**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

DAKOTA RESOURCES COUNCIL, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR, et al.,

Defendants,

and

STATE OF NORTH DAKOTA, et al.,

Intervenor-Defendants.

No. 1:22-cv-01853-CRC

**BRIEF OF AMICUS CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANTS**

## DISCLOSURE STATEMENT

As required by Federal Rule of Appellate Procedure 29(a)(4)(A) (as made applicable by LCvR 7(o)(5)), the Chamber of Commerce of the United States of America (Chamber) states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

Insofar as relevant to the litigation, the Chamber's general nature and purpose is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts, including by regularly filing amicus curiae briefs in cases that raise issues of concern to the nation's business community.

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## IDENTITY AND INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.[1]

The Chamber has a strong interest in legal and policy issues relating to climate change. The global climate is changing, and human activities contribute to those changes. There is much common ground on which all sides could come together to address climate change with policies that are practical, flexible, predictable, and durable. The Chamber believes that durable climate change policy must be made by Congress, which should both encourage innovation and investment to ensure significant emissions reductions and avoid economic harm for businesses, consumers, and disadvantaged communities. *See, e.g.*, U.S. Senate Committee on Environment and Public Works, *What They Said About the AIM* [*American Innovation and Manufacturing*] *Act*, 116th Cong., 2d Sess., https://bit.ly/3pLuaMU (reporting Chamber's support for bipartisan AIM Act); Sen. Sheldon Whitehouse, *New Bipartisan, Bicameral Proposal Targets Industrial Emissions for Reduction* (July 25, 2019), https://bit.ly/3pGuwEL (press release reporting Chamber's support for bipartisan Clean Industrial Technology Act). U.S. climate policy should recognize the urgent need for action,

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[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E) (as incorporated by LCvR 7(o)(5)), amicus curiae states that no counsel for any party authored this brief in whole or in part, and no entity or person — aside from amicus curiae, its members, or its counsel — made any monetary contribution intended to fund the preparation or submission of this brief. No party has opposed the filing of this brief, which accompanies a motion for leave to file pursuant to LCvR 7(o).

while maintaining the national and international competitiveness of U.S. industry and ensuring consistency with free-enterprise and free-trade principles. *See* U.S. Chamber of Commerce, *The Chamber's Climate Position: 'Inaction is Not an Option'* (Oct. 27, 2021), https://bit.ly/44YvvQN. Governmental policies aimed at achieving these goals should not be made by misconstruing federal statutes to achieve results not authorized by those statutes.

## SUMMARY OF ARGUMENT

1. The Supreme Court has emphasized that inherent in the National Environmental Policy Act (NEPA) and its implementing regulations is a "rule of reason." Unlike some other environmental laws, NEPA is a purely procedural statute, intended to improve agency decisions and inform the public, that does not impose substantive obligations on federal agencies. Under the rule of reason inherent in the statute, the scope of an agency's analysis in an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is determined by the *usefulness* of any new potential information to the decisionmaking process. In the circumstances of the lease sales challenged here, the additional GHG-related analysis demanded by Plaintiffs would provide no useful information to the Bureau of Land Management (BLM) or to the public, and therefore NEPA's rule of reason did not require BLM to undertake that analysis.

*First*, Plaintiffs demand that BLM evaluate the "incremental impact" that GHG emissions from the challenged lease sales will have on climate change or on the environment. But this demand is simply not possible to satisfy in any reliably useful way, given the fundamental causal mechanisms and long time horizon of *global* climate change arising from *cumulative* emissions. Plaintiffs offer no credible alternative methodology, indeed no methodology at all save "carbon budgeting" or "SC-GHG," which BLM already used. NEPA's rule of reason does not require doing the impracticable.

*Second*, even if it were practicable, the additional GHG-related analysis demanded by Plaintiffs would not meaningfully assist BLM in making the substantive decision at issue here. The first of NEPA's two purposes is satisfied if the agency has "*considered* relevant environmental information." The challenged lease sales were approved only after BLM undertook a comprehensive review and reconsideration of federal oil and gas permitting that expressly included "potential climate and other impacts associated with oil and gas activities on public lands." It is not credible to think that BLM failed to "consider" the GHG emission-related impacts of the sales. The additional paperwork demanded by Plaintiffs would not be useful to BLM.

*Third*, the additional GHG-related analysis demanded by Plaintiffs would not meaningfully inform the public if it were practicable. The second of NEPA's two purposes is satisfied if "the public has been informed regarding the decision-making process" so that it may play a role therein. But no reasonably interested member of the public needs additional analysis to make up his or her mind about the challenged lease sales. In truth, no one's view of leasing the acreage at issue, or of using federal lands for oil and gas development more generally, actually turns on the added paperwork that Plaintiffs can imagine. In this context, that paperwork would not be useful.

2. Though couched in the mild language of "mitigation," Plaintiffs' interpretation of FLPMA's anti-degradation mandate would result in *categorically banning* any additional oil and gas leasing of public lands. That interpretation cannot be reconciled with FLPMA itself, which expressly makes "mineral exploration and production" one of the "*principal or major* uses" for which BLM must manage public lands. 43 U.S.C. § 1702(*l*) (emphasis added). Nor can Plaintiffs' interpretation be reconciled with the Mineral Leasing Act of 1920, by which Congress generally made public land containing oil and gas deposits eligible for leasing and specifically mandated that "[l]ease sales shall be held for each State where eligible lands are available at least quarterly."

3. If the Court reaches the issue whether to vacate the challenged lease sales, it must consider the "disruptive consequences" of vacatur. Here, those disruptive consequences would extend to the Nation's economy and its energy security. Vacatur would disrupt the mineral development on federal lands that drives growth, creates jobs, reduces consumer costs, and funds state budgets — all while bolstering America's energy security by reducing dependence on foreign oil and fossil fuels.

Plaintiffs' motion for summary judgment should be denied, and Defendants' cross-motions should be granted.

## ARGUMENT

### I. NEPA's "rule of reason" did not require BLM to conduct the additional GHG-related analysis demanded by Plaintiffs.

"NEPA's purpose is not to generate paperwork — even excellent paperwork . . . ." *Department of Transportation v. Public Citizen*, 541 U.S. 752, 768 (2004) (quoting 40 C.F.R. § 1500.1(c) (2003)); *accord* 40 C.F.R. § 1500.1(a) (current version). Rather, "the Supreme Court has emphasized that 'inherent in NEPA and its implementing regulations is a "rule of reason."'" *Mayo v. Reynolds*, 875 F.3d 11, 20 (D.C. Cir. 2017) (quoting *Public Citizen*, 541 U.S. at 767); *accord Indian River County v. U.S. Department of Transportation*, 945 F.3d 515, 533 (D.C. Cir. 2019) (reiterating "emphasized"). This rule-of-reason standard "ensures that agencies determine whether *and to what extent* to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." *Mayo*, 875 F.3d at 20 (emphasis added) (quoting *Public Citizen*, 541 U.S. at 767). "Necessarily, then, '[w]here the preparation of an EIS would serve "no purpose" in light of NEPA's regulatory scheme as a whole, no rule of reason worthy of that title would require an agency to prepare an EIS.'" *Id.* (quoting same). The same is necessarily true for the *extent* of the analysis in any Environmental Assessment (EA) that logically precedes an EIS: no rule of

reason would require an agency to undertake analysis that would serve no purpose, including analysis that would provide no information that is useful to either the decisionmaker or the public.

In the circumstances of the lease sales challenged here, "the underlying policies behind NEPA and Congress' intent, as informed by the 'rule of reason,'" *Public Citizen*, 541 U.S. at 768, make clear that the additional GHG-related analysis demanded by Plaintiffs would provide no useful information to BLM or to the public.

**A. The additional GHG-related analysis demanded by Plaintiffs is impossible.**

As a corollary of the rule of reason, "NEPA does not require the impossible." *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77 (D.D.C. 2019). But in fact, Plaintiffs demand that BLM undertake exactly that — the impossible task to "evaluate the incremental impact that [GHG] emissions [from the challenged lease sales] will have on climate change or on the environment." Plaintiffs' Memorandum (Doc. 53-1) at 21 (internal quotation marks omitted).

*First*, the causal mechanism of "climate change" is global, not local. Plaintiffs agree with the proposition that "[c]urrent ongoing global climate change is caused, in large part, by the *atmospheric* buildup of GHGs," i.e., the buildup of GHGs in the undifferentiated mixture of air that surrounds the entire planet. *Id.* at 4 (emphasis added) (quoting HQ_1878). Moreover, assertedly harmful change in the climate (i.e., above-normal warming) is predicted to occur not incrementally from marginal GHG emissions, but instead catastrophically from *cumulative* emissions. Indeed, Plaintiffs note that the "carbon budget derives from science suggesting *the total amount* of GHGs that are emitted is the key factor to determine how much global warming occurs." *Id.* at 28 (emphasis added) (quoting *Diné CARE v. Haaland*, 59 F.4th 1016, 1043 (10th Cir. 2023)). As BLM has explained, therefore, "the global nature of climate change prevents it from assessing the specific effects of GHG emissions from any particular lease sale either on any particular region or

on the planet as a whole." *Id.* at 23 (quoting *WildEarth Guardians v. U.S. BLM*, 457 F. Supp. 3d 880, 894 (D. Mont. 2020)).

To be sure, the last-cited decision "rejected this argument" by BLM, as do Plaintiffs. *Id.* But neither that decision nor Plaintiffs even attempt to explain why the point is wrong as a matter of common sense or of atmospheric physics and dynamics. One need not reflexively accept BLM's asserted "technical expertise," Federal Memorandum at 23, to rightly defer to BLM's methodological judgments in this regard when Plaintiffs offer no credible alternative methodology. (To the extent that Plaintiffs offer "carbon budgeting" or "SC-GHG" as alternatives, BLM has already undertaken those analyses, as discussed below.)

Plaintiffs compound their request for the impossible when they demand, in addition to an evaluation of the incremental impact of the challenged lease sales, that BLM —

- show "how these lease sales *cumulatively* affect the environment," Plaintiffs' Memorandum at 23 (quoting *WildEarth Guardians*, 457 F. Supp. 3d at 895);
- "determine whether impacts are *significant* by accounting for both their 'context' and 'intensity,'" *id.* at 24 (quoting a non-existent regulation, *see* Federal Memorandum (Doc. 60) at 13–14 & n.12);
- "analyze the *significance* and *severity* of such emissions," *id.*; and
- "analyze[] the *severity* of *cumulative* emissions resulting from the challenged sales," *id.* at 25; and
- "determine whether the impacts of its continued authorizations of GHG-emitting projects are *significant* or not," *id.*

Repetition does not help Plaintiffs. To the contrary, it highlights the infeasibility of what they demand of BLM. If it is impossible to determine the incremental impact of a single lease sale, then it is likewise impossible to determine (at the scale we are discussing) the *cumulative* impact of multiple sales. If it is impossible to determine the incremental impact of a single lease sale, then it is likewise impossible to determine whether that impact is *significant*. If it is impossible

to determine the incremental impact of a single lease sale, then it is likewise impossible to determine whether that impact is *severe*. NEPA does not require these impossible determinations.

*Second*, Plaintiffs will no doubt say that it is at least possible for BLM to use "carbon budgeting" or "SC-GHG," even if doing so does not quite achieve what they are demanding. But whatever the merits of those tools for purposes of NEPA analysis,[2] BLM has cogently documented that it *did* use them here. *See* Federal Memorandum at 34–36. As for the former, "BLM considered the total emissions from fossil fuel development on federal lands in the context of the IPCC's carbon budget," *id.* at 35; such consideration yielded the suggestion that "30-plus years of projected federal emissions would raise average global surface temperatures by approximately 0.0158 °C., or 1% of the lower carbon budget temperature target," *id.* (quoting HQ_1876).

As for SC-GHG, BLM used that tool as well, supplying the figures that enabled Plaintiffs to calculate that "the total social costs of GHG pollution for all of the lease sales equals (in 2020 dollars) between $416,104,000 and $4,739,823,000, depending on the discount rate applied." Plaintiffs' Memorandum at 26. Therefore, Plaintiffs essentially got what they asked for. If there is any qualification in that statement, it arises from the fact that "BLM simply leaves it to the reader to . . . compile the individual social cost figures from each EA and add them together." *Id.* at 27. But as Plaintiffs themselves acknowledge, adding the individual figures together is an exercise in "simple

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[2] For example, the Chamber is of the view that the SC-GHG metric "has no place in NEPA's analytical framework," as "there is no discernable method for a federal agency to determine if the SC-GHG represents a 'significant impact.'" American Chemistry Council et al., Comments on National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change at 16 (Apr. 10, 2023), *available at* https://www.regulations.gov/comment/CEQ-2022-0005-0362; *see generally id.* at 14–19 (explaining how SC-GHG estimates are not appropriate for NEPA reviews, would distort decisionmaking on individual projects, and are further compromised by lack of consensus surrounding selection of discount rates used and by flawed process used to arrive at numbers); *see also* Agricultural Retailers Association et al., Comments on Proposed Rule, National Environmental Policy Act Implementing Regulations Revisions at 13–14 (Nov. 22, 2021), *available at* https://www.regulations.gov/comment/CEQ-2021-0002-33767.

arithmetic." *Id.* at 26. Regarding this arithmetic-related complaint, the D.C. Circuit's oft-repeated injunction that courts should refuse to "flyspeck" NEPA analyses seems especially appropriate. *Food & Water Watch v. FERC*, 28 F.4th 277, 285 (D.C. Cir. 2022) (quoting *Myersville Citizens for a Rural Community, Inc. v. FERC*, 783 F.3d 1301, 1323 (D.C. Cir. 2015), in turn quoting *Nevada v. Department of Energy*, 457 F.3d 78, 93 (D.C. Cir. 2006)).

**B. Additional GHG-related analysis would not meaningfully assist BLM.**

Plaintiffs appear to recognize that NEPA analysis is undertaken not for its own sake but rather "so that decisionmakers and the public can determine whether and how those emissions [from the challenged lease sales] should influence the choice among alternatives." Plaintiffs' Memorandum at 24. Plaintiffs' recognition accords with the widely accepted precept, based on longstanding case law, that the "purpose and function of NEPA is satisfied if [1] Federal agencies have considered relevant environmental information, and [2] the public has been informed regarding the decision-making process." 40 C.F.R. § 1500.1(a); *see also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349, 356 (1989) (describing first purpose of statute); *Baltimore Gas & Electric Co. v. NRDC, Inc.*, 462 U.S. 87, 97 (1983) (describing "twin aims" of statute).

On the first of these two points, it is not credible to think that BLM failed to "consider" GHG emission-related information as part of the challenged lease sales. This is an Administration whose very first week saw the issuance of Executive Order 14008 on "Tackling the Climate Crisis at Home and Abroad" (Jan. 27, 2021). *See* 86 Fed. Reg. 7,619 (Feb. 1, 2021). Section 208 of that Order directed the Department of the Interior to undertake "a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the [Department's] broad stewardship responsibilities over the public lands and in offshore waters, *including potential climate and other impacts associated with oil and gas activities on public lands*." *Id.* at 7,624–25 (emphasis added). BLM has shown how that review yielded (among other results) the "Specialist Report"

that was incorporated into the EA for each of the challenged lease sales. *See* Federal Memorandum at 5–7. In breadth and bulk, the Specialist Report is exhaustive. *See id.* at 20–21.

In these circumstances, the additional GHG-related analysis demanded by Plaintiffs — to the extent it is even possible — would not serve NEPA's purpose and function of helping BLM to "consider" relevant environmental information.

**C. Additional GHG-related analysis would not meaningfully inform the public.**

The other longstanding purpose and function of NEPA is satisfied if "the public has been informed regarding the decision-making process." 40 C.F.R. § 1500.1(a); *accord Robertson*, 490 U.S. at 349 (describing second purpose of statute). The additional GHG-related analysis sought by Plaintiffs would not serve that purpose and would accordingly contravene the rule of reason.

It is unreasonable to think that the public is waiting for such analysis in order to make up its mind about the challenged lease sales — or of any federal oil and gas leasing. Rather, anyone who invests minimal effort would know what Plaintiffs know, namely that "the lease sales are predicted to add 35.096 megatonnes of carbon dioxide equivalent ('$MtCO_2e$') emissions to the atmosphere, resulting [in] estimated environmental harm [calculated using SC-GHG] between $416 million and $4.7 billion." Plaintiffs' Memorandum at 15. And they will know this because the six sale-by-sale numbers are available in the respective EAs (which is where Plaintiffs found them), to be added together with what Plaintiffs concede is "simple arithmetic." Interested members of the public will also know, as Plaintiffs do, that as of "fiscal year 2020, federal onshore oil and gas leases contributed annual emissions totaling 427.65 $MtCO_2e$," and that "BLM administered lands are responsible for 14% of total U.S. GHG emissions, 1.6% of global emissions, and nearly 20% of all emissions in the U.S. from fossil fuel production." *Id.* at 6 (citing HQ_4019). Again, these are in documents incorporated into each EA.

Plaintiffs had no need for additional analysis by BLM to conclude that "[h]umanity and the world are at an inflection point," *id.* at 1, such that BLM's "continuing to authorize fossil fuel leasing on public lands" must be stopped categorically, https://bit.ly/3MizUXe (press release on filing this lawsuit). Other members of the public likewise have no need for additional analysis by BLM to conclude the opposite and to join Congress in the view that "the public lands [should] be managed in a manner which recognizes the Nation's need for domestic sources of minerals," 43 U.S.C. § 1701(12), and that "mineral exploration and production" should be one of the "principal or major uses" for which BLM must manage the public lands, *id.* § 1702(*l*). *See generally infra* Part II.

The GHG-related analysis sought by Plaintiffs will not meaningfully contribute to this debate. In regulatory and judicial parlance, that paperwork will neither inform the public nor help it play a role in the decisionmaking process. Accordingly, the demanded analysis would serve neither of NEPA's purposes.

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Another settled and longstanding precept is that "NEPA does not mandate particular results or substantive outcomes." 40 C.F.R. § 1500.1(a); *accord Robertson*, 490 U.S. at 351 ("Other statutes may impose substantive environmental obligations on federal agencies, but NEPA merely prohibits uninformed — rather than unwise — agency action." (footnote omitted)). Plaintiffs want the particular result and substantive outcome of *no leasing, period*. NEPA gives them no legal right to that outcome, and no rule of reason gives them the same result under the guise of demanding additional GHG-related analysis, whether in an EA or in an EIS. Thus, BLM complied with NEPA here.

## II. Plaintiffs' interpretation of FLPMA — as *categorically banning* any additional oil and gas leasing of public lands — cannot be reconciled with the statute or with the Mineral Leasing Act.

Plaintiffs also attack the challenged lease sales under FLPMA, relying on the statutory mandate that in "managing the public lands," BLM shall "take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). *See generally* Plaintiffs' Memorandum at 39–45. Specifically, Plaintiffs contend that "BLM violated its mandatory duties under FLPMA by taking action that it acknowledges *will cause* further unnecessary and undue degradation of public lands, without defining a threshold of climate degradation or taking any action to avoid it." *Id.* at 39.

Plaintiffs couch their degradation-related arguments as asking merely that BLM "impose mitigation measures and constraints on oil and gas activity" in order to prevent the proscribed degradation. *Id.*; *accord id.* at 39 ("include appropriate mitigation measures"), 41 ("tailoring mitigation measures and conditions to avoid degradation"), 45 ("meaningful mitigation or constraint"). That mild language calls to mind incremental steps "to reduce impacts" that oil and gas development might have on particular "public lands, waters, and wildlife resources." *Id.* at 39–40.

But Plaintiffs actually advance a far more radical interpretation of FLPMA's anti-degradation mandate. In Plaintiffs' view, "*any* additional [GHG] emissions are entirely incompatible with maintaining a livable planet. Therefore, *all such additional emissions* are responsible for causing further unnecessary and undue degradation of public lands." *Id.* at 44 (emphasis added). In short, as to oil and gas leasing, "such degradation is caused by *the activity itself*." *Id.* at 43 (emphasis added). Thus, it is not BLM's day-to-day *implementation* of its oil and gas leasing program that Plaintiffs attack; it is the very "*perpetuation* of BLM's oil and gas leasing program" that Plaintiffs contend is "incompatible with the agency's substantive duty under FLPMA." *Id.* at 41 (emphasis added).

All of this is nothing less than the conclusion that FLPMA's anti-degradation mandate — a narrow (if important) qualification on the statute's broader mandate for BLM to "manage the public lands under principles of multiple use and sustained yield," 43 U.S.C. § 1732(a) — must be read to *categorically ban* any further oil and gas leasing of public lands. *Cf.* https://bit.ly/3MizUXe (press release acknowledging that Plaintiffs "assert that the BLM has violated environmental laws by continuing to authorize fossil fuel leasing on public lands"). But FLPMA expressly identifies extraction of "minerals" as one of those multiple uses. *Id.* § 1702(c). Indeed, "mineral exploration and production" is expressly one of the "*principal or major* uses" for which BLM must manage public lands. *Id.* § 1702(*l*) (emphasis added). FLPMA expressly makes it "the policy of the United States" that "public lands [should] be managed in a manner which recognizes the Nation's need for domestic sources of minerals." *Id.* § 1701(12). Thus, Plaintiffs would turn FLPMA on its head.

Plaintiffs' conclusion is doubly anomalous in light of the Mineral Leasing Act of 1920. In that statute, Congress generally made public land containing oil and gas deposits eligible for leasing, 30 U.S.C. § 181, and specifically mandated that "[l]ease sales shall be held for each State where eligible lands are available at least quarterly," *id.* § 226(b)(1)(A). The categorical ban on oil and gas leasing sought by Plaintiffs cannot be reconciled with the statutes enacted by Congress. In sum, Plaintiffs' FLPMA-based arguments for a categorical ban on leasing must be rejected.

## III. The "disruptive consequences" of the vacatur sought by Plaintiffs go beyond harms to successful bidders and extend to the Nation's economy and energy security.

By their pending motion, Plaintiffs seek the remedy of vacatur: "the Court should vacate BLM's June 2022 lease sales and instruct the agency to conduct an EIS for all six sales and comply with FLPMA." Plaintiffs' Memorandum at 45. The Court will have to consider that request if it concludes (contrary to the foregoing) that NEPA or FLPMA was violated. The D.C. Circuit has set forth "two factors" that govern whether "to leave agency action in place while the decision is

remanded for further explanation," i.e., to remand *without* vacatur. *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 985 F.3d 1032, 1051 (D.C. Cir. 2021), *cert. denied*, 142 S. Ct. 1187 (2022). Those are (1) the "seriousness of the order's deficiencies" and (2) the "disruptive consequences" of vacatur. *Id.* (quoting *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Commission*, 988 F.2d 146, 150 (D.C. Cir. 1993)). We here address the latter factor: vacatur would seriously disrupt the Nation's economy and energy security.

### A. Vacatur would disrupt the mineral development on federal lands that drives growth, creates jobs, reduces consumer costs, and funds state budgets.

The Chamber has long studied the impact of American oil and gas production on the business community and the public at large, and the Chamber's Global Energy Institute in 2021 reported on "the consequences of a leasing ban on federal lands and waters." U.S. Chamber of Commerce Global Energy Institute, *Federal Lands and Waters Energy Development* 2 (Nov. 2021) (Energy Report), https://bit.ly/3HQRLQ6. Synthesizing the results of numerous third-party studies, the Energy Report emphasizes that leasing and production on federal lands (like the challenged lease sales here) and in federal waters are key aspects of U.S. economic growth. *See id.* at 1.

During fiscal year 2019, for example, "oil and natural gas development on public lands contributed . . . [n]early $76 billion to the U.S. economy." *Id.* at 2. The development activity also "[s]upported approximately 318,000 jobs" and generated "$3 billion in revenue" for state funding of "education, health and emergency services, and infrastructure." *Id.* Production on federal lands and in federal waters also has a real-world impact on the prices that consumers pay to commute and travel and heat their homes. *See* OnLocation, Inc., *The Consequences of a Leasing and Development Ban on Federal Lands and Waters* (Sept. 2020) (Development Ban), https://bit.ly/3FhoI6D. "All Americans — not just those living in the 34 oil and natural gas-producing states or working at oil and natural gas jobs — directly benefit from increased domestic production." U.S. Depart-

ment of Energy, U.S. Oil and Natural Gas: *Providing Energy Security and Supporting Our Quality of Life* 5 (Sept. 2020) (Energy Security), https://bit.ly/3K1b7UG.

If Plaintiffs have their way, especially as to their interpretation of FLPMA, the Court will preside over a de facto "pause" in (if not a permanent cessation of) federal onshore leasing activity. Pausing leasing activity significantly reduces the above-described benefits in both the short term and the long term. In 2022 alone, nationwide job losses under a pause would have reached almost one million. *See* Development Ban at 19. A pause through 2025 would generate a "loss of more than $22.7 billion to U.S. GDP," translating into a "loss of more than 154,000" jobs and a loss of "nearly $4 billion in tax revenue." Energy Report at 2. Defendant-Intervenor North Dakota would lose more than 2% of jobs statewide, and Defendant-Intervenor Wyoming would lose *8% of jobs statewide*. *See* Development Ban at 19. If the pause were to continue, production on federal lands and in federal waters would contribute *nothing* to U.S. GDP by 2040. *See* Energy Report at 2.

Importantly, shutting down *supply* by vacating the challenged lease sales would do nothing to reduce *demand* for oil and gas. Domestic supply constraints do not eliminate hydrocarbon production altogether but merely shifts it beyond our borders to jurisdictions that have higher methane emissions intensity and lack America's environmental leadership. *See* Mustafa H. Babiker, *Climate Change Policy, Market Structure, and Carbon Leakage*, 65 J. Int'l Econ. 421, 441 (2005) (detailing how this chain of events "can lead to significant increases in offshore [i.e., international] energy-intensive production associated with relocation"); U.S. Chamber of Commerce Global Energy Institute, *Greater U.S. Energy Production Is Needed to Reduce Reliance on Authoritarian Regimes* (Apr. 5, 2022) (explaining why we should "aggressively pursue low-carbon alternatives that wean U.S. dependence on fossil fuels, while also recognizing the climate and security benefits of relatively low-GHG energy production here on U.S. soil"), https://bit.ly/3W8khoP.

In light of the foregoing, vacating the challenged lease sales would have disruptive consequences to the Nation's economy.

### B. Vacatur would disrupt the mineral development on federal lands that furthers America's energy security.

In the Outer Continental Shelf Lands Act Amendments of 1978, Congress sought to ensure "expedited exploration and development of [offshore lands] in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade." 43 U.S.C. § 1802(1). FLPMA contains no precisely parallel language, but it similarly recognizes "the Nation's need for *domestic* sources of minerals." 43 U.S.C. § 1701(12) (emphasis added). The "[e]nergy self-reliance" resulting from robust domestic production of energy "makes the United States more secure." Energy Security at 51. The point is simple: "As domestic oil and gas production has expanded, America's reliance on foreign energy supplies has declined, dramatically enhancing U.S. energy security." *Id.* at 21. That energy security reduces the likelihood that the country will repeat the shortages of the 1970s, a "history that includes long lines at gasoline pumps and curtailments of natural gas at schools and factories." *Id.* And our "increased ability to supply energy to allies around the world also enhances U.S. flexibility in dealing with global diplomatic challenges, further strengthening security." *Id.*

To some observers, all of this might have seemed somewhat theoretical when the Energy Security report was written in September 2020. But the invasion of Ukraine in the spring of 2022 has given energy security a newly concrete and dramatic importance. As President Biden declared in banning imports of Russian oil and gas, the policy of the Executive Branch — complementing the policy of Congress as quoted above — is to "reduce our dependence on foreign oil and fossil fuels." The White House, *FACT SHEET: United States Bans Imports of Russian Oil, Liquefied Natural Gas, and Coal* (Mar. 8, 2022), https://bit.ly/39e0Gj1. To that end, domestic "supply must

keep up with demand." *Id.* But domestic supply cannot keep up with demand if BLM is prevented from even *beginning* the process of opening up acreage in six states to oil and gas exploration and development. That would inevitably decrease production from an area that accounted for at least a quarter of total U.S. crude oil production. *See* U.S. Energy Information Administration, *Oil and petroleum products explained: Where our oil comes from*, https://bit.ly/3O8lBpw (reporting that New Mexico, North Dakota, and Colorado were three of the top five crude oil-producing states in 2021, accounting for 11.1%, 9.9%, and 3.7% of total U.S. crude oil production, respectively).

In light of the foregoing, vacating the challenged lease sales would have disruptive consequences to the Nation's energy security.

## CONCLUSION

For the foregoing reasons, Plaintiffs' motion for summary judgment should be denied, and the cross-motions of Defendants and Defendant-Intervenors should be granted.

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Respectfully submitted,

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