delehanty Decl. Attach. 13); Sen. Hr'g 100-464 at 159 (Delehanty Decl. Attach 14) (explaining that under amendments agency "has discretion to not lease" as provided in the MLA and FLPMA, and "[t]he discretion is limited only by the need not to be capricious"). The legislative history also refutes WEA's theory that the 1987 amendments require BLM to close lands under the RMP if it wants to withhold them from leasing. WEA 16.

In short, the legislative history demonstrates that the 1987 amendments were intended to reform the MLA to prevent abuses of the oil and gas leasing process, while maintaining the Department's existing discretion not to lease. The Court should reject Petitioners' theory that Congress—without ever mentioning it—sought to overturn controlling Supreme Court precedent and fundamentally change the MLA into a mandate to offer leases for sale whenever lands are sought by oil and gas companies. See Whitman v. Am. Trucking Ass'n., 531 U.S. 457, 468 (2001) (Congress "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not . . . hide elephants in mouseholes").

C. Petitioners Cannot Show a Likelihood of Success on Their NEPA Claims.

Wyoming acknowledges that NEPA's purpose is to ensure that federal agencies "look before they leap." Wyo. 27. That is exactly what BLM is doing here—temporarily refraining from irreversibly committing public lands to oil and gas development while it reassesses the leasing program in the wake of GAO calls for reforms and numerous successful legal challenges. See p. 2, supra. Petitioners, however, would flip NEPA on its head by requiring BLM to offer oil and gas leases regardless of whether the agency has completed the necessary environmental analysis.

As their arguments demonstrate, Petitioners' goal is not to further NEPA's purpose of environmental protection, but instead to "maintain the economics of their development projects." WEA 19. This Court should not allow NEPA to be used as an "'obstructionist tactic' to prevent environmental protection." Douglas Cty. v. Babbitt, 48 F.3d 1495, 1508 (9th Cir. 1995).

Congress rejected amendments to the MLA that would have provided for leasing decisions "to be made up front" in RMPs. See 133 Cong. Rec. E 2682, 1987 WL 941062 (June 30, 1987) (comments of Rep. Rahall introducing House bill); H.R. Rep. No. 100-495 at 779, 1987 WL 61525 (Dec. 21, 1987) (Conf. Rep.) (House bill planning provisions eliminated in conference committee).

NEPA requires preparation of an environmental impact statement (EIS) for any "major Federal action[] significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). But Petitioners fail to identify any "major federal action" subject to NEPA in this case. See Kleppe v. Sierra Club, 427 U.S. 390, 399–400 (1976) (rejecting the call for NEPA compliance where there was no specific proposal for major federal action).

Although Petitioners attempt to frame their argument as a challenge to a "nationwide policy," they fail to identify any such nationwide agency action. Wyo. 28; WEA 17; see p. 6 n.1, supra.[6] Instead, Petitioners challenge BLM's inaction in failing to hold first and second quarter lease sales. As Wyoming concedes, oil and gas lease sales are generally major federal actions that trigger NEPA's requirements. Wyo. 29 n.18; see also New Mexico ex rel. Richardson, 565 F.3d 683, 718–19 (10th Cir. 2009). There is no support, however, for the claim that temporarily not holding oil and gas lease sales is also a major federal action. Cf. Minn. Pesticide Info. & Educ., Inc. v. Espy, 29 F.3d 442, 443 (8th Cir. 1994) (holding that while Forest Service completed an EIS for a prior decision to use herbicide on a national forest, no EIS was required for its later decision not to use herbicide); Defs. of Wildlife v. Andrus, 627 F.2d 1238, 1243–44 (D.C. Cir. 1980) ("[I]f the agency decides not to act, and thus not to present a proposal to act, the agency never reaches a point at which it need prepare an impact statement."); All. For Bio-

[6] Petitioners cite no case law that supports this argument. See Wyo. 28 (citing California ex rel. Lockyer v. U.S. Dep't of Agric., 459 F. Supp. 2d 874, 898, 903–04 (N.D. Cal. 2006); Sierra Club v. Morton, 514 F.2d 856, 878 (D.C. Cir. 1975)). In Lockyer, the court addressed an agency rulemaking decision that affected pristine national forests nationwide. Morton was overturned by the Supreme Court in Kleppe, which held an EIS was not required for coal leasing activities across a region because there was no specific proposal for "major federal action" there. Kleppe, 427 U.S. at 399–400. Here, too, there is no major federal action subject to NEPA.

Integrity v. Shalala, 116 F. Supp. 2d 166, 175 (D.D.C. 2000) (holding FDA's announcement of a presumption against regulation was not an "overt action" subject to NEPA).

Moreover, the failure to hold lease sales does not trigger NEPA because BLM is "maintain[ing] the environmental status quo" pending further analysis. Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1114 (9th Cir. 2002), abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv., 630 F.3d 1173 (9th Cir. 2011). Here, BLM is refusing to make an irretrievable commitment of resources through oil and gas lease sales while it further analyzes the significant environmental and other impacts of the oil and gas program. See Anglers Conservation Network v. Pritzker, 70 F. Supp. 3d 427, 442 (D.D.C. 2014), aff'd, 809 F.3d 664 (D.C. Cir. 2016) ("Plaintiffs have failed to state a claim under NEPA because Defendants have not taken any final agency action that alters the substantive status quo or constitutes an 'irreversible and irretrievable commitment of resources' to an action that will affect the environment.").

Instead of focusing on the impacts to the environment, as NEPA requires, Petitioners make a tortured argument that the "status quo" is BLM offering public lands for lease in future auctions. WEA 18; Wyo. 29. But this ignores BLM's discretion under the MLA to determine whether lands are eligible and available for leasing, as well as the agency's common past practice of postponing lease sales. See pp. 6–11, supra; Delehanty Decl. ¶¶ 3–4. Anticipation of a future discretionary action cannot represent the status quo. BLM's own NEPA documents illustrate this point: they indicate that if the agency takes "no action," the lands will remain unleased. See, e.g., Delehanty Decl. ¶¶ 9–10, Attachs. 11–12 (examples of 2020 BLM leasing analyses).

Wyoming's reliance on Citizens for Clean Energy v. U.S. Department of the Interior, 384 F. Supp. 3d 1264, 1278–79 (D. Mont. 2019), is misplaced. Wyo. 29. In that case, the court found that plaintiffs had made a sufficient showing that the decision to permanently lift a coal leasing moratorium would change the status quo by removing public land protections. The opposite is true here: temporarily postponing lease sales will leave the public lands as they are now. Because the failure to hold lease sales leaves public lands unencumbered by oil and gas development rights, NEPA compliance is not required.[7]

Unable to demonstrate a change in the environmental status quo, Petitioners also claim—without any support—that NEPA compliance is required because the temporary pause amounts to a "de facto" amendment to applicable RMPs. Wyo. 29–30; WEA 18. The Tenth Circuit rejected a nearly identical "de facto amendment" argument in Utah Shared Access Alliance v. Carpenter, 463 F.3d 1125, 1135 (10th Cir. 2006). In that case, even though the relevant RMPs designated certain areas of the public lands as "open" to off-highway vehicle use, the court held that BLM's discretionary decision to temporarily close certain routes in these areas to off-

[7] Petitioners rely heavily on the "socioeconomic impacts" of the temporary pause. WEA 18–20; Wyo. 33–35. But "[i]t is well-settled that socioeconomic impacts, standing alone, do not constitute significant environmental impacts cognizable under NEPA." Cure Land, LLC v. U.S. Dep't of Agric., 833 F.3d 1223, 1235 (10th Cir. 2016); see also 40 C.F.R. § 1502.16(b). Petitioners must show that the agency action has the potential to cause significant environmental impacts—something they have failed to do. The only environmental impact Petitioners allege is a shift in oil and gas development from federal to private lands or overseas. See WEA 20–21; Wyo. 30–32. However, they offer no evidence to show that postponement of the March, April and June sales would have any significant impact in that regard. In fact, Wyoming's own evidence suggests the opposite. See Ben Cahill, Biden Makes Sweeping Changes to Oil and Gas Policy, Center for Strategic & International Studies, Jan. 28, 2021, https://www.csis.org/analysis/biden-makes-sweeping-changes-oil-and-gas-policy) (cited by Wyoming) (temporary leasing pause will have little impact on exploration and production because existing leases will not be impacted); see also Ex. 2, Laura Zachary Decl. ¶¶ 7–11, 33.

highway vehicles to protect wildlife and other resources did not amount to a de facto amendment of the RMP that was subject to NEPA. Id. at 1135–36.

The same is true here. BLM has the discretion not to offer oil and gas leases on lands identified in the RMP as "open" for leasing. See, e.g., New Mexico ex rel. Richardson v. U.S. Bureau of Land Mgmt., 459 F. Supp. 2d 1102, 1124 (D.N.M. 2006), aff'd in relevant part, 565 F.3d 683 (10th Cir. 2009); Roy G. Barton, 188 IBLA 331, 337 (2016). BLM's discretionary, temporary decision not to hold lease sales is not tantamount to a decision that any particular lands will be closed to leasing in the future. Because there has been no change to the RMP-level designations, NEPA is not required.

WEA also suggests that postponing lease sales violates 42 U.S.C. § 15921(a)(1)(A), which states that to "ensure timely action on oil and gas leases," the Interior Department shall "ensure expeditious compliance" with NEPA. WEA 16–17. That provision, however, is implemented through adoption of best management practices (BMPs) and proposing regulations. See 42 U.S.C. § 15921(b)(1)(B) (directing Interior Department to develop BMPs and regulations to "ensure timely action on oil and gas leases"). WEA does not identify any such BMPs or regulations that BLM has allegedly violated. Moreover, as BLM's notices explained, the lease sales were postponed precisely because more analysis was required to ensure compliance with NEPA. See p. 2, supra. WEA offers no evidence that this additional review is not being done "expeditious[ly]." Petitioners should not be allowed to undermine NEPA by forcing BLM to irretrievably commit public lands to oil and gas development without fully considering the environmental impacts of doing so.

III. PETITIONERS CANNOT DEMONSTRATE THEY WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION.

Petitioners also cannot establish that they are "likely to suffer irreparable harm in the

absence of preliminary relief." Winter, 555 U.S. at 20. Their allegations of irreparable harm are insufficient for several reasons.

A. Wyoming Has Not Shown It Will Suffer Significant Harm Before a Decision on the Merits.

To obtain a preliminary injunction, Petitioners must demonstrate they are "likely to suffer irreparable harm before a decision on the merits can be rendered." 11A Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2948.1 (3d ed. 1998) (emphasis added). "[I]f the harm is not likely to occur before the district court rules on the merits, there is no need for preliminary injunctive relief." Colorado v. U.S. Envtl. Prot. Agency, 989 F.3d 874, 887 (10th Cir. 2021). !

Wyoming has not shown imminent irreparable harm. Its alleged harms are premised primarily on projected future reductions in revenue and economic benefits that would come from developing newly issued leases. Wyo. 37. But such impacts are unlikely during litigation on the merits because any new leases would not be brought into production—or generate royalties and other economic benefits—for well over a year. By that point, this Court is likely to have decided the merits of this case and whether to award any relief on final judgment. Analyses by the U.S. Energy Information Administration (EIA) and the Federal Reserve Bank of Dallas, as well as independent researchers, all conclude that halting new onshore oil and gas leasing will not reduce U.S. oil and gas production for at least a year—with significant declines only occurring much later than two years in the future. Zachary Decl. ¶¶ 7-11. There are several reasons for this.

First, according to the Congressional Budget Office, most leases are not brought into production until several years into the lease term. Zachary Decl. ¶¶ 16–17. And even in the (unusual) situation where an operator seeks to drill immediately after acquiring a lease, the process takes an average of at least 14.5 months between issuance of an onshore lease and initial production. Id. ¶ 15. Thus, a decision on the merits is likely in this case before the impacts

alleged by Wyoming would be felt, if they were to occur at all.

Second, operators holding existing leases have already obtained approvals necessary to continue drilling operations for the next two years. BLM reports that as of April 2021, Wyoming operators held more than 3,000 approved drilling permits that had not been drilled—a supply far exceeding the number of wells likely to be drilled over the next two years. Id. ¶ 24; see also id. ¶ 25 (report relied on by Wyoming forecasts 276 federal wells drilled in Wyoming in 2021 absent leasing pause). Moreover, lessees hold millions of acres of Wyoming federal leases that are not in production and provide opportunities to obtain even more drilling permits regardless of the leasing pause. Id. ¶ 24. The same is true for permits and leases in Colorado and other states. Id. ¶¶ 20–32. As the Tenth Circuit recently held, evidence showing "the mere possibility of the potential for a small increase in [impacts to the State] at some point in the future" is insufficient to demonstrate imminent irreparable harm. Colorado, 989 F.3d at 887.[8]

Wyoming's attempts to avoid these facts fail. First, it cites a report by Timothy Considine claiming thousands of jobs will be lost in the first year from reduced development, resulting from an immediate 62% reduction in well spuds during the first year. Wyo. 38–39. Considine does not attempt to reconcile this dramatic finding with actual timelines for permitting, or with EIA and

[8] Wyoming makes a related argument that a federal leasing pause will hinder development in drilling and spacing units (DSUs) that include federal, private and state minerals. Wyo. 39–41. But development in such DSUs requires a federal drilling permit—not just a federal lease. See 43 C.F.R. § 3162.3–1(c) ("No drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the authorized officer's approval of the [application for permit to drill]."). As a result, any development in Wyoming while the merits of this case are being decided—in DSUs or otherwise—will likely involve drilling permits that have already been approved on existing leases. Tellingly, Wyoming fails to identify any DSU where a lease under consideration for one of the postponed sales was necessary for development to proceed in the next year. See Colorado, 989 F.3d at 888 (state failed to establish irreparable harm where it could not point to any specific project that could "move forward before the case is decided on the merits" if injunction were granted).

Federal Reserve analyses reaching the opposite conclusion. Even WEA, representing Wyoming operators, does not predict such a plunge. See WEA 25–29 (irreparable harm argument). A Petroleum Association of Wyoming representative recently told the state legislature: "A leasing moratorium . . . is a slow burn in Wyoming. . . . It does not have an immediate impact in terms of just falling off a cliff." Delehanty Decl. ¶ 14 (Obermueller comments).

In fact, Considine fails to explain his finding at all, other than to state he ran a "regression" analysis. Zachary Decl. ¶ 19. But Considine does not disclose the details or data underlying his analysis, and it appears to be fundamentally flawed. Id. ¶¶ 12–13, 19. Considine's "conclusory allegations," which contradict other evidence in the record, do not meet the "high bar" of establishing that irreparable harm is "certain, great, actual and not theoretical." N.M. Dep't of Game and Fish v. U.S. Dep't of Interior, 854 F.3d 1236, 1251–52, 1255 (10th Cir. 2017) (rejecting similar "conclusory statements" by state's witnesses); Wyoming v. U.S. Dep't of Interior, No. 2:16-cv-0285-SWS, 2017 WL 161428, at *10 (D. Wyo. Jan. 16, 2017) (denying preliminary injunction against BLM regulation where states' "assertion of economic loss [was] speculative and unsupported by facts").[9]

B. Any Impacts from the Leasing Pause Are Not Irreparable.

Moreover, any impacts Wyoming might experience while this case is pending are not irreparable. To the extent bonus bids or other payments made at the time of the lease sale are delayed by the leasing pause, e.g., Wyo. 38; Zachary Decl. ¶ 47, they would be made up if lease

[9] The State also bears the burden of showing that Considine's testimony meets the standards of Fed. R. Evid. 702, which requires that expert testimony be "based on sufficient facts or data" and be "the product of reliable principles and methods," and that "the expert has reliably applied the principles and methods to the facts of the case." See Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 592 n.10 (1993). Wyoming has not met this burden, and Considine's unsupported conclusions should be disregarded.

sales resume following this Court's decision on the merits.

A plaintiff "must establish both that harm will occur, and that, when it does, such harm will be irreparable." N.M. Dep't of Game and Fish, 854 F.3d at 1251. The "possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." Dennis Melancon, Inc. v. New Orleans, 703 F.3d 262, 279 (5th Cir. 2012) (alteration omitted); see also Sampson v. Murray, 415 U.S. 61, 90 (1974) ("[T]he temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury."); Heideman v. S. Salt Lake City, 348 F.3d 1182, 1189–90 (10th Cir. 2003) (loss of profits from application of municipal ordinance not irreparable harm where plaintiff businesses "will be able to resume their [business activities] in the event they prevail on the merits").

Here, if the Court rules in Wyoming's favor on the merits and requires BLM to commence selling oil and gas leases again, the State will obtain the same relief as from a preliminary injunction. The mineral revenues paid to the State, and other economic benefits from developing the leases, will accrue to Wyoming at that point. See Wyoming, 2017 WL 161428 at *11 (payment of royalties under new BLM regulation was not irreparable harm because if plaintiffs prevailed on the merits, royalties could be recovered from agency).

Not only has Wyoming failed to demonstrate irreparable harm from such a delay, it may actually benefit from postponing the lease sales. The market for oil and gas has been at historic lows for the past year but has begun to recover.[10] If oil and gas prices continue to climb over the next 12 months, interest in federal leases—and the prices paid for them at auction—likely will

[10] See Memorandum from Wyo. Consensus Revenue Estimating Group to Gov. Mark Gordon Re: April 2021 Revenue Update (April 29, 2021) (reporting federal mineral revenues exceeded state forecasts through March 2021), https://wyoleg.gov/budget/fiscal/AprilCREG2021.pdf.

increase as well. At that point, Wyoming will receive additional revenue from its share of those larger payments. See League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton, 752 F.3d 755, 765–66 (9th Cir. 2014) ("Because the jobs and revenue [from timber project] will be realized if the project is approved," relevant harm from enjoining project "is the value of moving those jobs and tax dollars to a future year, rather than the present").

Moreover, a primary goal of the Interior Department's oil and gas program review—proceeding concurrent with this litigation—is to determine whether to increase royalty rates for oil and gas leases and thus obtain a better return for American taxpayers and states. For example, increasing the royalty rate on onshore leases from 12.5 percent to 18.75 percent could yield $15 billion for states over the next 30 years, with Wyoming receiving more than $100 million annually in additional federal mineral revenue. Zachary Decl. ¶ 47. If BLM increases royalty rates while this case is pending, leases sold after a decision on the merits would provide a greater return for federal and state governments. Id.; see also id. ¶¶ 34–42 (market impacts from leasing pause will modestly increase total revenues to states). Wyoming has not shown it will suffer any harms that would not be redressable in a final judgment.

C. Petitioners' Other Claims of Irreparable Harm are Meritless.

Petitioners assert three other forms of harm: (a) impacts to WEA members' business planning; (b) that alleged MLA and NEPA violations cause irreparable procedural harm; and (c) that pausing federal leasing will somehow lead operators to flare more natural gas. These arguments are meritless.

First, while WEA alleges harm to "operational continuity and project economics" from postponed lease sales, it cannot point to any specific losses (much less significant injury) its members have suffered. See WEA 26–27 & n.1. This alleged harm amounts to nothing more than a complaint about business inconvenience, which does not establish the "certain, great,

[and] actual" irreparable harm required for an injunction. N.M. Dep't of Game and Fish, 854 F.3d at 1254–55; see Colorado, 989 F.3d at 886–87 (statements about "increased enforcement burdens" on state agency were insufficient).

Moreover, issuance of an injunction will not provide "predictab[ility]" or certainty for WEA members. WEA 27. Nothing in the MLA, or any other statute, mandates that BLM offer any particular lease sought by a WEA member, or that it do so by any particular date. See 30 U.S.C. § 226(b)(1)(A). Nor does any WEA member know whether it will submit the high bid for a given lease that is offered. This lack of certainty is an inherent feature of federal oil and gas leasing—not an irreparable injury caused by postponing the lease sales. See Wyoming ex rel. Sullivan, 969 F.2d at 881–82 (denial of opportunity to bid on mineral lease does not support standing). If certainty is the goal, WEA members can achieve that by planning their operations around the millions of acres of already-issued leases, p. 17, supra, rather than pursuing additional acreage. WEA cannot show irreparable harm on this basis.

Second, any procedural injuries from alleged MLA or NEPA noncompliance are not irreparable: if the Court rules in Petitioners' favor and requires BLM to conduct quarterly lease sales or prepare a NEPA analysis, Petitioners will obtain the relief they seek. This is not a case where a "procedural violation of NEPA is combined with a showing of environmental or aesthetic injury," Brady Campaign to Prevent Gun Violence v. Salazar, 612 F. Supp. 2d 1, 24 (D.D.C. 2009), or where an agency is about to break ground on a project that "would have an adverse environmental impact or would limit the choice of reasonable alternatives" before complying with NEPA procedures. Save Strawberry Canyon v. U.S. Dep't of Energy, 613 F. Supp. 2d 1177, 1189 (N.D. Cal. 2009) (internal quotations omitted) (both cases cited at Wyo. 42); see also, WEA 26–27 (citing similar cases). Instead, the leasing pause avoids irreparable

harm by deferring actions that would adversely impact the environment and limit BLM's options following a ruling on the merits. If a procedural violation by itself represented irreparable harm, conservation groups and other plaintiffs could obtain a preliminary injunction in almost any meritorious NEPA case. Courts have not taken that approach. See, e.g., Nevada v. United States, 364 F. Supp. 3d 1146, 1152–53 (D. Nev. 2019); Nat'l Parks Conservation Ass'n v. Semonite, 282 F. Supp. 3d 284, 290 (D.D.C. 2017).

Third, the possibility of additional flaring over the next year is entirely speculative and would be a self-inflicted wound by Wyoming. As the State notes, it has a statutory responsibility to prevent waste, Wyo. Stat. § 30-5-102, and Wyoming does not need a preliminary injunction to prevent additional flaring while this case is pending. The State can and should require operators to install pipeline capacity for their associated gas, regardless of whether new federal leases are sold over the next year. See Colorado, 989 F.3d at 887–89 (speculative impacts to state would be "self-inflicted" injury rather than irreparable harm caused by federal decision, because they resulted from state decision not to regulate certain activities).[11]

D. BLM Has Discretion Over How Many Lease Parcels to Issue at Any Court-Ordered Lease Sale.

Petitioners cannot cite a single case where a court has ordered the relief they seek here. See p. 4, supra. But even if BLM were required to hold a lease sale, nothing in the MLA or any other statute dictates the number of leases that must be offered or issued. See 30 U.S.C. § 226(b)(1)(A) (referring to quarterly lease sales but not content of those sales). BLM retains the discretion to issue no, or virtually no, leases in any sales. See Norton, 542 U.S. at 65. In that event, an injunction would not avoid any of their alleged irreparable harms.

[11] Wyoming also asserts that reduced federal oil and gas production will limit its funding from the Land and Water Conservation Fund. Wyo. 41. This argument is premised on the State's claims of lost oil and gas production, which fail for the reasons discussed above.

Western Energy Alliance v. Salazar is instructive on this point—and a case where this Court rejected another WEA attempt to use the 1987 MLA amendments to force BLM to issue oil and gas leases. There, WEA argued an MLA provision directing that "[l]eases shall be issued within sixty days following payment by the successful bidder" at the lease sale, 30 U.S.C. § 226(b)(1)(A), required BLM to issue the leases even where it had not decided pending administrative appeals (known as protests) by that time. 2011 WL 3737520, at *1. This Court held the 60-day deadline was mandatory, but only required that "a final decision must be made" on the leases within 60 days—not that the leases must be issued. Id. at *6. Salazar reasoned that requiring issuance of leases, as WEA sought, "would either end [BLM's] discretion prematurely, or would shift the discretion to the energy companies . . . . [T]his Court will not prevent [BLM] from protecting both the public lands, as well as the integrity of the government's public land mineral leasing program," by ordering the agency to issue leases. Id.

The same principle applies here: even if this court finds that the MLA imposes some requirement for lease sales, the Court cannot dictate the substance of those sales. Instead, BLM has discretion to decide what (if any) leases to offer, and whether to issue them following the sale. Thus, a preliminary injunction is unlikely to prevent Petitioners' alleged irreparable harm because it will not require the agency to offer or issue the leases hoped for by Petitioners.

IV. THE BALANCE OF EQUITIES AND PUBLIC INTEREST DO NOT FAVOR AN INJUNCTION.

Neither the balance of equities nor the public interest supports the unprecedented relief Petitioners seek. In considering whether to grant the "extraordinary remedy" of a preliminary injunction, "courts 'must balance the competing claims of injury and must consider the effect on each party of" an injunction, "pay[ing] particular regard for the public consequences." Winter, 555 U.S. at 24. These factors point strongly against Petitioners' request, for two reasons.

First, Petitioners seek to commit property belonging to the American public to oil and gas development before this case can be decided on the merits. The Tenth Circuit has ruled that the "unique nature" of property interests makes preserving them particularly important in assessing preliminary injunctive relief. RoDa Drilling v. Siegal, 552 F.3d 1203, 1210 (10th Cir. 2009). This consideration merits even more weight here, because BLM manages federal property for the benefit of the public. See 43 U.S.C. § 1701(a); 30 U.S.C. § 187. If BLM is ordered to sell oil and gas leases, and the Court later rules against Petitioners on the merits, it would be difficult for the federal government to claw back those leases at that point. See Massachusetts v. Watt, 716 F.2d 946, 952 (1st Cir. 1983) (recognizing difficult in undoing the "chain of bureaucratic commitment" resulting from issuance of oil and gas leases). On the other hand, if no injunction issues, Petitioners will still reap benefits from lease sales if they later prevail on the merits. Pp. 18–19, supra. The balance of harms and public interest thus favor denial of injunctive relief.

Second, despite GAO reports and court decisions pointing to the need for a comprehensive review of the oil and gas program, the irreversible commitment of resources sought by Petitioners would occur before BLM can complete that review. BLM's review will consider royalty rates to ensure that any new leases generate a fair return for American taxpayers. The potential benefits of increased royalties would be lost if BLM is ordered to issue leases now. Pp. 19–20, supra. Moreover, a preliminary injunction would force BLM to sell leases without complying with NEPA, and without information about climate and other environmental impacts the agency recognizes is needed to make informed decisions. As this Court has held:

> The Court is cognizant of the importance of mineral development to the economy of the State of Wyoming. Nevertheless, mineral resources should be developed responsibly, keeping in mind those other values that are so important to the people of Wyoming, such as preservation of Wyoming's unique natural heritage and lifestyle.

Wyo. Outdoor Council v. U.S. Army Corps of Eng'rs, 351 F. Supp. 2d 1232, 1260 (D. Wyo. 2005). An injunction here would disserve the public interest by making it likely BLM will "act on incomplete information, only to regret its decision after it is too late to correct." Marsh v. Or. Nat. Res. Council, 490 U.S. 360, 371 (1989). Petitioners' request should be denied.

V. IF THE COURT ISSUES AN INJUNCTION, IT MUST BE LIMITED TO COLORADO AND WYOMING.

Petitioners have not made the "clear showing" necessary to issue a preliminary injunction. P. 3, supra. If the Court does grant such relief, however, it should be limited to lease sales in Colorado and Wyoming because Petitioners have not attempted to establish their standing, or show irreparable harm, for any lease sales beyond those two states. See, e.g., Nat. Res. Def. Council, Inc. v. Winter, 508 F.3d 885, 886 (9th Cir. 2007) (injunctive relief must be tailored to remedy the specific harm alleged, and an overbroad preliminary injunction is an abuse of discretion). Wyoming makes no request for relief beyond its borders and has neither asserted nor established standing for relief in other states.

While WEA seeks much broader relief, and claims to represent members "across the Western United States," WEA 3; Kathleen Sgamma Decl. ¶ 3, ECF No. 41-1, WEA makes no assertions of injury related to lease sales outside Colorado and Wyoming.[12] See United States v. Hays, 515 U.S. 737, 743–47 (1995) (plaintiffs lacked standing where they failed to demonstrate they had been subject to challenged activity outside the district where they lived). Accordingly, WEA lacks standing or irreparable harm to seek relief outside of Colorado or Wyoming.

CONCLUSION

The WEA and Wyoming motions for preliminary injunction should be DENIED.

[12] See, e.g., Robert S. Boswell Decl. ¶ 3, ECF No. 41-3 (alleging harm to operations in western Colorado); Pete Obermueller Decl. ¶¶ 13–15, ECF No. 41-2 (alleging harms to Wyoming economic interests, but which are not particularized).

Respectfully submitted this 7th day of June, 2021,

/s/ *Michael Freeman*
Michael Freeman (*admitted pro hac vice*)
Robin Cooley (*admitted pro hac vice*)
Thomas Delehanty (*admitted pro hac vice*)
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 996-9615 (M. Freeman)
(303) 996-9611 (R. Cooley)
(303) 996-9628 (T. Delehanty)
mfreeman@earthjustice.org
rcooley@earthjustice.org
tdelehanty@earthjustice.org

Counsel for Conservation Colorado, Friends of the Earth, Great Old Broads for Wilderness, National Parks Conservation Association, Sierra Club, Southern Utah Wilderness Alliance, The Wilderness Society, Valley Organic Growers Association, Western Colorado Alliance, Western Watersheds Project, Wilderness Workshop

/s/ *Kyle Tisdel*
Kyle Tisdel (*admitted pro hac vice*)
Western Environmental Law Center
208 Paseo del Pueblo Sur, Unit 602
Taos, NM 87571
(575) 613-8050
tisdel@westernlaw.org

Melissa Hornbein (*admitted pro hac vice*)
Western Environmental Law Center
103 Reader's Alley
Helena, MT 59601
(406) 708-3058
hornbein@westernlaw.org

Counsel for Center for Biological Diversity, Citizens for a Healthy Community, Diné Citizens Against Ruining Our Environment, Earthworks, Food & Water Watch, Indian People's Action, Montana Environmental Information Center, Powder River Basin Resource Council, Western

Organization of Resource Councils, WildEarth Guardians

Shannon Anderson (Wyo. Bar No. 6-4402)
Powder River Basin Resource Council
934 N. Main St.,
Sheridan, WY 82801
(307) 672-5809
sanderson@powderriverbasin.org

Local Counsel

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on June 7, 2021, I electronically filed the foregoing **CONSERVATION GROUPS' RESPONSE TO PETITIONERS' MOTIONS FOR PRELIMINARY INJUNCTION** with the Clerk of the Court via the CM/ECF system, which will send notification of such filing to other participants in this case.

/s/ Michael Freeman