H.R. 3397, TO REQUIRE THE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT TO WITHDRAW A RULE OF THE BUREAU OF LAND MANAGEMENT RELATING TO CONSERVATION AND LANDSCAPE HEALTH

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

Thursday, June 15, 2023

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CONTENTS

LEGISLATIVE HEARING ON H.R. 3397, TO REQUIRE THE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT TO WITHDRAW A RULE OF THE BUREAU OF LAND MANAGEMENT RELATING TO CONSERVATION AND LANDSCAPE HEALTH

Thursday, June 15, 2023
U.S. House of Representatives
Committee on Natural Resources
Washington, DC

The Committee met, pursuant to notice, at 9:03 a.m., Room 1324, Longworth House Office Building, Hon. Bruce Westerman [Chairman of the Committee] presiding.

Present: Representatives Westerman, Lamborn, Wittman, Gosar, Graves, LaMalfa, González-Colón, Fulcher, Stauber, Curtis, Tiffany, Rosendale, Boebert, Bentz, Collins, Duarte, Hageman; Grijalva, Huffman, Gallego, Leger Fernández, Stansbury, Peltola, Hoyle, and Kamlager-Dove.

Also present: Representative Johnson.

The CHAIRMAN. The Committee on Natural Resources will come to order.

Without objection, the Chair is authorized to declare a recess of the Committee at any time.

The Committee is meeting today to hear testimony on Representative Curtis' bill, H.R. 3397, to require the director of the Bureau of Land Management to withdraw a rule of the Bureau of Land Management relating to conservation and landscape health.

I ask unanimous consent that Representative Dusty Johnson of South Dakota be allowed to participate in today's hearing from the dais.

Without objection, so ordered.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I therefore ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o).

Without objection, so ordered.

I now recognize myself for an opening statement.

STATEMENT OF THE HON. BRUCE WESTERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

The CHAIRMAN. Again, good morning, everyone. It is a little bit earlier starting time, but hopefully we will get out of DC a little bit earlier today, and we wanted to have plenty of time for the hearing.

We are here today to consider H.R. 3397, which would require the Bureau of Land Management to withdraw its proposed so-called Conservation and Landscape Health Rule. In short, this rule would devastate rural economies across the West under the guise of conservation. The rule would only further this Administration's radical preservationist agenda.

More than half of the U.S. population lives within 100 miles of BLM land. Thousands of rural economies depend on access to BLM lands for energy and mineral development, outdoor recreation, timber production, grazing, and more. These activities are all part of the BLM's multiple-use and sustained-yield mandate, which create hundreds of millions of dollars in economic output, and sustain over 783,000 jobs.

Now, the BLM is threatening to upend its multiple-use mandate and the Western way of life. The rule would broadly allow the BLM to lease lands under new and vaguely defined conservation leases, incorporate new standards when evaluating traditional multiple-use decisions, and expedite designations of new areas of critical environmental concern.

One of the greatest concerns is how the rule would fundamentally change the way BLM carries out its multiple-use and sustained-yield mandates by elevating conservation as a use within the Federal Land Policy and Management Act of 1976, also known as FLPMA, thereby bypassing congressional authority. BLM would pursue this through so-called 10-year conservation leases to address restoration of degraded landscapes.

And one of the main problems with this is BLM seems to think preservation is the same as conservation, and it is certainly not. This type of playbook is not new for the Biden administration. No amount of clever naming schemes will disguise the fact that their policies are quite simply atrocious. You might recall the 30x30 Initiative, which was quickly rebranded as the America the Beautiful Initiative. We aren't fooled by Trojan Horses.

The BLM's proposed conservation rule is anything but, and it fails to even define what exactly would be considered conservation or permissible under a conservation lease. While the definition goes so far as to say it will not prevent non-commercial activities, this is in itself limiting, because many members of the public access Federal lands through commercial outfitting and guiding services, which would, by definition, be excluded. As a lifelong hunter and fisherman myself, I am deeply concerned that this will have devastating effects on the outdoor recreation economy, which heavily depends upon outfitters and guides.

The rule also states that, "Lands could be temporarily closed to public access," yet remains silent on how long these closures could last, meaning that the American people could be blocked from accessing an area under a conservation lease for the majority or entirety of the lease's 10-year term.

Our Committee's members and staff have repeatedly asked the BLM these and many other questions, yet the agency has failed to give us any clear answers on how they will implement this rule. We have held three hearings in the past 2 months where Members have been able to engage with agency officials on the rule, including DOI Secretary Deb Haaland, and the BLM Director,

Tracy Stone-Manning. Witnesses have shared their opposition to the implementation of this rule, and Members on both sides of the aisle have expressed their concern.

The BLM itself has only held three in-person listening sessions on the rule in densely populated cities: Denver, Albuquerque, and Reno. These areas do not adequately represent the impacted communities. The agency also failed to respond to a letter I sent with 13 of my colleagues asking them to extend the comment period on this rule and hold more in-person listening sessions.

This is why we are advancing H.R. 3397, which would require the BLM Director to withdraw this devastating rule, and would prevent the BLM from issuing a substantially similar rule in the future. I look forward to hearing our witnesses' testimony and discussion today on why this legislation is so critical to push back on over-reaching regulations. American citizens in rural areas across the West deserve better than the BLM's hard-fisted bureaucracy.

I would particularly like to thank Governor Kristi Noem, who is no stranger to this hearing room, having served on the Committee before, she is now the Governor of South Dakota, as we all know, and Governor Mark Gordon of Wyoming for traveling to DC today to testify on this important subject. And it is great to hear from the real world, where these policies will have devastating impacts. And I look forward to hearing the testimony of the governors.

With that, I yield back my time and now recognize Ranking Member Grijalva for his opening statement.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you very much, Chairman Westerman. I appreciate the opportunity to talk about BLM's newly-proposed public lands rule, Even if I don't appreciate the context in which the discussion is happening.

The proposed rule is long overdue. It is a long-overdue update to how we manage our public lands. As laid out by the Federal Land Policy and Management Act, FLPMA, BLM has a mandate to manage our public lands for multiple uses in a way that will "best meet the present and future needs of the American people." To meet the needs of our future, there is no question that conservation must be part of that multiple-use equation.

Unfortunately, however, conservation has historically taken a back seat to all other uses, including mining, oil and gas extraction, and even grazing. These other land uses have long-standing agency systems and protocols that provide access and set forth consistent guidelines and expectation. Conservation does not. So, it is important to see the Biden administration finally putting conservation on an equal footing and seeking balance.

The proposed rule establishes a framework to promote restoration, provide for responsible development, and conserve intact, healthy landscapes.

As it stands now, over 90 percent of BLM lands are open to commercial development. The new rule won't change that at all. But public lands are not just a backdrop for oil rigs and mining pits. They include incredible natural places where Americans hike, fish, camp, bike, or seek respite.

Many of the agency's crown jewels are found on the 35 million acres of national conservation lands, places like Bears Ears National Monument in Utah and the Sonoran Desert National Monument in my home state. Considering these special places is not a radical idea, it is what the American people want.

Year after year, the Colorado College State of the Rockies Poll shows a broad majority support increased conservation.

It is also important to point out that BLM is responsible for managing a countless array of cultural and archeological resources. That is exactly why tribal communities throughout the country have been calling on lawmakers to support conservation of their ancestral homelands. It is way past time that we start listening.

The proposed rule does just that by creating a critical opportunity for BLM to incorporate feedback from tribes and elevate the role of Indigenous traditional ecological knowledge into the planning.

And finally, I will point out that the Biden administration has committed to the permitting of 25 gigawatts of renewable energy on public lands by 2025. The proposed public land rule complements that effort by creating a new mechanism for mitigation to occur on public lands. Simply put, the proposed rule will help BLM finally establish the balance that will best meet our present and future needs.

Repealing this rule only endorses a status quo of imbalance and unsustainability, the burden which our future generations will be forced to bear.

I look forward to our discussion today. I welcome our distinguished guests to the Committee.

Mr. Chairman, I yield back.

The CHAIRMAN. Thank you, Ranking Member Grijalva. We will now move on to our first panel, which consists of Representative John Curtis of Utah, who is the bill's sponsor.

I now recognize Representative Curtis to testify for 5 minutes on H.R. 3397.

STATEMENT OF THE HON. JOHN R. CURTIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. CURTIS. Thank you, Mr. Chairman, for holding this hearing. Thank you to our distinguished witnesses for being here.

I am sitting here, and having a hard time, literally, having my head not explode.

There is one Member across the aisle at this hearing at the beginning and two total at this hearing now. This is the same reflection of those in the East Coast who would like to come to us in the West and tell us how to manage our lands, and what is good and bad.

Let me state clearly for the record that for decades, and decades, and decades, the good people of Utah have managed these lands in a responsible way, far better, Mr. Ranking Member, than since the Bears Ears Monument designation. Nothing good has come out of that designation for the land in Utah, for the local tribes, and for the people who participate in this land. And now we have bureaucrats on the East Coast who have never been to my district, who have hardly been to the West, other than to fly over it on their way

to California, tell us that they know better than we do how to manage these lands. That is simply not true based on any fact.

If you come to see these lands, how we have managed them, how we have protected them, how we have taken care of them, how we have balanced recreation with agriculture, with extraction, with the many beauties in this area, first of all, I would like to go on the record of saying that in the West we know far better how to manage these lands, and have done better for decades and decades, than any bureaucrat in the East Coast could ever imagine or ever dream of managing these lands.

The bulk of my district is over 90 percent Federal lands. Think about that for just a minute. Ninety percent of my district doesn't get property tax, doesn't have the ability to manage their own fate. Ninety percent. Our state is 60 percent. And I know our two witnesses have similar percentages in their state. Yet, people from the East who have never been there, want to tell us how to manage these lands and what we can do with these lands.

And once again, I will say that for decades, and decades, and decades, the best environmentalists in the world—by the way, they hate to be called environmentalists, our farmers and ranchers are the best environmentalists in the world—have been taking care of and preserving and protecting these lands.

This rule undermines the work of real conservatives, conservationists like farmers and ranchers who have kept the land in good health. It will increase the likelihood of wildfires. Poor management of these lands will increase the likelihood of fires. It will increase our food shortages and our energy shortages. None of these things are good for the people of the United States, let alone the people of the West.

The repeal of this designation is critical to proper management of these lands. And I would like to thank our Chairman and our witnesses again and my colleagues for being here. And I hope that, through the course of this hearing today, we will understand truly how to best manage these lands, preserve, take care of our beautiful resources in the West.

With that, Mr. Chairman, I yield my time.

[The prepared statement of Representative Curtis follows:]

PREPARED STATEMENT OF THE HON. JOHN R. CURTIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

ON H.R. 3397

H.R. 3397—To require the Director of the Bureau of Land Management to withdraw a rule of the Bureau of Land Management relating to conservation and landscape health.

- The Biden Administration's rule undermines the Federal Land Policy and Management Act's (FLPMA) multiple-use requirement for Bureau of Land Management (BLM) lands, hindering access to public lands for energy and critical mineral development, grazing, forest management, and recreation.
- More than 90% of BLM's 245 million acres are located in the Western United States, and the rule would disproportionally impact Western recreationalists, ranchers and mineral producers.
  - And a lot of that land is located in Utah.
- This rule undermines the work of real conservationists, like farmers and ranchers who have kept the land in good health for generations.

- It would create increased risk for wildfires as lands prone to disaster would be locked up and not properly managed.
- It would also hinder American energy independence by making it harder to produce oil, gas and coal while also making it more difficult to site and build renewable energy facilities.
- Utahans are proud of our land and want to share with recreationalists who come from all over the world to enjoy it. Under this rule, multiple use opportunities for recreationalists shrink drastically.
- Americans all over the country will feel the impact of this rule if implemented. Food costs will rise as the rule will impact grazing. Already too high energy prices will be further impacted as land used for critical energy development will be locked up.
- The rule would lock up lands through new "conservation leases" and by the identification of intact landscapes through the BLM's Resource Management Plan process.
- The rule is a land grab disguised as a 30 x 30 accomplishment and must be revoked.

The CHAIRMAN. Thank you, Representative Curtis. We will now move to our second panel of witnesses.

And Governor Gordon, Governor Noem, again, welcome, and I will just remind you that, under Committee Rules, you must limit your oral statements to 5 minutes, but your entire statement will appear in the hearing record.

And to begin your testimony, just press the "on" button on the microphone.

We do use timing lights. When you begin, the light will turn green. At the end of 5 minutes, the light will turn red. I will ask you to please complete your statement if you haven't done so by that time.

I would now like to introduce Representative Dusty Johnson from the great state of South Dakota to introduce our first witness.

Mr. JOHNSON. Mr. Chairman, I think we all know a lot of politicians who will be whatever you want them to be. And if the political winds change, they will just change who they are just that quickly. And that is not Kristi Noem. I have known her for a long time, and I have seen her act, and I have seen her step forward and make decisions. And time and time again, I have seen her make decisions not on the basis of what would increase her political comfort, but what would better serve her oath of office. And you guys understand the paradox of that. Often when you make those tough decisions, they end up becoming the popular thing. And in that way she has led public opinion, in that way she has made great decisions for our state, in that way she has been a great leader.

So, thank you to the Committee for letting me show up as an off-Committee member, just to show up and brag by saying this, and I am the only Member of Congress who can say this, that is Kristi Noem, and she is my governor.

STATEMENT OF THE HON. KRISTI NOEM, GOVERNOR, SOUTH DAKOTA

Governor NOEM. Thank you, Congressman Johnson. It is an honor to be here. I was ready for some kind of a joke or something I had to respond to, but thank you very much for that kind introduction. I have enjoyed watching you serve in the seat that represents South Dakota here, and you have done so with distinguished honor. So, I appreciate all of your service to our state and our people. Thank you.

Good morning, Chairman Westerman, and Ranking Member Grijalva, and the members of the Committee. It is my honor to be with all of you today. In fact, my former Chief of Staff just gave me my old nameplate from this Committee, when I had the chance to serve with all of you, which is incredibly special to me. I would put it up here today and use it, except for I don't get the chance to sit where you sit today. This is not a decision that I will get the chance to make. This is something that has congressional authority, and you need to act in order to protect our people and to protect our freedom.

Today, I sit in front of you as a governor and as a former farmer and rancher, and someone who recognizes the deep devastation that if this proposed rule should go forward, how hard it would be on our people, and what it means for our nation far into the future.

I remember vividly my time serving here on this Committee, and I remember fondly working with many of you, who sat on this Committee with me as well during that time, and the good work we were able to do in preserving our natural resources.

Today, as the current governor of the great state of South Dakota, I want to direct my comments specifically to a piece of legislation that you are debating and considering: H.R. 3397. This legislation would require the Director of the Bureau of Land Management to withdraw a rule relating to conservation and landscape health.

This rule is just one of many that highlights an example of overreaching, unelected bureaucracy attempting to perpetuate radical environmental policies that ignore common sense. They ignore stewardship practices that have been practiced on our land for generations while allowing multiple uses of this precious resource to strengthen America and our people. We have been doing that for many, many years.

In my written testimony, which I have submitted today to you, Mr. Chairman, I list several specific reasons why this rule would be so devastating for our people in South Dakota and for our economy, why I think it is impossible for them to move forward with this, and to responsibly conserve our land. I encourage all of you to read that written testimony. It goes into much more detail.

In addition to my testimony today, I have joined a letter with other governors, with governors of Utah, Idaho, Montana, Nevada, and my friend sitting here with me today, Governor Mark Gordon of Wyoming. He is a voice, and they all voiced concerns with the Biden administration directly on this proposed rule.

Like many of you, land conservation for our family isn't just a theory. It is the way that we have lived for many, many generations. I was raised by a dad who often reminded me, "Kristi, we

don't sell land because God is not making any more land." From the time I was a young girl, I listened to him talk about soil types, I listened to him talk about the importance of native ground, conservation practices, and management decisions.

I learned the scientific data and the research of what it took to operate on that land and to protect it, but I also learned why he cared so much. Because working the land wasn't just a job or a career to my father, it was our family legacy, it was our way of life. It was a culture that not only preserves a critical work ethic that is so important to this country, but it also reminded us daily of the natural resources that were a gift from God.

As I grew older, I learned more about the importance of keeping all areas of our country productive. To help stabilize the economy, every part of our nation needs to produce, and that would help us during very difficult economic times.

I also learned how critical it was to be energy independent, how important it was to protect our nation's food supply, and to produce our own food.

When I was elected governor, I selected a fellow rancher as my lieutenant governor. His name is Larry Rhoden. To our knowledge, we are the only governor and lieutenant governor in the history of the nation that both spent our lives making a living from agriculture. We are very proud of that, and we understand as well as anyone that our farmers and our ranchers care about our land. They are stewards. We care about preserving it to pass it on to our kids and to our grandkids.

My experience in business and in public office and national security issues has reaffirmed my belief that our enemies and those who hate the United States of America may never need to fire a shot to take us over. They may not need to. We are going to be surrendering our freedom by becoming more dependent on them for our critical needs: for gas, oil, food, medicine, and more. When a country controls our food supply and our energy supply, they will control us, and American freedom will be gone. We cannot allow rules like this to move forward in a way that stops productivity and it stops American independence.

Nearly 98 percent of BLM surface lands in South Dakota are grazed by permittees. Grazing is an important conservation strategy in South Dakota. We also host 76 active producing oil and gas wells and 36,762 acres. These acres provide outdoor recreation opportunities, including hunting, fishing, hiking, camping, and more. And we must maintain public access in order for these lands to benefit both South Dakota residents and visitors.

Mr. Chairman, I am smart, and I realize I am out of time, and you have a tight schedule, but I have much more I would like to share with the Committee today on what specifically is wrong with this rule and why it doesn't work, the redundancy in it, the unnecessary burden it creates, how it stops productivity. And the No. 1 concern for me is that conservation is already incredibly a part of every single management practice that happens on BLM land. To go out there and to create a mechanism such as a conservation lease that could be bought by third parties, not even necessarily by people in our own country, and give them access and authority over these lands, it is dangerous. It is not just dangerous to those that

are out there working the land, it is dangerous to our economy, it is dangerous to our energy independence, to producing our own food supply. It is dangerous to America.

Thank you so much, Representative Curtis, for bringing this piece of legislation.

With that, Mr. Chairman, I will yield back.

[The prepared statement of Governor Noem follows:]

PREPARED STATEMENT OF KRISTI NOEM, GOVERNOR OF SOUTH DAKOTA

Introduction

Good morning, Chairman Westerman, Ranking Member Grijalva, and members of the Committee. Thank you for the opportunity to be with you all today. I recall vividly my tenure on this committee and remember fondly working with many of you on both sides of the aisle to achieve important priorities for the American people.

Today, I come before you not as a committee member, but as a former colleague and current Governor of the great state of South Dakota. I would like to direct my comments this morning to the important piece of legislation the committee is considering—H.R. 3397. This legislation would require the Director of the Bureau of Land Management (BLM) to withdraw a rule relating to conservation and landscape health.

I stand with Representative John Curtis of Utah, the sponsor of H.R. 3397, and his fellow Representatives who are co-sponsoring the legislation.

In addition to my testimony today, I have joined a letter with the Governors of Utah, Idaho, Montana, Nevada, and Wyoming to voice these concerns to the Biden Administration directly.

There are several reasons why I believe this rule needs to be withdrawn immediately:

The rule creates unnecessary redundancy in scope and practice.

It fails to follow long-established NEPA requirements.

The rule fails to properly balance the proposed definition of "conservation" with the economic impact on South Dakotans and Americans.

It also prioritizes conservation leases over other proven proper uses of public lands.

The rule would limit the public's access to federal lands and deny them the ability to utilize and enjoy our landscapes and outdoor activities.

It would also limit grazing on public lands. This would be devastating to our producers, our economy, and our ability as a nation to produce our own domestic food supply—all while limiting a critical management practice.

The rule would also negatively impact our ability to manage our forests responsibly to the benefit of our land, wildlife, public safety, and economy.

This rule is just one of many which highlights an example of an overreaching, unelected bureaucracy attempting to perpetuate radical environmental policies that ignore common sense stewardship practices that have protected our land for generations, while allowing multiple uses of this precious resource to strengthen America and our people.

We have seen these types of actions before, such as in the Waters of the United States rule proposed by President Biden. We've also seen it in the 30x30 program that has now been deceptively rebranded as "America the Beautiful." But make no mistake, it is a land grab initiative purposely designed to make the federal government more powerful and to take more control over people's daily lives.

My family has lived off the land for generations. I was raised by a dad who often reminded me, "Don't sell land, Kristi. God isn't making any more land."

From the time I was a young girl, I listened to him talk about soil types, native ground, conservation practices, and management decisions. I learned the scientific data and research that was necessary to protect the land, but I also learned why he cared so much—because working the land wasn't just a job or a career to him. It is a family legacy, a way of life, and a culture that not only preserves a critical work ethic, but also reminds us daily of the natural resources that are such a gift to this country.

As I grew older, I learned more about the importance of keeping all areas of our country productive to help stabilize our economy through difficult times. I also learned how critical it is that we continue to be energy independent and produce our own food supply.

When I was elected Governor, I asked a fellow rancher, Larry Rhoden, to serve as my Lieutenant Governor. To our knowledge, we are the first Governor/Lieutenant Governor combination in our country's history that both primarily earned their living working in agriculture. We understand as well as anyone that our farmers and ranchers care about our land. We care about preserving it to pass on to our kids and grandkids.

My experience in business, public office, and national security has reaffirmed my belief that our enemies and those who hate the United States of America may never choose to fire a weapon at us. They may not need to. We are surrendering our Freedom by becoming more dependent on them for our critical needs: gas, oil, food, medicine, and more. When a country controls our food supply or our energy supply, they will control us. And American Freedom will be gone. We cannot allow rules such as this one to move forward in a way that stops productivity and American independence.

Background

Nearly 98% of all BLM surface lands in South Dakota are grazed by permittees. Grazing is a proven and effective conservation strategy in South Dakota and across much of the Great Plains and the Western United States. South Dakota also hosts 76 actively producing oil and gas leases that cover 36,762 acres. The acres managed by BLM in South Dakota provide outdoor recreation opportunities including hunting, fishing, hiking, camping, and others. Maintaining public access to those lands is of critical importance to South Dakota residents and visitors.

Unnecessary Redundancy to Existing Law

The Federal Lands Policy and Management Act of 1976 (FLPMA) requires that BLM manage public lands for multiple use and sustained yield. Multiple use requires a balanced use of diverse resources to meet the present and future needs of the American people. Conservation is a tool to ensure those resources are managed in a way that promotes resiliency to natural disturbance events and achieves sustainable use of those resources for the long-term.

The proposed rule seeks to clarify that "conservation is a use on par with other uses of the public lands under FLPMA's multiple-use, sustained-yield framework." Conservation is *not* a 'use,' but an overarching objective in all other uses. This rule, as proposed, seats conservation as a competing use to those others listed, when it is already mandated by those other uses. The proposed rule is both unnecessary and redundant.

Compliance with NEPA

The proposed rule will have a significant impact on the environment and should trigger an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA). BLM has stated that the proposed rule is too broad and thus exempt from the NEPA process. I disagree with BLM's determination. If private Americans must follow NEPA, then so should the federal government.

Imbalance of Conservation versus Economic Needs

This proposed rule overemphasizes conservation rather than the economic needs of the American people. Resources like minerals, mining, and fields for grazing are critically important for the continued success of our economy. But the proposed rule broadens the application of the fundamentals of land health from just public land grazing to all other renewable resource uses.

The rule does not include an economic analysis evaluation. It also does not provide any data to indicate better outcomes for conservation practices if implemented. They claim that the rule does not have a "significant economic effect," or that it does not affect "a significant number of small entities." BLM provides no support for this ridiculous claim. And they're declaring that it's not a "major rule" based on this analysis.

The more I read the rule, the more offended I was.

In addition, BLM should not eliminate the requirement to publish potential designations of Areas of Critical Environmental Concern in the Federal Register. This provides states and other interested stakeholders time to consider the economic and environmental impacts to those areas prior to the public comment period.

Competition from Conservation Leases

The ". . . proposed rule would provide a framework for BLM to issue conservation leases on public lands for the purpose of pursuing ecosystem resilience through mitigation and restoration." As previously stated, creating a new use targeted solely at conservation creates unnecessary competition for the other approved uses. Rather

than creating a new rule that proposes conservation as a use, BLM should follow its existing mandate to review all permits and lease applications to adhere to conservation guidelines and standards for use of public resources.

Also, conservation leases can be bought up by outside groups that do not adhere to or embrace the mission of federal land use—even activist groups.

Maintain Public Access

Public lands in South Dakota provide opportunities for hunting, fishing, hiking, camping, and other types of recreation. But the proposed rule says that ". . . *the purposes of a lease may require that limitations to public access be put in place in a given instance* (for example, temporarily limiting public access to newly restored areas)." That is simply unacceptable.

Some tracts of BLM land in South Dakota are vast landscapes. BLM should not limit access to entire leased areas when only a fraction of a landscape is in a restorative state. Larger tracts of land offer better recreational opportunities by spreading pressure out, which is less likely to push big game away.

South Dakota prioritizes our Walk-In Area hunting access program to enroll private lands that are adjacent to BLM lands. This creates larger blocks of land open to public hunting and increases access opportunities that might otherwise not be available from isolated BLM tracts.

If a proposed lease must restrict access to any public lands for the purpose of restoration, public access must be addressed. There are currently BLM parcels in South Dakota and across the western US that are landlocked within private lands. Rather than implementing new ways to restrict access to BLM lands, BLM should put more time, funding, and efforts into accessing landlocked BLM lands.

Grazing Management

As stated earlier, nearly all surface lands managed by BLM in South Dakota are grazed by permit or lease. Livestock grazing is an important management tool that grasslands have evolved with over millennia. Grazing aids in promoting biodiversity, keeps fire fuels low, and promotes a robust rural economy. Further, rotational grazing promotes a healthy ecosystem and is an important tool for conservation.

In South Dakota, BLM tracts are comingled with private land and lands owned by the South Dakota Office of School and Public Lands (SDSPL). Because of the small and isolated nature of BLM lands in South Dakota, these are often comanaged as a unit and BLM lands are not separately fenced. As a result, critical infrastructure such as water sources, mineral supplement, interior fences for promoting sustainable grazing practices cannot be easily severed from the existing BLM, private, and SDSPL complexes. If this rule is implemented in a manner where the comingled nature of BLM is not accounted for, the implementation of this rule would result in hardship for the local landowners and the SDSPL to manage their lands adjacent to BLM lands.

Additionally, severing these BLM lands from existing grazing management may result in less conservation because the lands are no longer managed on a landscape scale.

Forestry

BLM manages over 34,000 acres of forestland in South Dakota. BLM should focus on using authorities already in place, such as a Good Neighbor Agreement, to manage these forests. South Dakota adheres to forestry best management practices. There is no need to create additional guidance for forest management activities to address conservation concerns.

Biden Administration Overreach

This proposed rule reminds me of President Biden's failed effort to overregulate so-called "Waters of the United States." His administration wanted to redefine the phrase "navigable waters" as described in the Constitution to regulate every drop of water and every inch of land from coast to coast. The Biden Administration stated publicly their desire to seize control of thirty percent of all land in the United States by the year 2030. These efforts are un-American and unconstitutional. The American people do not want an overburdensome federal government breathing down their neck when they seek to use their private property.

Justice Alita and the Supreme Court made this abundantly clear in the recent *Sackett* opinion. The authority to regulate the environment is not a blank check to make up rules that take away liberty. This BLM rule, like the unconstitutional WOTUS rule, would take power away from the states and the people and give it to the federal government.

It's not to say the federal government doesn't have a role in federal land management decisions, of course it does, but it should not restrict people's abilities to have access or utilize this natural resource while ignoring economic impact—or even conducting basic scientific research.

Conclusion

In closing, I support H.R. 3397 because the rule BLM has proposed would be bad for the country. Moreover, the proposed rule opens the door for a mechanism to circumvent the NEPA process and not require an environmental impact study.

Let me be clear, this is a land grab by a greedy government that wants more power and control and will even ignore its own laws to do so. Lastly, this rule would be devastating for our people in South Dakota and our economy. And it would make it impossible to responsibly conserve or utilize our land.

The CHAIRMAN. Thank you, Governor. And we will have plenty of time for questions. We will get to delve into the details of your testimony even more.

I now recognize the gentlelady from Wyoming, Ms. Hageman, to introduce our second witness.

You are recognized.

Ms. HAGEMAN. Yes, and it is so wonderful to see both of you today.

There are a lot of differences between Washington, DC and Wyoming, but one of them is traffic.

[Laughter.]

Ms. HAGEMAN. Maybe you have noticed that. I apologize for being a few minutes late. It is so wonderful to see both of you here today.

Mr. Chairman, it is my honor to introduce from the great state of Wyoming, Governor Mark Gordon. Governor Gordon grew up on a family ranch in Wyoming, and understands firsthand the difficulties of dealing with over-burdensome Federal regulations in a landlocked state. He is an experienced public servant, having served as Wyoming State Treasurer from October 2012 until January 2019, when he was sworn in as our governor.

As our governor, he is here today to represent the interests of many frustrated farmers, ranchers, recreationists, and others who have been left out of the conversation on this so-called landscape health rule proposed by the BLM.

I would add that this rule isn't about either conservation or landscape health, either one. It is about control. And I look forward to Governor Gordon's testimony in that regard.

I ask those of you who consider this proposed rule to be a great conservation effort with minimal impacts to listen to his testimony. Governor Gordon knows Wyoming, and he understands the significance this proposed rule will have on Wyomingites and many others if we don't do anything about it.

Thank you for being here today, Governor Gordon, and I yield back.

STATEMENT OF THE HON. MARK GORDON, GOVERNOR, WYOMING

Governor GORDON. Mr. Chairman, members of the Committee, Representative Hageman, it is wonderful to be here today. On behalf of the people of Wyoming, as a rancher, an outdoorsman, and a conservationist, let me thank you for this opportunity to share my support for H.R. 3397, Representative Curtis' bill, and my opposition to the Bureau of Land Management's proposed Conservation and Land Use Rule.

More than 48 percent of Wyoming is Federal surface estate. The BLM's footprint in Wyoming is substantial, managing approximately 18.4 million acres of public land and 42.9 million acres of Federal mineral estate. This equates to over 29 percent of Wyoming's surface land, covering more than West Virginia.

Wyoming's top three economic drivers: energy, tourism, and agriculture, all contribute meaningfully to conservation, in concert with the multiple-use principle of Federal law and BLM's existing rules. Wyoming routinely ranks first in the nation for gas production and second for oil production from onshore Federal minerals. In 2022, 7.5 million tourists visited the Equality State, spending $4.5 billion. Public land recreation contributes substantially to Wyoming's economy.

Agriculture is our third-largest economic sector. Grazing on public lands is done under tight regulation and with dedication to stewardship of the land while supporting a domestic food supply. Mr. Chairman, members of the Committee, Wyoming ranchers are custodians of the public lands, and work well with agencies on grazing issues. I am proud that my ranch was recognized for excellence in range management by the Society for Range Management. It lies in core sage-grouse habitat.

In 2014, my wife and I stood with eight others when we signed the first candidate conservation agreements with assurances with then-Secretary of the Interior Sally Jewel. And I remember what she said that day: "We have going on here in Wyoming the most effective example of state and private landowners working in cooperation with multiple Federal agencies to protect these ecosystems in perpetuity."

Mr. Chairman, my point is not what we have done for conservation, but the fact that Wyoming ranchers, industries, and sportsmen are conservation-minded. And that is true throughout the West. In the words of Teddy Roosevelt, "Conservation means development as much as it does protection." Wyoming people have respected the importance of conservation from the early days of statehood, when we established the nation's first game and fish agency. Respecting private property rights, Wyoming was one of the first states to recognize and implement wildlife migration corridors. We have successfully managed the nation's largest population of greater sage-grouse, and that is because we have the best habitat.

Simply put, if it ain't broke, don't fix it. The best solution is to rescind this rule.

In fact, I question the need to create a separate conservation category. The Federal Land Policy and Management Act of 1976 requires the full consideration of multiple uses of Federal lands as

directed by Congress, not the whimsical inspiration of DC bureaucrats. Though the BLM has claimed that there are "pressures to review FLPMA" and "fill in the gaps," that is not the Bureau's role. It is up to Congress to write the laws, not the executive branch to take them for a joy ride.

This proposal wallpapers over a Federal management grab, which seeks to elevate conservation as a single use on BLM lands. It does so while simultaneously abrogating the BLM's responsibility to review decades of management practices across its 245 million acres, and without material stakeholder input. It pits productive uses of public land against conservation, a gross mischaracterization of the concept.

Wyoming stands as an example of how grazing, energy development, and recreation are not mutually exclusive of conservation. Wildlife management, moreover, is the responsibility, and squarely within the authority and purview of the states, not the Federal Government. state agencies excel in the management of fish and wildlife species, yet this rule seeks to circumvent state authority, and doing so will throw a monkey wrench into collaborative conservation work that our citizens and state agencies do already with BLM offices.

Let me say my administration values the relationship we have with Wyoming BLM staff, which is why it seems so boneheaded to spurn valuable, on-the-ground stakeholder knowledge and the ability to work with local partners to craft a useful way forward. One can only assume, from the broad, sweeping statements of this rule that it was pushed from the top down to serve an agenda, rather than improve management of the public lands.

Finally, Mr. Chairman, the language of this rule inappropriately picks out and expands upon the BLM Organic Act in ways that are arguably unconstitutional. This is not a trivial matter. This rule has the potential to undermine how public lands are managed and threatens the essential economies of my state and our country.

Therefore, I urge the BLM to reconsider the need for the Conservation and Landscape Health Proposed Rule, and reiterate my support for Representative Curtis' bill, H.R. 3397.

Mr. Chairman, members of the Committee, thank you for this time.

[The prepared statement of Governor Gordon follows:]

PREPARED STATEMENT OF MARK GORDON, GOVERNOR OF WYOMING

Chairman Westerman, Ranking Member Grijalva, and members of the Committee, good morning. On behalf of the people of Wyoming, and as a rancher, outdoorsman and conservationist, let me thank you for the opportunity to discuss H.R. 3397 and the BLM's proposed Conservation and Land Use rule with you today.

Wyoming is no stranger to federal lands. More than 48 percent of Wyoming is federal surface estate, including the first national park, the first national monument, and the first national forest. The Bureau of Land Management's footprint in Wyoming is substantial. The BLM manages approximately 18.4 million acres of public lands and 42.9 million acres of federal mineral estate. This equates to over 29 percent of Wyoming's surface land, covering an area larger than the state of West Virginia. It is important to note Wyoming's top three economic drivers, energy, tourism, and agriculture, have developed successful industries and contributed meaningfully to conservation across the state under the multiple-use principle of the federal law and BLM's existing rules.

Wyoming routinely ranks first in the nation for gas production from onshore federal minerals and second for oil production from onshore federal minerals.

Approximately 65 percent of Wyoming's oil and 79 percent of gas production are from federal minerals.

In 2022, seven and a half million tourists visited the Equality State, spending $4.5 billion. Recreation, largely on public lands, contributed $1.5 billion to the state's economy. More than 5 percent of our employment stems from the recreation industry.

For food production, in Fiscal Year 2021, the BLM authorized over 1.4 million Animal Unit Months or AUMs on public lands, more than any other state. Agriculture is the third largest sector of our economy, and grazing is done under tight regulation and with dedication to personal responsibility to ensure land stewardship while supporting a domestic food supply.

Mr. Chairman and members of the Committee, as a rancher, I was proud when my ranch received the Society for Range Management Wyoming Section's Excellence in Range Management award. My ranch management team followed up with another on the Ucross Ranch the following year. Because of our work on that ranch, Apache Corporation, an oil and gas company associated with Ucross, demonstrated the ability to sequester 2,640 metric tons of carbon per year from grazing management alone.

My ranch lies in core sage-grouse habitat. In 2014, my wife and I stood alongside eight other ranchers who signed Candidate Conservation Agreements with Assurances (CCAAs) with then Secretary of the Interior Jewell. I remember her comments that day, "We have going on here in Wyoming the most effective example of the state and private landowners working in cooperation with multiple federal agencies to protect these ecosystems in perpetuity. I will say that Wyoming was way ahead of the curve."

Mr. Chairman and committee members, my point here is not specifically what we have done for conservation but the fact that Wyoming ranchers, industries, and sportsmen are conservation-minded. In the words of Teddy Roosevelt, "Conservation means development as much as it does protection. I recognize the right and duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful use, the generations that come after us."

Cooperation has enabled Wyoming to be one of the first states to recognize and manage wildlife migration corridors essential to healthy mule deer and antelope. We also successfully manage the nation's largest population of the Greater Sage-grouse. We have known and respected the importance of conservation from the early days of our statehood when we established the nation's first game and fish agency. And without hesitation, Mr. Chairman and committee members, I can say the investment from energy development in natural resource management would be a fraction of what we have now to protect and enhance habitat. Wyoming ranchers are stewards of public lands and have worked well with agencies on grazing issues. Wyoming is a haven for outdoor recreation. All of these practices are complementary and envisioned in a multiple-use sustained yield approach to managing public lands. So when it comes to this proposed rule, simply put: It isn't broken, so don't fix it.

This proposed rule was rushed forward without material input from Wyoming or other states. It did not have the benefit of the views of impacted public land users. The proposed rule mischaracterizes conservation, seeks to preempt wildlife management from the States, and oversteps the Bureau's statutory authority.

The best solution is to rescind the rule.

I fully support Representative Curtis's H.R. 3397, co-sponsored by Wyoming's Congresswoman Harriet Hageman. I also note that Wyoming Senator John Barrasso brought a companion bill in the U.S. Senate.

Barring the rescission of the proposed rule, I call for the DOI and BLM to extend the comment period for a thorough review and for additional public meetings in Wyoming and other affected states—enough of management by windshield, model, or fantasy. If one wants true conservation, it must come from working with people on the ground.

This proposed rule caught state governments, agriculture, industry, recreationists, and even local BLM offices entirely by surprise—seemingly disdaining any input from those with the most knowledge and expertise to craft a useful policy.

Let me be clear; my administration values the relationships we have with the Wyoming State BLM Office and the District and Field Office staff throughout the state, which is why it seems so boneheaded not to include their on-the-ground knowledge and ability to work with local partners in crafting this proposed rule. One is left to assume from the broad, sweeping statements in the rule that it was pushed from the top down to serve an agenda rather than improve the management of public lands. Hosting public "information sessions" in hand-picked locations with

no opportunity to comment is not a responsible way to seek input and will be counter-productive.

I have to question the need and the occasion to create a separate conservation category, essentially overriding other statutory multiple uses. The Federal Land Policy and Management Act of 1976 (FLPMA) requires the full consideration and multiple-use of federal lands, as directed by Congress, not the interpretation of D.C. bureaucrats. This rule's potential to upend decades of management practices across the BLM's 245 million acres requires extensive review and contributions from those standing to be impacted. Abrogating the responsibility the BLM bears to analyze the full range of impacts this rule will have on communities, businesses, and the environment is the height of arrogance. Meetings with the opportunity for engagement and comments must be held in our state. Analysis of the implications is critical so the public may have a say on their lands.

This proposal is wallpaper to cover a federal management grab. It would likely elevate a mischaracterization of conservation as a single-use on BLM lands. Currently, the proposed rule's definition of conservation is a major consideration in every land-use decision on BLM lands. This rule pits the productive use of public lands as diametrically opposed to conservation, a gross misstatement. I have already shown that Wyoming exemplifies how grazing, energy development, and recreation are not mutually exclusive to conservation.

The BLM, in its June 5th virtual public meeting, justified this proposed rule by claiming there are "pressures" to review FLMPA authorities to fill in gaps in implementation. That is the role of Congress.

If the BLM has not managed under FLMPA "to sustain the health, diversity, and productivity of the public lands" without this rule since 1976, what has the agency been doing for the last 47 years? Why now this heavy-handed rewrite of Congressional authority?

Ranchers, companies, and organizations have achieved remarkable conservation benchmarks throughout the years under this authority, and it does not need to be tweaked. Responsible local management makes our public lands productive and an enduring attraction to people worldwide. The impetus for this rule exists because of the good work of these entities. And yet, this proposed rule gives the BLM a checklist when evaluating "intact landscapes" outside their normal planning process. This can be read as a designation of entire segments of land to exclude multiple uses in the name of keeping a landscape "intact." Succession, erosion, and competition are not static processes—something that Aldo Leopold noted over and over again.

Let me also state clearly; wildlife management is the responsibility and within the authority and purview of the states—not the federal government. State agencies lead in the conservation and stewardship of all fish and wildlife species except for a few cases where specific species fall under federal jurisdiction. And sadly, the federal government's ability to recover species is not all that compelling.

This rule seeks to circumvent State authority to define, analyze, and manage wildlife within our borders. Instead of furthering the collaborative work our State wildlife agencies currently do with local BLM offices daily, this rule would drive a wedge while most likely undermining local conservation efforts. As such, progress towards achieving our shared goal of thriving populations of the public's wildlife, healthier ecology, thriving local communities, and a better understanding of management would be stymied. Communities would be crippled, management compromised, riparian systems impacted, and invasives left unchecked. This rule is wrongheaded.

Using tools like Areas of Critical Environmental Concern, or ACECs, outside of their intended capacities is also misguided. The well-established framework that includes public input through Resource Management Plans should not be tampered with, yet, this rule opens the door for interim evaluations and implementations, excluding any input from the states, tribes, local governments, land users, and the affected public. The authority to make management designations of BLM land of this magnitude must be made by Congress and not left to unelected officials. Land management is best when it is stable and is most stable when management agencies respect those closest to the managed area. Wild, whimsical policy swings like this rule have far more potential to do lasting harm than working with people who know what they are managing.

By now, it is probably pretty clear that I believe this proposed rule is an inappropriate expansion of the BLM's Congressional mandate and statutory authority. FLPMA charges the BLM with managing for "multiple use and sustained yield unless otherwise specified by law." Congress has not granted the BLM any authority to define conservation nor included it as an additional mandate with the ability to exclude existing uses. How can I be so certain? Because I was here in 1976 and

remember conversations with former Assistant Secretary of the Interior Jack Horton about FLPMA and the intent of Congress at that time. I remember conversations with former Senator Cliff Hansen, for whom my sister interned, and his views about FLPMA. It is up to the legislative branch to write the laws, not the executive branch to take them out joyriding. As a Governor, I have learned that much.

The language in this proposed rule selectively picks out and expands on the BLM's Organic Act in a manner that is both wrong and questionably constitutional. This rule encroaches on State's rights and priorities and may violate federal law. The best thing for a bad idea like this rule is to rescind it. Failing that, for the sake of the American public, we need additional time to thoroughly analyze how the BLM is going beyond its statutory scope of authority. What this rule proposes is not trivial. It appears to have the potential to completely undermine how public lands are managed in our country and upend major pillars of my state's—indeed, the country's economy, our people's standard of living, and the viability of far too many local communities. I urge the BLM to reconsider the need for the Conservation and Landscape Health proposed rule and reiterate my support for HR. 3397.

The CHAIRMAN. Thank you, Governor Gordon. And I thank both of the governors for your testimony.

I was just thinking how blessed we are to have not only two strong governors from Western states here, but two ranchers and two true conservationists. I know a conservationist when I see one, and I see two of them that know what they are talking about at the witness table today.

With that, we are going to move to questions. Members will have 5 minutes. I now recognize Mr. Fulcher for questions.

Mr. FULCHER. Thank you. And to our panel, thank you for being here today. I know you have other things to do, but this is real important, and we need you. So, thank you for that.

Governor Gordon, does Wyoming participate with SRS, Secure Rural Schools funding, Payment in Lieu of Taxes?

And can you talk about that, and how that fits into your budget when you put together the budget of each year and the source of that funding? I want to just talk about money, Federal money, for just a minute.

Governor GORDON. Mr. Chairman, Representative, thank you very much for that question. Yes, we do. And mineral development and the surface activities there contribute mightily to our schools.

Wyoming has a constitution that requires our state to fund a lot of our school activities. There is also local property tax, and we have also funded it with a severance tax off minerals. When we forego that, as we did in 2020, when COVID hit and we shut down production of so much, that was roughly a third of the state's total budget, an incredible hit to local schools, to our school kids, and an incredible hit to our county's ability to meet their needs.

Mr. FULCHER. So, Governor, given that, if you had the option as a governor of your state and the ultimate director of that budget, what would you prefer in that dynamic to control the destiny of the land, to be able to manage that land that is under Federal control and these restrictions, or to rely on the ongoing PILT and SRS funding?

Governor GORDON. Mr. Chairman, Representative, I, as Treasurer, had the opportunity to experience what happened when Congress instituted sequestration. And as a result, I have recommended that the states collect the Federal mineral royalties and distribute the 50 percent to the Federal Government, rather than

the other way around. That money leaving the state and not being able to come back under whatever particular circumstance is dramatic.

So, to answer your question directly, I would rather control our future than have it controlled by——

Mr. FULCHER. Thank you for that.

And Mr. Chairman, I would just like to state for the record I wish there were more of my colleagues on the other side of the aisle here, because most of them come from states which are identified as donor states, not donee states. But it is just what the governor pointed out: the amount of Federal money that their taxpayers pay into the Federal Government, a lot of that gets exported to the West in the form of PILT, Payment in Lieu of Taxes, SRS.

That is a lose-lose deal, because those in those donor states are sending that money, in large cases, to the West, where there is a lot of this public land. And those of us who are supposedly receiving it are getting the short end of the stick because (A) we can't depend on it, it is not predictable; and (B) as the governor points out, you lose the ability to control your own destiny.

Governor Noem, I am less familiar with South Dakota. I am right next door.

Governor NOEM. That is unfortunate.

Mr. FULCHER. I am right next door to Governor Gordon.

Governor NOEM. Come visit us.

Mr. FULCHER. However, I know Mr. Johnson really well, and he gives me all these rave reviews, so I know it is a wonderful place.

Governor NOEM. Good.

Mr. FULCHER. In terms of Federal land, do you have a significant issue with wildfire in the summer season?

Governor NOEM. We do. But I would say the Black Hills National Forest is known as one of the best-managed forests in our country. It has one of the last successful operating timber industries, and that is because we utilized some mechanisms that were implemented in the last farm bill that I had the chance to work on when I was here in Congress, using Good Neighbor Authority to go out and to do some unique pilot projects to allow us to actually manage our forest in a way that many other people's hands were tied in other areas of our country.

So, I would say that now we are deeply challenged by what we see coming out of the Forest Service. They are cutting our cubic feet that we can get in timber contracts. In fact, the last GTR made false assumptions, and cut our percentage down significantly—I would say a third of what it should be. And that brings incredible risk to our state.

I know Governor Gordon and I have worked extensively on trying to get the Forest Service to revise their analysis and use real scientific data to come up with what we could actually go out there and log in order to utilize the timber, but this is the story of it all. We have bureaucrats in DC making decisions not on facts on the ground. And what it is doing in the Black Hills, is it is going to threaten life.

Mr. FULCHER. So, your point is that the management of the Black Hills aids the fight against wildfire.

Governor NOEM. Yes, it does. It aids in the fight against wildfire, and that is because we have been able to go around the Federal Government.

We have been able to get through some of the rules like this one that is being proposed, cut through that, and still be able to do more than other forests have been able to. But now we see that going away under the Biden administration.

Mr. FULCHER. Yes. Thank you, Governor.

Governor NOEM. But listen, these forests are heavily populated with people and communities. When you have a forest fire come through, you are getting more erosion and waste, dangerous chemicals being released into the atmosphere. If a person was environmentally-minded and conservation-minded, they would allow us to manage these forests.

Mr. FULCHER. Thank you for that, Governor. I am out of time, but that is a very good, thoughtful answer.

Governor Gordon, thank you, as well.

Governor GORDON. Thank you.

Mr. FULCHER. Mr. Chairman, I yield back.

The CHAIRMAN. The gentleman from Idaho's time has expired, and I recognize the gentleman from Arizona, Mr. Gallego, for 5 minutes.

Mr. GALLEGO. Thank you, Chairman Westerman and Ranking Member Grijalva.

This hearing is another step in the Majority's effort to undermine the multiple-use mandate of the Bureau of Land Management, and prohibit similar actions in the future. The proposed rule does not change BLM's existing land management planning process, it just adds to it. But this bill would dangerously limit future rulemaking by the agency.

As a Representative of Arizona, which has 12.1 million surface acres and 17.5 million subsurface acres of BLM land, I think it is important that we look out for the future and not cut ourselves off at the knees by limiting future rulemaking. And I think it is important that these decisions be made based on the input of people who would actually be impacted by this rule. Unfortunately, today's hearing falls short on both accounts.

Also, since more than half of this Committee's members come from other states with more BLM land than South Dakota, we can rely on the experience and expertise of our own governors.

I am also surprised that we have not called other witnesses.

If we can't agree on the fundamental existence of climate change, a productive conversation around the new BLM rule gets a whole lot harder. I would like to emphasize the importance of inviting witnesses that follow the science and have expertise in the issues we are discussing.

I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the gentleman from California, Mr. LaMalfa, for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman. I appreciate it. I appreciate both of you governors for traveling here today and bringing your firsthand expertise on dealing with vast spaces of Federal land in your states.

Governor Noem, the proposal says conservation leases are not intended to provide a mechanism for precluding other uses, such as grazing, mining, or recreation. Conservation leases should not disturb existing authorizations, valid existing rights, or state or tribal land use management. However, if the Administration determines other uses such as grazing or energy production are incompatible with the lease, those uses would not be allowed, and could be prohibited indefinitely from these lands, even after the expiration of a conservation lease, which would effectively lock up these lands indefinitely for multiple use.

So, do we pretty much have a de facto national monument or wilderness area by a designation like this? Do you believe this is their ultimate goal?

Governor NOEM. It gives them the authority to. This proposed rule absolutely allows them to look at large landscapes and to shut the public out from accessing it, from utilizing it, from no longer being able to hunt and fish, engage in outdoor recreation, from mining, permitting, grazing, all activities. It creates a new mechanism, which I will remind you, Congress has no authority to do this. You are overstepping your authority—or that BLM has no authority to do. Congress is the only one who has the authority to put forward a rule like this to establish something like a conservation lease which can collect fees to go out and prioritize conservation over all other activities. BLM has no authority to be able to do what they are trying to do in this rule here today.

There are no consequences for violation of these conservation leases, as well, no punishment if the rules of the game are not followed. What is interesting to me is there are no guidelines on who can purchase a conservation lease and who can't. What is to prevent China from coming in and purchasing up conservation leases on our Federal lands, and therefore having some control and authority over them?

It also allows BLM to go around the NEPA process, which listen, I am just a big believer that if Americans have to follow the NEPA process, then the Federal Government should have to follow the NEPA process. If we are going to go through that, everybody should be treated equally under the law.

It is burdensome. It will shut down economic activity in these regions of the country, which right now, facing the inflation and the stagnation that we are seeing, keeping these productive areas contributing to our American energy independence and our food supply is critically important.

So, it is ill advised. And what is interesting to me is watching how they allow bureaucrats in DC to make these decisions under this proposed rule, and taking that authority away from the local BLM offices. Because I think Governor Gordon would tell you and I will tell you, as well, we have good relationships with our local BLM offices because those people actually do live there, and they do interact with people that are out there working on stewardship practices on the land. This rule changes that. It takes those decisions away from those local authorities and moves it to bureaucrats within the agency at the higher level that many times may not have stepped foot in our state.

Mr. LAMALFA. Thank you. It is apparent to me when I do flyover country, coming from my home in California to the——

Governor NOEM. Don't do that. You need to stop.

[Laughter.]

Mr. LAMALFA. I don't consider it that, I consider it God's country, but especially at night, once you get west of the Mississippi there are not a whole lot of lights down there. But I do notice there are a whole lot of problems with the lands that are already managed by BLM or U.S. Forest Service of not having a whole heck of a lot going on in their management.

So, I wonder, both governors, how do you feel it currently is going with the record of land management that our Forest Service is doing on helping prevent fire?

You mentioned the Black Hills there. I look at million-acre fires in my district. What is the track record of them, and should we be giving them more responsibility over more lands such as this pie in the sky 30x30 deal?

Governor Gordon, let me give you a shot.

Governor GORDON. Well, thank you very much. And I will give you an experience that we had recently in 2020, something we called the Mullen Fire.

It was an area that had been logged before, and it is an area that had some burn scars there before, as well. It is also an area where there is a wilderness called Savage Run. This lies just a little bit north of the Colorado border. In 2020, we had a serious fire, very dry conditions. And because there was so much dead beetle-kill timber, that fire was almost impossible to put out. It burned for quite a long time.

And here is the thing. Where it entered into either timber sales that had been harvested, or places that had burn scars, the fire was able to be kept at bay. In places where it had old-growth forest, in places where it was a wilderness, that fire escaped all bounds and kept moving. This is very similar to what you had in California.

Mr. LAMALFA. Yes, sir, like the Tahoe Pilot Plan that Chairman and I and others have visited. When the fire hits that, you can actually knock the fire down. It actually works. It will not work very well under this rule.

I yield back, Mr. Chairman. Thank you.

The CHAIRMAN. The gentleman yields back. The Chair recognizes Ranking Member Grijalva for 5 minutes.

Mr. GRIJALVA. Thank you very much, Mr. Chairman. And Governors, thank you for taking the time to visit with us today.

Governor Noem, welcome back.

Governor NOEM. Yes, thank you.

Mr. GRIJALVA. It has been a few years since you were a member of this Committee. And as you can see, not much has changed.

[Laughter.]

Mr. GRIJALVA. We are still at odds over how best to prioritize long-term conservation of our public lands, and ever struggling to find a common ground on what should be, I would hope, a bipartisan initiative.

Both your states, like states all over the country, like my state, are reeling from the effects of climate change, long-term drought,

catastrophic wildfire, and year after year, record-high temperatures, just to name a few.

Under Secretary Haaland, BLM has taken the important step to come up with a proposal to balance the uses of public lands, enhance options for durable conservation, and promote resilient and intact landscapes. These are outcomes that are supported by broad majorities of Americans. And as I highlighted in my opening remarks, they are outcomes supported by Indigenous communities across this country.

The proposal is an opportunity to bring public land management into the 21st century. That is why I believe public land states like Colorado, California, and New Mexico are advocating for the rule. In fact, just a couple of weeks ago, New Mexico's land commissioner testified about how the rule is a significant improvement and update to the management framework for public lands.

This is a sentiment echoed in a letter sent to the Committee by the California Natural Resources Agency, which, Mr. Chairman, I would like to ask unanimous consent to enter into the record.

The CHAIRMAN. Without objection.

[The information follows:]

California Natural Resources Agency
Sacramento, CA

June 13, 2023

Hon. Raúl M. Grijalva
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Greetings Committee Members:

Thank you for the opportunity to provide testimony in advance of the upcoming hearing on H.R. 3397. We respectfully oppose H.R. 3397 and support the adoption of the Bureau of Land Management's Public Lands Rule.

The Bureau of Land Management (BLM) stewards many of California's most spectacular places, in total overseeing about 15 percent of California's land mass. These landscapes including rangelands, forests, mountains, and deserts across our state. BLM lands provide important opportunities for Californians to recreate outdoors, including by hunting and fishing. These lands also provide important habitat and connectivity corridors for wildlife, allow for natural carbon sequestration, and protect clean water and air for local communities.

The Proposed Conservation and Landscape Health Rule is a thoughtful improvement to federal land stewardship. Simply put, it will better enable BLM to fulfill its mission to sustain the health, diversity, and productivity of our shared public lands for the use and enjoyment of present and future generations.

BLM's mission of Multiple Use and Sustained Yield will be strengthened with a focus on healthy and resilient ecosystems. California demonstrates that economic prosperity, clean energy, and environmental protections for air, water, and biodiversity can go hand in hand. California's economy has grown into the fourth largest economy in the world while maintaining world-leading environmental standards that keep our ecosystems and communities healthy.

We applaud the Bureau of Land Management for its proposed approach to place environmental conservation and restoration on equal footing with other uses on BLM-managed lands. This important shift will help conserve California's iconic landscapes, which sustain tourism, provide our residents public access to nature, offer refuge for wide range of wildlife, and safeguard our water supplies.

Importantly, finalizing and strengthening the proposed updates to the Federal Land Policy and Management Act (FLPMA) will help to advance the solar energy

and other renewable energy projects we need to achieve our clean energy goals. In California, we know that ambitious clean energy development is aided by well-planned and located environmental conservation. As BLM's own Desert Renewable Conservation Plan in California has demonstrated, land use planning that considers ecosystem needs alongside energy development can actually expedite permit issuance, speed project delivery and reduce conflict and delay for important new energy projects.

We also strongly support BLM's prioritization of partnership with Native American Tribes in this updated rule. Native people have stewarded these lands since time immemorial and must have a central role in future land stewardship.

Designation of Areas of Critical Environmental Concern (ACEC) have been successful conservation tools in California and updates to how these areas are designated and managed are essential to effectively address climate change and biodiversity loss. Encouraging the designation and durable protection of ACECs where needed and appropriate to protect imperiled plants and animals represents an important advancement to advance the BLM's conservation mission.

Several existing ACECs in California have played an important role in our environmental management, including:

- Hopper Mountain ACEC (Ventura County) was designated to limit certain uses during California Condor nesting season and has helped the successful California Condor Recovery Program, which has brought the species back from near extinction.
- Kaweah ACEC (Tulare County) limits certain activities to protect the only grove of Giant Sequoia trees managed by BLM at Case Mountain, while providing public access including hiking, mountain biking, and equestrian trails. Giant Sequoias are not only a culturally iconic species in California, but also are important for sequestering carbon and helping combat climate change.
- Pine Hill Preserve ACEC (El Dorado County) was designated to protect eight rare plant species, four of which are endemic, or found nowhere else on earth due to the unique soil type in this area. This area also provides access for hiking and educational resources and opportunities on California's rare plants.

We look forward to submitting more detailed written comments on BLM's proposed rule update in coming weeks. We are thankful for all the Natural Resources Committee, the Bureau of Land Management and other federal partners do to ensure the effective stewardship of federal lands in California.

Thank you for your consideration of this testimony.

Sincerely,

WADE CROWFOOT,
Secretary

Mr. GRIJALVA. These two states have roughly 10 million more acres of BLM land than your two states combined. So, it must be more of a matter of perspective, rather than scale or impact. It is not as if California and New Mexico don't have critiques. They are both engaged with the Administration to ensure that their concerns regarding the proposal are incorporated into the final product. There is an open comment period. There is still an open comment period, so plenty of time to register official feedback and work with the Administration to strengthen the rule.

The rule itself is not long. In fact, it may actually be shorter than your written testimony or the letter the Chair referenced in his opening remarks. My comments today are to work with the Biden administration to improve this long-overdue update.

This conflict between—it is not a conflict, it is a reality. And our public lands should play and need to play a significant role in climate mitigation and to building up resiliency and sustainability

for our nation in the long term and for the future. And this rule is future-looking, looking beyond our nose and beyond the immediacy of the moment, and a tool that I believe is important as we tackle what I think is the critical issue before us, this Committee and Congress, and for the nation, which is climate change.

Thank you, Mr. Westerman, and I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the gentleman from Minnesota, Mr. Stauber, for 5 minutes.

Mr. STAUBER. Thank you very much, Mr. Chair.

Governors, it is great to see you. Welcome to the fourth administrative state, where unelected bureaucrats make rules that affect us all, oftentimes in a negative way.

To me, this is, as Mr. Curtis spoke about, I think this is a way for our Federal Government to take chunks of land to stop development. In the Iron Range of Minnesota, we have the biggest copper nickel mine in the world. It is called the Duluth Complex. Trillions of dollars of minerals there. This Administration wouldn't even allow an EIS to go forward. They removed 225,000 acres from development. This is what they are trying to do.

And we can talk at these hearings; this Administration is going to do what they want to do. I never thought, as a Member of Congress, I would have to vote to defend using gas stoves in our homes across this country. But we did. And just last week, the Army Corps of Engineers removed a water permit that they gave just 4 years ago. The EPA remanded this water permit, first time ever in the history of this country.

We feel the pain. And as Mr. Curtis talks about the Western states, I want to add the Midwestern states, too. This is happening in Minnesota and other states. They would rather push this agenda than allow the American people to live free. As Ronald Reagan says, "As government expands, our liberties contract." And as governors, you are seeing that in your respective states. I believe this is another rule and a tool for this Administration to assert control and take away our lands from the people of this nation.

Governor Gordon, in your testimony you shared your frustration with the lack of stakeholder input that the Biden administration considered when crafting this proposed rule. If the BLM actually listened to your constituents in Wyoming, what do you think they would have heard from them on this dangerous precedent that these so-called conservation leases would have on our Federal leasing?

Would they fear the Federal Government pairing future productive leases with conservation leases or utilizing conservation leases to strategically block off other areas from permitted activities? Can you comment on that?

Governor GORDON. Thank you, Mr. Chairman, Representative, a very good question. It is interesting that no one thought to have a field hearing anywhere near my state. And as a result, that testimony is lost on the BLM.

I think one of the biggest challenges, and you have mentioned it, is the lack of consistency and the desire by the Federal Government to kind of control the future of this.

Wyoming has a variety of BLM lands. My ranch, for example, has BLM land holdings in it. If those are put into conservation

leases, it could quite conceivably affect the way we operate. That could, for many families in Wyoming——

Mr. STAUBER. I would submit to you, Governor, that it will if this goes through.

Governor GORDON. I agree with you. And I would also say, Representative, that you could break ranches. You could break families that have been on the ground for generations.

And here is the deal. If they weren't focused on sustainability, if they weren't focused on conservation, they wouldn't be in business now. So, it would be an irony to say, out of conservation, we are going to break the backs of ranchers who have shown conservation ethic. Thank you.

Mr. STAUBER. Thank you very much, Governor Noem. It is great to see you once again. And real quick, just like in my district in northern Minnesota, public lands play an important role in your everyday lives of those living in South Dakota. As you mentioned in your testimony, entire facets of your economy are built, both figuratively and literally, on our precious public lands. If this rule is finalized, and the BLM gains this tool to weaponize Federal lands, what effect is it going to have on your state's economy?

Governor NOEM. Thank you, Congressman, for the question. It will be dramatic.

What is interesting to me is that, if you read the rule and the analysis the BLM has put out on the rule, it is that they have done no economic evaluation. In fact, they have openly declared that this is not a major rule, does not have more of an impact than $100 million on our economy. Yet, if you keep reading through the rule, they have done no economic analysis, and have no idea what the consequences will be if this is put into place.

What is also interesting is that there is a real lack of environmental data, as well. They don't know how this is going to help, and they make no attempt to even define that our stewardship of the land will actually get better.

They openly say that there will be public input, yet do not conduct and follow through on that. Our people have not been heard from, other than the ability to submit comments, which I would say the Ranking Member referred to people such as land managers and elected officials in some states having an important voice because they are in bigger states. In my world, everybody matters. It doesn't matter if you are big, or small, or important, or not important, you should listen to them, especially if they are making a living off the land.

But you have submitted for the record comments from many, many associations of people that engage in recreation, grazing, the Cattlemen's Association, many, many more that have submitted comments against this rule. So, I would encourage you to, even though they are not going to conduct public hearings because they don't want to hear what they are going to have to hear, I would say look at those comments that are being submitted to the formal record.

And again, in this rule there are some mechanisms to allow them to stop putting things in the Federal Record, and to stop taking public input at all.

Mr. STAUBER. Right, right.

Governor NOEM. So, that is another overstep, that the BLM made promises years ago that they are trying to do away with in this proposal in front of you today.

Mr. STAUBER. Thank you very much, and my time is up.

I yield back, Mr. Chair.

The CHAIRMAN. The gentleman yields back. The Chair recognizes the gentlelady from New Mexico, Ms. Stansbury, for 5 minutes.

Ms. STANSBURY. Thank you, Mr. Chairman, and welcome to our governors. Thank you for joining us today.

I just want to start, with respect to my dear friends across the aisle, to counter the narrative that was proposed at the beginning of this hearing that this is just a bunch of bureaucrats from the East supporting this action by the Department of the Interior, and to remind my colleagues that the Secretary of the Interior is our nation's very first Indigenous cabinet Secretary, a native New Mexican whose family has lived in and been from New Mexico for countless generations.

And I myself am a native New Mexican. I was born in rural New Mexico, in Farmington, New Mexico, in San Juan County, where my dad worked in the oil fields, and where my mom worked at the San Juan Power Plant. I grew up working the land with my hands, working for my family's irrigation company, and I support this rule.

And the reason why I support this rule is because, unlike what we are hearing here in this hearing this morning, the rule actually will help us to manage our lands in a more balanced way. It is not going to cut off development. It is not going to cut off our ranchers from grazing. It is not going to cut off oil and gas. It is not going to cut off mining. It is going to make sure that we are adequately balancing the needs of conservation, protecting our cultural landscapes, and ensuring that we are also balancing that with our resource management.

And I say that also as somebody from a state in the West that is an oil and gas state, that is a rural state, that is a state where our communities depend on agriculture and ranching, and where our state revenue predominantly comes from oil and gas on those lands, and where our state has actually implemented a very similar rule. And guess what? Not only did it not cut into the revenues of the state, we have seen the largest, most astronomical growth in oil and gas revenues over the last several years in New Mexico ever in the history of our state. In fact, this year we are on par to see the largest growth in oil and gas revenues after implementing a similar rule.

So, I find it very upsetting, Mr. Chairman, when I see the resources of this body of Congress, the People's House, being used to put forward narratives and misinformation that, in my mind, is intended to scare the American people because it is just simply not true. And much of what I have heard here today is just not true. This is really about balancing the needs of our public lands.

Now, if we want to talk about Eastern bureaucrats who have been misusing public lands, I do have to note with respect that the Black Hills were brought up this morning. It is a space that, similar to Chaco Canyon, is sacred to Indigenous people, that is sacred to the Lakota Sioux people, along with places like Mount Rushmore and the sacred mountain that it was carved into, and that the former President Donald Trump used for a campaign event which one of our witnesses helped to host on the sacred Indigenous lands, which was a misuse, and possibly illegal misuse, of our public lands.

And as we all know, the former President this week was indicted on 37 counts of illegal behavior, including under the Espionage Act. So, it is a fine point to make here in this Committee to try to claim that a bunch of Eastern bureaucrats are telling Westerners about misuse of our public lands when the front runner in the Republican Party is indicted on 37 counts of illegal activity this week and was misusing our public lands in the West. So, I take a lot of homage with the conversation here this morning.

So, I do want to make the point that it is important that we follow the science, that we do listen to our stakeholders across the West, that we listen to our Indigenous communities, that we listen to our farmers and ranchers who are stewards of the land—of course, they are—that we do work with industry and those who are using our public lands for revenues and for extractive activities that we all benefit from, and that we continue to ensure the ecological integrity of our public lands in the West.

But it is also important that we maintain the integrity of this body, and use the resources of this Committee and of Congress to tell the truth to the American people, and that we make sure that we are serving our role as good stewards of this body and our public lands.

With that, I yield back.

The CHAIRMAN. The gentlelady yields back.

I have here in my hand the 88-page BLM rule, and I wanted to illustrate that this is a substantial rule, much longer than probably all the statements combined that have been made today, and much longer than any letters that we have sent.

And without objection, I want to enter this into the record. So ordered.

[The information follows:]

4331-27

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1600 and 6100

[LLHQ230000.23X.L117000000.PN0000]

RIN: 1004-AE92

Conservation and Landscape Health

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes new regulations that, pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and other relevant authorities, would advance the BLM's mission to manage the public lands for multiple use and sustained yield by prioritizing the health and resilience of ecosystems across those lands. To ensure that health and resilience, the proposed rule provides that the BLM will protect intact landscapes, restore degraded habitat, and make wise management decisions based on science and data. To support these activities, the proposed rule would apply land health standards to all BLM-managed public lands and uses, clarify that conservation is a "use" within FLPMA's multiple-use framework, and revise existing regulations to better meet FLPMA's requirement that the BLM prioritize designating and protecting Areas of Critical Environmental Concern (ACECs). The proposed rule would add to provide an overarching framework for multiple BLM programs to promote ecosystem resilience on public lands.

DATES: Please submit comments on this proposed rule on or before **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** or

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The full document is available for viewing at:

https://docs.house.gov/meetings/II/II00/20230615/116036/HHRG-118-II00-20230615-SD016.pdf

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The CHAIRMAN. That was not the call of votes, which we do expect to happen here soon. We are now going to go to the sponsor of the bill, Mr. Curtis, from Utah.

You are recognized for 5 minutes.

Mr. CURTIS. Thank you, Mr. Chairman. I would like to explore for a minute this relationship between states with large amounts of Federal land and the East Coast, and perhaps help my colleagues understand this relationship.

Like both of you, Utah has a large amount of public lands, about 42 percent just for BLM, about 60 percent over Federal lands. And there were no hearings in Utah on this. And I think that kind of shows the heart of the frustration of those of us in the West.

I was on this Committee and watched the efforts to move the BLM to the West, to Colorado, successfully started and then pulled back, and really saddened that that wasn't completed. Because like both of you, we have great relationships with our BLM folks in the state. We meet with them frequently, we talk with them. They understand our perspective.

So, this is not an anti-BLM sentiment from us. It is more of a feeling that people who have not been to our states, who won't hold hearings in our states, who won't come to our states, have a degree of hypocrisy in telling us how to manage our lands. And I would love to give both of you just a second to comment on that relationship.

Governor Gordon, first.

Governor GORDON. Well, thank you. And I think, actually, the good Congresswoman's testimony, Mr. Chairman, somewhat offended me.

We invited Secretary Haaland to come to Wyoming to do a couple of things: to meet with the tribes on the Wind River Reservation, which have a long conservation standard, and we have worked very closely with them on a number of issues; we also invited her to go look at the Jonah Field, where oil and gas companies are doing remarkable work to save the sage-grouse. She demurred from that, and instead went to Yellowstone National Park.

And it is very frustrating to me when people aren't willing to look at on-the-ground work. And Chaco Canyon is a great example of where "conservation" has led to amazing amounts of erosion.

The other thing that I am particularly frustrated about on this, with the lack of hearings and the lack of process on this, is that both Governor Polis and I, Governor Polis is a Democrat, have written to BLM and said, "Can we please use endosulfan to control invasive species?" We have yet to see them approve the use of that chemical, which would help with, as you know, cheatgrass and other things. It is ironic, because the USDA has approved it, the EPA has approved it, and yet they are dragging their feet.

Mr. CURTIS. I have a really important question after Governor Noem answers this that will actually tie into that.

So, Governor Noem, do you want to respond briefly to this relationship between the East and the——

Governor NOEM. Well, the Congresswoman is wrong in virtually everything that she said. I think that they are trying to cast this narrative that we don't care about the environment or stewardship of our lands, and that we can't work with our local BLM offices. We can.

The sustained yield is a mandate right now of the Federal Lands Policy and Management Act. So, what is interesting to me is that

South Dakota is the second-largest producing state of renewable energy, that we are regularly in the top 10 of greenest states in the nation, that we are very conservation-minded, and——

Mr. CURTIS. So, both of you have led right into the question I want to ask you right now, which is hypothetically, if we could change this and make it outcome-based and say, OK, states, you get to decide the rules of the road, and these are the outcomes we want to produce. We want to make sure these lands are protected. We want to make sure they are preserved. We want to make sure there are recreational opportunities. We want to make sure that any extraction is done appropriately. So, here are the rules of the road, and you get to set the terms and conditions. How many of you would like to compete with New Mexico on those terms?

Governor NOEM. In a heartbeat. We would beat them every day of the week.

That is the reality of it, is because we have less bureaucracy. We did all of these accomplishments and outcomes without mandates. South Dakota doesn't go out there and mandate practices, and mandate more taxes to fund government programs to make this work. We do it in partnerships. We have conversations. We have honest, working relationships with the people who live there and recognize the value of the land.

Mr. CURTIS. This describes this tension that they feel from us that they interpret as not caring about the lands. But in essence, it is more please don't tell us that you know better than we do in a place that you have never been, where, by the way, for decades, and decades, and decades we have done a fabulous job of this.

And I wish we had more time to explore this relationship. But I think you have spoken well. Give us an outcome-based rule, and we will take it all day long.

Governor NOEM. Well, the one thing that Governor Gordon has mentioned is that this rule also trounces on states' rights. It takes decisions we make regarding our wildlife and how we operate away from us, and gives it to the Federal Government. It is about control.

Mr. CURTIS. Yes, absolutely.

Governor NOEM. So, regardless of what they say, it is about control.

Mr. CURTIS. I am out of time, Mr. Chairman. I yield.

The CHAIRMAN. The gentleman yields back. We will note that votes have been called, and now 15 people have voted. So, I think we have time for one more round of questions before we recess.

Mr. Bentz, you are recognized for 5 minutes.

Mr. BENTZ. Thank you, Mr. Chair, and thank you for being here.

One would think from some of the materials I have read from environmental interests that support this rule, that both Wyoming and South Dakota are public land wastelands. Is that the case? Are your public lands in disastrous shape that require this type of removal from any type of use to kind of get them back into shape, what kind of shape are they in? I don't want to lead you any more than necessary.

Governor NOEM. I would say that there are always areas that can be addressed, but they are managed very well, in partnership with the people that are out there operating on the land.

And I would say specifically, this proposed rule that BLM has brought does no analysis on if these mandates will actually produce better results. That is what is interesting to me, is that what they are putting forward with conservation leases doesn't show us that it is going to produce better conservation practices, or produce greener energy, or less carbon emissions.

Essentially, what it is doing is letting third parties come in, give them some money, and give them the authority over this land, rather than the people who actually live there. And it gives no discretion as to who those third parties are, if they are foreign countries that could be our enemies. They could be people who do not love the United States of America.

And then it also allows them to lock up that land and have authority over it that they had no authority before, with no consequences if the agreement is broken.

Mr. BENTZ. And Governor Gordon, the suggestion that we need this new use of conservation suggests that multiple use has been a failure. Is that true in your state, or is it working?

Governor GORDON. Thank you, Mr. Chairman, Congressman. No, it is not.

As the good governor from South Dakota knows, we have worked very collaboratively together to do the best we can with a mosaic of landscape in the Black Hills.

Here is one of the problems when it comes to climate change. Dead and dying trees off-gas because they oxidize. Either they oxidize over decades, or they oxidize in a few seconds, as we have seen in the West. The ability to work together on the ground to effect conservation practices, that is the benefit of having local communities and state control.

Your comment about does multiple-use fly in the face of that, absolutely not. As I mentioned before, these ranches would not be sustainable. These businesses would not be sustainable if they overused the resource.

Mr. BENTZ. I grew up on a ranch, and I have five younger brothers, three of them are still in the ranching business in Oregon. And we are very familiar with this, with what we are debating.

I am also very familiar with, as an attorney who represented the local production credit association through the 1980s and the 1990s, just how important a grazing permit is when you go in to get a loan. And you have to say to whoever you are working with, who is sitting on the other side of the desk, and you are trying to borrow some money, and they ask, "Are you going to have your grazing permit?" And you can't say, well, maybe.

[Laughter.]

Governor GORDON. Exactly.

Mr. BENTZ. Is that the case also, Governor Noem, in your state? I mean, isn't that reliability, that which you are going to rely upon to graze your cattle, pretty important in those kind of financing conversations?

Governor NOEM. Absolutely, yes. It is an important discussion that everyone has with their bank, or whoever is financing them on what their operating note needs to be, at what level, and what

kind of collateral they are bringing to the table, and if their business model actually works. Yes, it is.

Mr. BENTZ. And isn't it correct, I am not sufficiently familiar with either of your states, that huge chunks of this public land is already placed in other types of off-limit locations that, I don't mean 10 acres, I mean millions. Is that correct, Governor Gordon?

Governor GORDON. In Wyoming, if you look at the total, it is about 39 percent of the Federal estate that is in either national parks, wilderness areas, or other categories of restricted use.

Mr. BENTZ. So, this proposal of going in and allowing someone to lease this land, I have heard it said that this is a device to allow big, huge REITs and other organizations with lots of money to come in and bid these things up to use to acquire carbon credits. And thus, all of a sudden this assertion that we heard earlier from New Mexico's Congresswoman that nothing is going to change, nothing could be further from the truth. Is that correct, Governor Noem?

Governor NOEM. It is very true. In fact, you have a lot of producers out there that may have private land that is completely surrounded by BLM land. What happens if they declare that an intact landscape that is now locked up and no access given, and they can't even access their own private property? That is a reality that we see out there on the ground that has the potential if this rule goes forward.

Mr. BENTZ. Right. Well, thank you both so much for being here. It is an incredibly important issue, and I really appreciate your presence today and your testimony.

Governor GORDON. And Mr. Chairman, if I might, I want to point out that, back in 2008, the grazing management that we did sequestered 2,526 metric tons of CO_2. We were recognized on the Chicago Climate Exchange. So, management makes a difference.

Mr. BENTZ. Thank you, I yield back.

The CHAIRMAN. The gentleman yields back. As I have mentioned, votes have been called, so we are going to take a short recess. There are two votes, and we will reconvene approximately 5 to 10 minutes after the second vote. And I hope all the Members can come back, and I hope the witnesses can stick with us. I apologize for the inconvenience.

Governor NOEM. No worries.

The CHAIRMAN. We are now in recess.

[Recess.]

Mr. LAMBORN [presiding]. The Committee will come back to order.

The next one of the Members to ask questions is the gentleman from Montana, Mr. Rosendale.

Mr. ROSENDALE. Thank you very much, Mr. Chair.

Thank you, both governors, for joining us. And I hope, Governor Noem, that you didn't suffer too much anxiety taking that well-too-familiar commute back to Washington.

Governor NOEM. No, no. A little bit of PTSD, but not too bad.

[Laughter.]

Mr. ROSENDALE. Yes, yes. One of the things that I like to always paraphrase is Dwight Eisenhower, when he says—and we have listened from the disinformation and lack of information from,

unfortunately, my colleagues on the other side. Dwight Eisenhower said that farming looks very easy when you use a pencil for a plow, and you live 1,000 miles away from a corn field. And that is exactly the problem that we run into in this body on a daily basis. There are too many people that are making decisions about the land management in our part of the world that they are not familiar with at all, at all.

And, unfortunately, we have some people making those decisions, such as the Director of BLM, who is a known collaborator with eco-terrorists, and a Secretary of the Interior who won't provide documents about her daughter's lobbying efforts with the Department of the Interior and BLM that certainly doesn't help matters.

Sadly, it is critically important for us to pass this bill and hold this hearing so that we, the people that are impacted the most by it, can actually get accurate information about the impact of the rule from the people that are going to be hit by it the most. As we have discussed several times already this morning, BLM is not going out and holding these hearings in the areas that are going to be hit. We have requested in the state of Montana to have a hearing, just to have a hearing in the state, when we have nearly 40 percent of our state that is Federal public lands, and we can't even accomplish that.

We watched this Administration time and again try to bypass or get around those laws by passing rules that completely contradict them, thereby eliminating congressional participation, congressional representation, representation from the people that we represent as their extension, and public votes, quite frankly. So, they believe that they can do that. And, fortunately, we have seen time and again the Supreme Court side with us and say, no, the agencies are going outside of their bounds.

So, that all being said, Governor Gordon, Governor Noem, did the BLM ever consult with you, your office, or the impacted agencies in your state before the promulgation of this rule?

Governor GORDON. Mr. Chairman, Congressman Rosendale, no.

There was some indication that you could have an information-only kind of opportunity. I think the hearing was held, not a hearing, it was an information-only sort of briefing that was held in Denver. You could only kind of view it, but you couldn't participate, you couldn't have a hearing. You could not talk about what the rule would mean.

And I think the good governor from South Dakota mentioned it, the fact that they are ignoring normal NEPA process on something this devastating is just a complete abrogation of FLPMA.

Mr. ROSENDALE. Governor Noem, did the Administration meet with you before they promulgated this rule?

Governor NOEM. No, there was no input or even consideration for our office, no notification or consultation.

Mr. ROSENDALE. OK. So, do either of you believe that, as I do, that this contradicts the Taylor Grazing Act, which is law, which prioritizes grazing, food production for our nation?

Governor NOEM. Yes.

Governor GORDON. Yes.

Mr. ROSENDALE. As a rancher yourself, how does this conservation and management currently factor in to your typical operation?

I know that, in Montana, most of our public lands are checkerboarded, and everybody seems to be the same way. So, how is this going to impact the typical operation, conservation and/or management practices for a local rancher, farmer in your state?

Governor NOEM. Well, first, in particular, ranchers look at every analysis of how they utilize land, on how it maintains that land, because they recognize it will need to be utilized in the future. These 10-year leases for permits to access BLM land, they want to continue to get them. They are not interested in a short-term engagement in partnership with BLM. They want to be good stewards so they are eligible for those leases in the future.

Myself, as a rancher, looked at my land and utilized rotational grazing to get the most out of that land and leave it in the best shape at all times. And to go forward with a proposed rule like this and say that what we are doing today isn't working, and ignoring what is happening on the ground, I think, is extremely arrogant, perhaps naïve, especially in the fact that when you look at the rule and read it—in fact, the more times I read it, the more offended I was, because it lacks any scientific data or analysis that what we are doing today is not providing conservation, and efforts, and that it isn't being a good steward of the land, but also doesn't give you any basis for why they are proposing these changes and that it will actually better our environment, that it will leave us in better shape.

So, it is very clear what their agenda is when you don't use any kind of data to back up the need for changes, have no analysis for the economic impact it will have, you ignore Federal law, you overwhelm our state's authority and rights with it, with what you are proposing, as well, and then take constitutional authority that should be only given to Congress. This rule has done all of those.

And I want to remind all of you of your responsibility here at this Committee. It is to protect the United States of America. And what they are undermining with just this simple rule in BLM undermines all of those precedents that we have followed that are built on constitutional law in this country.

And I have seen this so much. I have been in a lot of different roles in my life now. I am a wife, and a mom, and a grandma, but I am also a business person, farmer, rancher. I have served in our legislature. I have been here in Congress, and as governor. I have never in my life seen such a short period of time where they have completely destroyed the foundation of this country. And it is not just in the big things that you see and hear about on the TV news at night, it is in rules like this, where they are overstepping their authority through a powerful Federal Government and undermining us as states, us as governors and the authority we have to fight for our people and their way of life.

There will be business owners, small businesses in my state that will be bankrupt if this proposed rule goes into place. They will have no land for their cattle, nowhere to graze them. They will be out of business. Their cattle or their manufacturing plants, their future, will be gone.

These timber industries, we have one of the last examples of one that is still functioning, but we lost a mill in the Black Hills, and it was because of the Federal Government. We have two left, each

of us have, and that is all we have anymore. And we are going to fight tooth and nail to keep that, too. This rule would destroy our timber industry, as well.

Mr. ROSENDALE. Thank you very much for your information and for your passion.

Mr. Chair, I yield back.

The CHAIRMAN [presiding]. The gentleman's time has expired. The Chair now recognizes the gentleman from Colorado.

Mr. Lamborn, you are recognized for 5 minutes.

Mr. LAMBORN. Thank you, Mr. Chairman. This is an important hearing. Thank you for having it.

Governor Noem, I enjoyed serving with you in Congress when you were here. In fact, you were on this same Committee for a time, and you did such an excellent job. And I know you are also doing that in your position now in South Dakota.

Just last month, BLM Director Tracy Stone-Manning testified before this Committee, and I asked her at that hearing if the new proposed conservation rule would allow simultaneous land use by ranchers, loggers, and other industries. And she said, "The term of the conservation lease would preclude uses that directly conflict with the underlying conservation lease."

I think that a lot of people here in Washington don't understand the West, or they wouldn't make the kind of rules that they are proposing.

I know you had a great answer just now to Representative Rosendale. Is there anything you would like to add about the impact that this rule, should it ever take effect, would have on BLM land, and then hence the people and the economy of the state of South Dakota?

Governor NOEM. Well, let's remember that BLM was established to produce sustained yield and management practices that were out there for conservation efforts. So, in every single practice that we are utilizing on BLM land is built in the mandate to utilize conservation. What they are doing in this rule is putting conservation efforts, based on no definition of what those conservation efforts are or what they should be, and placing them above every other use. So, that in itself turns the entire mission of BLM on its head.

And when you have this much Federal land in your districts and in your states, it impacts your economy in ways that—the ripple effect is tens of thousands of people, tens of thousands of jobs, and it takes their ability to be producers away from them.

For me, it is not just on the economic side of it. It is also what it does to people's spirits and to their ability to want to get up every day and go to work. I am just a big believer that we have lost our nation's work ethic, and we need to remember why we have one. We have a work ethic because we were created to serve, to serve other people, to get up every day. It is better for us physically, mentally, spiritually. And having the ability to go out and work on the land and to help it produce and provide for your family would help our nation, as a whole, be unified and to accomplish something that keeps our economy stable.

We have talked for years about the need for not just one part of this country to be successful, not just one part where people can do well and make higher incomes, or where they can be more

productive. When you guys have a tough economic recession on the East Coast or on the West Coast, often it is the middle of the country that stabilizes this country.

Mr. LAMBORN. Thank you, I appreciate that.

Governor NOEM. Our people are still working.

Mr. LAMBORN. Thank you.

Governor Gordon, you are in the great state of Wyoming, and I admire how it is run. I have a daughter with her family who live there. And I have seen firsthand that it is a very well-run state. During COVID, it was a relief to leave Washington, DC, where things were locked up so tightly and be where things are at least halfway normal, such as Wyoming. That was a breath of fresh air.

One thing that really frustrates me about the current Administration is that they will be deceptive when they say a rule is proposed for one reason, when their real objective is another reason. Gas cooktop stoves is one example. They say it is to protect people with asthma. They are just trying to shut down a fossil fuel, and they are not admitting that, they are not being honest. Taking helium off the critical mineral list when it comes from natural gas extraction is another example of that.

Do you have suspicions, or thoughts, or concerns about what the real purpose of BLM's new conservation rule is?

And will it have the effect of hurting resource-based industries, including conventional fuels?

Governor GORDON. Mr. Chairman, Congressman, yes, absolutely. I am very concerned about the ulterior motives of this. It is to shut down fossil fuel development.

And as I have mentioned, one of the things is that our fossil fuel industry has very much invested in conservation. To just segue a little bit to the question that the Congressman from Montana mentioned very specifically, our ranch is in core sage-grouse area. People that develop minerals do so with an intent to do the best they can to preserve that bird. In our case, we did a range tour, and it was actually the NRCS that came back and said, "We can't provide you with any more resource, you are already doing things so well." That is the way we run our ranch.

And this conservation rule, if implemented, would suddenly have somebody in Washington say, "Oh, you know what? We are going to put this in conservation. You can't graze your cows anymore," when very much the role that our cows play in making that range better would be devastated. Our ranching operation would be devastated. That would be true across the West.

So, this rule and everything you see in this—and you have this same issue in Colorado—everything this Administration does is about climate. So, you have tremendous regulations being put in place that are holding back our fossil fuel industry, that are costing Americans dearly in the pocket. We had unprecedented rises in the price of oil and gas, and now we are talking about going off of coal and onto natural gas at a time when we can't get a lease out of this Administration, we can't get a permit out of this Administration.

And for those who aren't familiar with the mineral estate, there is a surface estate and a mineral estate. And the way the Federal Government shuts down anything that goes anywhere near a

Federal mineral lease, shuts down private industry, shuts down private property, it is devastating.

Mr. LAMBORN. Thank you. I yield back.

The CHAIRMAN. The gentleman's time has expired. The Chair now recognizes Mr. Huffman, who wasn't overlooked in the last round of questions.

But you are recognized for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chairman. And I hate to interrupt this hyper-partisan performance masquerading as a legislative hearing, but on the off chance that there may be a few people watching at home who don't get all of their news and information refracted through the kaleidoscope of right-wing media, I would just like them to know that not every Western state is hyped up on anti-government conspiracy politics.

In fact, California opposes H.R. 3397, and thinks it is a good idea to proceed with BLM's public lands rule. I would just like to enter into the record, if I could, Mr. Chairman, this letter from the California Natural Resources Agency.

The CHAIRMAN. Without objection.

[The letter can be found on page 22.]

Mr. HUFFMAN. Thank you, Mr. Chairman.

Look, not every Western state believes it would be the end of the world to elevate conservation to equal footing with grazing, and timber harvesting, and mining, and other extractive uses. A lot of folks think that this is just good, plain common sense and sensible policy, as do I. We will talk a little more about that when we get to the next panel with the BLM witness.

But for now, Mr. Chairman, I will yield back and allow you to proceed with the regularly scheduled conspiracy politics. Thank you.

The CHAIRMAN. The gentleman yields back, and I will remind the gentleman it is an open hearing, and I am glad that you and Mr. Grijalva are here to represent the Minority's view. And I do appreciate our witnesses for being here today.

I now recognize the gentlelady from Wyoming, Ms. Hageman, for 5 minutes.

Ms. HAGEMAN. Thank you. And again, it is so good to see both of you. The voice of Wyoming has been ignored on this topic, so I am deeply grateful for the chance to echo their sentiment of concern and outrage over this proposed rule.

According to public comments submitted by the United States Business Administration Office of Advocacy, this proposed rule has unintended consequences that are contrary to the statutory provisions of FLPMA, lacks factual basis, and does not adequately consider the economic impacts of the rule on small businesses. That is how bad this proposed rule is. The SBA under the Biden administration is literally calling out the BLM on how bad the proposal is.

Mr. Chairman, I would like to submit the SBA's public comments on this for the record.

Dr. GOSAR [presiding]. Without objection.

[The information follows:]

U.S. Small Business Administration
Office of Advocacy

June 13, 2023

Hon. Deb Haaland, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Re: Conservation and Landscape Health (88 Fed. Reg. 19583; April 3, 2023)

Dear Secretary Haaland:

On April 3, 2023, the U.S. Department of the Interior's Bureau of Land Management (BLM) published a proposed rule entitled "Conservation and Landscape Health." The Office of Advocacy of the U.S. Small Business Administration (Advocacy) respectfully submits the following comments on the proposed rule. Advocacy and small businesses support activities to mitigate and restore public lands. Advocacy is concerned, however, that BLM's proposed rule may be contrary to the statutory land management principles laid out in the Federal Land Policy Management Act (FLPMA). Furthermore, BLM's proposed rule does not adequately consider the impacts to small businesses as required by the Regulatory Flexibility Act (RFA). Advocacy makes the following additional comments below.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA). As such, the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),[1] as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),[2] gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.[3] The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.[4]

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."[5]

B. The Proposed Rule

The Federal Land Policy and Management Act (FLPMA) of 1976 lays out provisions for BLM to follow in its management of federal lands within the United States.[6] FLPMA directs the agency to manage the lands in a way that balances the need to preserve and protect certain lands in their natural habitat while also recognizing the need for domestic sources of "minerals, food, timber, and fiber."[7] FLPMA further directs BLM to follow specific criteria for the development of land use plans. These criteria include principles of multiple use and giving priority to the designation and protection of areas of critical environmental concern (ACEC).[8]

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[1] 5 U.S.C. § 601 et seq.
[2] Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).
[3] Small Business Jobs Act of 2010 (PL. 111-240) § 1601.
[4] *Id.*
[5] *Id.*
[6] 43 U.S.C. § 1701 et seq.
[7] *Id.* at (a)(12).
[8] 43 U.S.C. § 1712(c).

FLPMA defines multiple use as including the management of public lands in a way that "best meet[s] the present and future needs of the American people."[9] Multiple use is further defined as a combination of uses including but not limited to "recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values."[10] FLMPA also defines six principal uses for land management that include and are *limited* to, "domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production."[11]

Pursuant to FLPMA, if the Secretary of the Interior issues a land management decision that excludes or eliminates one or more principles of major use for two or more years, the Secretary is required to report their decision to Congress. Congress may issue a concurrent resolution of non-approval for the decision.[12] In such an instance, the Secretary must terminate such decision.[13]

On April 3, 2023, BLM published its proposed "Conservation Land Health" rule.[14] The rule proposes three major changes to current land management practices. First, it applies land health standards to all BLM managed lands.[15] This provision requires that BLM use data and information to prepare an assessment of land health for all BLM managed lands, not just those used for grazing, as is the current practice.[16] Second, the rule adds "conservation" as a land use category and allows for conservation leases.[17] These leases would be available to entities seeking to restore public lands or provide mitigation for a particular action.[18] Conservation leases would be issued for an initial maximum term of ten years, but can be extended as necessary to serve the purpose for which the lease was first issued.[19] Third, the rule expands the use of Areas of Critical Environmental Concern (ACECs).[20] The rule would emphasize ACECs as the principal designation for protecting important resources, and establish a "more comprehensive framework" to consider areas for ACEC designation.[21]

II. Advocacy's Small Business Concerns[22]

On May 17, 2023, Advocacy held a virtual small business roundtable to discuss the rule.[23] Advocacy also conducted outreach directly to small businesses. Small businesses in agriculture, forestry, and mining spoke to Advocacy about the rule, as well as to representatives of BLM. During this outreach, small businesses expressed concern with BLM's assertion that the rule would not have a significant impact on their business. They were especially concerned about the impact the new conservation leases would have on other uses and whether this may inhibit grazing, mining, and timber leases. Many small businesses questioned the need for the rule. They also questioned whether the rule was outside the bounds of FLPMA. Small businesses are already providing mitigation and restoration measures as prescribed under the National Environmental Policy Act (NEPA) and other environmental statutes.

Advocacy heard from some county executives in Western states where more than 80 percent of land within the county is managed by BLM, and significant portions of the county's economy is tied to these federal lands.[24] Small business representatives from Montana indicated that nearly 30 percent of the state's lands are public lands, and that grazing leases are an essential part of farming and ranching in the state. Some small businesses pointed to BLM's own economic report that states that lands managed by BLM account for nearly 201 billion dollars in economic output

[9] 43 U.S.C. § 1702(c).
[10] *Id.*
[11] *Id.* at (l). (Emphasis added).
[12] 43 U.S.C. § 1712(e)(2).
[13] *Id.*
[14] Conservation Land Health, 88 Fed. Reg. 19853, (April 3, 2023).
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.* at 19586.
[19] *Id.*
[20] *Id.*
[21] *Id.* at 19584.
[22] At the time of filing of this letter many of the stakeholders with whom Advocacy engaged have not yet filed their own comments. Advocacy therefore requests that BLM carefully review and consider the comments of small businesses and their representatives and that any issues not raised herein that are of concern to small businesses be given their due weight and consideration.
[23] *See*, Office of Advocacy Natural Resources Roundtable (May 17, 2023), https://advocacy.sba.gov/2023/04/27/small-entity-natural-resources-roundtable-may-17-2023/.
[24] Advocacy has not independently verified this data.

in the U.S.[25] Advocacy heard from some mining representatives who stated that close to 80 percent of their member companies are small businesses.[26]

Recreation and outfitting industries also have an interest in the rule. Some businesses expressed to BLM that conservation leases may be compatible with outdoor recreation activities and therefore may create opportunities for multi-use leases. Others, however, shared the concerns of other industries and noted that conservation leases may be incompatible with certain types of recreation, including those that require the use of motorized vehicles. Some noted that this could pose accessibility issues for those individuals with limited mobility if BLM, or the conservation lease holder, limits the types of recreational activities that can occur in a particular area.

Advocacy also acknowledges that there may be instances where a small business may find portions of BLM's rule beneficial in providing mitigation opportunities. There may also be new and emerging small businesses because of the proposed rule. While these small businesses may enjoy some benefits of the proposed rule, the rule itself is problematic. Given that the rule has the potential to impact a substantial number of small businesses across various industry sectors BLM must properly and thoroughly consider these impacts and modify the proposed rule's RFA analysis accordingly. Advocacy makes the below comments on the proposed rule.

A. BLM's proposed rule has unintended consequences that are contrary to the agency's goals and the statutory requirements for land management under FLPMA.

1. The proposed rule does not properly explain how conservation leases are compatible with the multiple use land management goals laid out in FLPMA.

FLPMA expressly states that BLM must balance the need to protect and preserve public lands with the principal land uses laid out in the Act.[27] FLPMA further states that public lands need to be managed in a way that recognizes the country's need for domestic sources of natural resources and food.[28] Within its proposed rule, BLM cites FLPMA § 102(a)(8) as the basis for issuing its proposed rule.[29] This section describes that BLM must manage public lands in a manner that will protect the quality of resources and preserve some public lands in their natural condition.[30] FLPMA § 102(b) states that the policies of the Act, "shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation." Within this rulemaking, BLM is proposing to create a new category of leases, conservation leases. In creating a conservation land use lease, BLM will disrupt the current multiple use landscape. BLM's proposed rule states that such conservation leases "would not override valid existing rights or preclude other, subsequent authorizations so long as those subsequent authorizations are compatible with the conservation use."[31]

BLM has not, however, clarified within the proposed rule how conservation leases will be compatible with the other principal uses laid out in FLMPA.[32] In at least two instances, mining and grazing, the proposed rule is incompatible. Without proper clarification from BLM regarding the implications of conservation leases on other uses, and the inevitable incompatibility that may result, the proposed rule has the effect of placing conservation leases above other interests.

This is contrary to the statutory intent outlined in FLPMA. As indicated above, BLM does not have statutory authority to create such additional uses that would make the other principal uses incompatible. According to the statutory text cited throughout this letter, Congress did not intend for land uses to be excluded on a programmatic level. BLM's rule has the impact of excluding various land uses programmatically simply because of their incompatibility with conservation. While BLM's objectives in issuing the proposed rule are well-intended, the agency is ignoring the fact that the current multiple use land management landscape is working and does not need the proposed change. This current landscape balances the need to protect and preserve lands while also acknowledging that these lands are necessary for ensuring domestic supply chains for food, minerals, and natural resources, just as FLPMA had intended.

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[25] *See* U.S. Bureau of Land Mgmt., "The BLM: A Sound Investment for America 2022", (November 2022), https://www.blm.gov/about/data/socioeconomic-impact-report-2022.
[26] Advocacy has not independently verified this data.
[27] 43 U.S.C. § 1701 et seq.
[28] *Id.* at 102(a)(12).
[29] *Id.* at 102(a)(8).
[30] *Id.*
[31] 88 Fed. Reg. 19583 at 19856.
[32] 43 U.S.C. § 1701(a)(7).

Furthermore, according to FLPMA, these conservation leases would need to be submitted to Congress. These leases could go through rounds of voting in Congress only to be eventually struck down.[33] BLM should therefore reconsider the proposed rule and whether it has statutory authority to take such actions. BLM should consider whether there are alternatives, such as more opportunities for mitigation, rather than creating additional lease categories that are not expressly authorized by FLPMA. Whatever alternatives BLM considers, the agency must require that the leaseholder identify the uses that are consistent with the principal use and be able to justify the exclusion of other principal uses as outlined in the statute. By modifying the rule so that it better aligns with the principles of FLPMA, BLM can ensure that its agency goals and priorities are in line with the statute and retain regulatory durability.

2. The proposed rule offers too much discretion to BLM that may result in elevating conservation above the other principal land management uses.

Within the proposed rule, BLM states that conservation leases will be issued for a maximum term of 10 years. The agency then states that it may, "extend the lease if necessary to serve the purpose for which the lease was first issued."[34] Conservation is not a finite use of land in the same way that other uses are. Conservation can be a prolonged and permanently sustained use of land. BLM does not make clear what it will use to measure when a conservation land use has been achieved, nor is this a clear-cut thing that can be measured. Restoration as a land use implies that once the land is restored, the lease has a logical endpoint.

Here, however, BLM has expressly chosen to use the term conservation, and not restoration. This provision of the proposed rule, therefore, would give BLM broad discretion to renew conservation leases indefinitely so long as they meet the purpose for which they were issued. This would all but ensure that other uses such as mining, grazing, logging, and some forms of recreation would not be able to co-exist on these lands, which, once again, is outside the bounds of FLPMA. By locking up a particular public land in an indefinite conservation lease, BLM is neglecting to ensure the sustainability of the domestic supply chain, and instead contributing to the lack of domestically available materials. This may have significant unintended consequences to the domestic supply chain.[35]

BLM should therefore reconsider whether there are other alternatives that may more adequately achieve the agency's objectives for the proposed rule. These alternatives may include broader mitigation opportunities on public lands that are more compatible with other land uses. This will ensure that BLM is not overstepping the statutory principles laid out in FLPMA.

3. BLM's proposal does not account for required actions that lease holders already take with respect to conservation goals and does not consider alternatives.

FLPMA directs BLM to balance and create multiple use land management plans. In doing so, FLPMA defines multiple use as a combination of uses including the six principal land management uses.[36] Within BLM's proposed rule, the agency does not consider and discuss requirements that lease holders are already complying with to meet the agency's goals for increased conservation. Many small businesses discussed the NEPA compliance measures that they are already taking to restore lands once their activities have expired, and to mitigate the impacts of those activities.

By considering measures that businesses are already taking, BLM can focus its attention on areas for improvement with respect to those activities rather than creating additional land uses that are not statutorily supported. Within its own rule BLM cites restoration of degraded lands and increased mitigation opportunities as reasons for issuing the proposed rule. BLM should therefore reconsider whether the provisions of the proposed rule meet these goals, and whether they are statutorily permitted under FLPMA.

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[33] 43 U.S.C. § 1712(e)(2).

[34] 88 Fed. Reg. 19583 at 19586.

[35] A lack of domestically available materials may have an impact on renewable energy priorities. These projects require mineral resources such as lithium, copper, and many other locatable minerals. It may also impact domestically sourced food.

[36] U.S.C. § 1702(c), Stating that the six principal land uses include, "domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production."

B. The proposed rule lacks a proper factual basis for certification that the rule will not have a significant economic impact on a substantial number of small entities.

Within BLM's proposed rule, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[37] Under § 605(b) of the RFA, if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, they must include a factual basis for such certification.[38] BLM's certification provides no such factual basis, and offers no information as to how they arrived at this conclusion.[39]

As noted above, many small businesses are concerned about the impacts the rule may have on both their existing leases and the opportunity for future leases. While BLM is not required to attempt to calculate the impact the proposed rule may have on potential future lease sales, BLM is required to offer a discussion of the impacts the rule may have on current lease holders.

At a minimum BLM should identify the small businesses that currently engage with the agency and/or hold leases. As noted above, many activities would be rendered incompatible with conservation leases which constitutes lost revenue for those businesses. While it is difficult to quantify those potential impacts, they should at least be discussed by BLM and should appear within its RFA analysis. BLM could also have asked for public comment and data directly from small businesses to help inform a more thorough analysis of the impacts.

Advocacy therefore requests that BLM revise its RFA analysis and instead provide a supplemental document with an initial Regulatory Flexibility Act analysis that includes a discussion of the impacted small entities, what if any impacts those small entities may face, and what regulatory alternatives the agency considered.

III. Conclusion

Advocacy appreciates BLM's intention to prioritize restoration of degraded public lands. However, BLM's proposed rule falls short of achieving these stated goals. The rule has unintended consequences that are contrary to the statutory provisions of FLPMA. Furthermore, BLM's RFA certification lacks a factual basis, and does not adequately consider the economic impacts of the rule on small businesses. For the foregoing reasons BLM should consider alternatives to the proposed rule that better align with the statutory provisions of FLPMA and should conduct a proper and thorough RFA analysis for the proposed rule.

Sincerely,

Major L. Clark, III,
Deputy Chief Counsel

Prianka P. Sharma,
Assistant Chief Counsel

Ms. HAGEMAN. American economies can only get a return on our Federal lands in much of the West through two things. The first is grazing and the second is through mineral extraction or logging. The very lifestyle of rural communities is at risk when burdensome regulations like this cripple the businesses that allow these communities to flourish. The revenue provided to the state through mining and agriculture is essential to our lives and our economy. This revenue funds our schools, health care, public safety, and other essential services.

Wyoming is a strong leader in energy production, agriculture, and outdoor recreation, as Governor Gordon outlined in his testimony. Basically, everything this proposed rule touches is what we in Wyoming are good at. So, quite frankly, it is hard not to take this personally.

To make matters worse, the BLM won't even come to Wyoming to talk about the proposed rule.

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[37] 5 U.S.C. § 605(b).
[38] *Id.*
[39] 88 Fed. Reg. 19583 at 19594.

Governor Gordon, considering that Wyoming's economy lives and dies on the industries impacted by this rule, why do you think it is that BLM would hold town halls in New Mexico and Colorado, but not Wyoming? Are they avoiding something?

Governor GORDON. Mr. Chairman, Congresswoman Hageman, it is clear they are avoiding having real testimony on the ground with practitioners of conservation. They are looking for communities where they can find a favorable audience so they can move things forward.

And the testimony of the gentleman from California I take great umbrage at, because actually——

Ms. HAGEMAN. We typically do, as well.

[Laughter.]

Governor GORDON. Governor Noem and I have worked with folks across the aisle. This is about conservation and good development, good management, and stewardship of our natural resources. It is not a hyper-partisan issue. Just last year, I signed an agreement with Secretary Vilsack which recognized that private property has a role in healthy wildlife populations. So, I take real offense at suggesting that this is somehow a conspiracy.

This is about keeping people on the land. This is about stewardship. And to suggest that people that are in the oil and gas business or miners somehow don't care about conservation is just wrong-headed.

Ms. HAGEMAN. It has been proven over, and over, and over again, yet our colleagues on the other side just simply can't get through that through their head because they lack the talking points, as we just saw.

A few weeks ago, the Subcommittee on Oversight and Investigations had Ms. Garcia Richard from New Mexico attend as the Minority witness. In her written testimony, she said that a state's "ability to generate money for education is directly tied to the health and the productivity of state lands."

What I don't understand is what revenue you would generate for your state through a Federal conservation lease. Governor, will conservation leases generate any funds to local education or to the state in general?

Governor GORDON. Mr. Chairman, Madam Congressman, no. That money would go to the Federal Government.

And it is sort of a joke to think that we are going to make it more productive by taking it out of play. We, as you know, and Governor Lujan Grisham, and I have both addressed Congress on this fact. Our schools are funded by mineral development. The leases and all the ancillary pieces of the economy are funded by activities on Federal lands. Taking those out of play would be devastating to our economy.

Ms. HAGEMAN. One of the things that so many people don't understand is that our water development and the way that we manage our resources in the West, even on Federal lands, is typically done by private individuals to better the situation for their livestock production. But that also benefits our wildlife. You take cattle off of our Federal lands in the West, you are also going to have a substantially negative impact on wildlife, because we are not going to be developing the resources that they need to survive.

This is going to have incredibly negative unintended consequences that the people in Washington, DC don't understand, and they should not be making policies like this sitting in their air conditioned office here.

With that, I yield back.

The CHAIRMAN [presiding]. The gentlelady yields back. The Chair now recognizes the gentleman from California, Mr. Duarte, for 5 minutes.

Mr. DUARTE. Well, I am a people in Washington, and I would seek to understand more about what you do.

I think it is under-appreciated, the 245 million acres in Bureau of Land Management. It looks pretty good to me from the air. I don't see every inch of it, by any means, mined and developed with gas rigs. Not that those things bother me much when they are done properly, sustainably, and effectively by operators that know what they are doing.

What does bother me a lot are some of the mismanaged lands in California, the forests that burn purportedly because of climate change. But from my angle on the kaleidoscope, we have neglected them. We have turned those forests over to the priorities of the conservation groups for a few decades. And now they are burning out of control, and we are getting no value from that.

We see some bumper stickers around rural communities that say graze it, log it, or watch it burn. And I believe we should be grazing it and logging it in California, much like we should be doing in South Dakota and Wyoming.

I would invite you, Governor Noem, and then you, Governor Gordon, give us some detail. Talk to us about the things you think about, the effective resource managers on your ranches, and how those lead to not only the conservation of the resources on your ranches, but how, instead of the government coming out with resource conservation monies and paying billions of dollars to have somebody do it for them, for us, you guys do a lot of environmental services for free because, God forbid—we will try and accept it—you make a few nickels once in a while doing it.

Explain the business of being a ranch owner to us, please.

Governor NOEM. Thank you, Congressman, for the question. I would say for most ranchers, it is not a business model, it is their family legacy. It is what their fathers did and their grandfathers and grandmothers did. And it is something that they take a lot of pride in.

I think probably one of the most devastating things I have ever seen in my entire life was when Winter Storm Atlas hit South Dakota when I served here in Congress, and tens of thousands, hundreds of thousands of cattle were dead overnight because of something out of ranchers' control.

So, to paint the picture that they only care about dollars and cents just simply isn't true. And they make management decisions how best to support that herd, but also how to support that land and how to protect it. They are putting in investments to access water, and they are putting in different resources in order to manage noxious weeds. You could go anywhere in South Dakota and see that the private land and land in cooperation with

ranchers is better cared for than much land that would be under a government jurisdiction or at the Federal level.

What is interesting to me is that, if you look at BLM and what their mission is, is that it specifically is to use the land, it is a land management agency, and it is supposed to consider conservation in every activity that it conducts. When you start prioritizing one over the other, the entire mission of the agency fails. And the way that they are approaching this, by declaring this not a major rule, completely eliminates any of the scientific facts they would need to even know if this rule is going to work.

When the former Congressman over here was chatting about conspiracy theories, this whole proposed rule is a conspiracy theory. They are avoiding Federal law. They may not even, under one of their processes they have established in this rule, even require these rules to be listed in the Federal Register anymore under the ACEC process. They are taking away all public input, potentially, in how they are going to create intact landscapes, which means the public will have no input, and they can immediately implement it overnight, which is not the authority of BLM.

So, I am incredibly surprised by how this rule came forward because of how it is established, and it is ignoring the long-set precedent that ranchers take every day to manage lands, and not asking for their input.

Mr. DUARTE. Thank you. That is a great answer. No one understands ranching and government together better than the two of you.

I will give what is left of the last minute to Governor Gordon, if we can, please. Thank you very much.

Governor GORDON. Thank you. On a personal level, when I get up on the ranch, I go out and I look at how the grass is growing. We measure it on a monthly basis. You can go to our website and see our range studies over the last several years. We take our conservation very seriously.

But more importantly, wherever you go in Wyoming, and I am thinking of the Thunder Basin, and Congresswoman Hageman knows it well. Secretary Perdue came out and actually took a ride through the Thunder Basin national grassland and visited with the ranchers there, because he wanted to see on the ground what was going on. You can't do windshield management. You have to look at the ground. You know that, as a farmer yourself.

And what is frustrating about this rule is it will put in place all of these sort of constrictions on management. And as I mentioned before, it would inhibit our ability to be able to improve the range, and to be able to sustain the range so that our sage-grouse populations could happen. You know, from being from California, that dead and dying material oxidizes. It doesn't produce anything except CO_2. And that either happens over time or it happens in a fire.

Mr. DUARTE. Out on the range there are lots of ideas in the world, we all learn from each other in farming and natural resources of all types, many businesses, do you categorically dismiss perspectives because of political party affiliation?

Governor GORDON. Absolutely not.

Governor NOEM. We don't get that ability, as governor. As a governor you need to get things done, and accomplished, and do what is best for people. And we work on a bipartisan basis every single day.

Mr. DUARTE. Do you feel you are able to listen to an idea or perspective, and give it merit based on its——

Governor NOEM. The diversity of that perspective helps us make better decisions. When we hear those different opinions, we make better policy decisions.

Governor GORDON. And there may be things that the governor and I don't agree on, and there may be things that a governor in Colorado and I don't agree on. But we find a way forward.

Mr. DUARTE. Even though you are in the same political party, you don't always agree?

The CHAIRMAN. The gentleman's time has expired. I am going to have to move on to the next question. I recognize the gentleman from Arizona, Mr. Gosar, for 5 minutes.

Dr. GOSAR. Thank you, Governor Noem. Good seeing you again.

Governor NOEM. Good to see you again, too.

Dr. GOSAR. And Governor Gordon, I am the lost sheep from Wyoming, the oldest brother.

First, I have to start with the comments from my colleague from New Mexico. She mis-speaks. She said this rule will not stop oil and gas leases, it won't change a thing. Well, tell that to the Navajo allottees who saw their livelihoods and financial well-being dragged from them from one of their own Indigenous Secretary of the Interior, once again magnifying the old adage, "I am here from the Federal Government, I am here to help." Run Forrest, run.

Now, I want to get back to this from a little different tact. You are very aware of the equal footing clause, I might ask, and the multiple-use doctrine. Yesterday in a Committee hearing on Oversight, we had just the craziest, craziest hearing. And we had an individual talking about mercury toxicity. And little did she know that the No. 1 adage for mercury toxicity is catastrophic wildfires. Amazing. Absolutely amazing. It shows that this dog chases his tail round, and round, and round we go, and never catches it.

So, we are looking at those aspects and primacy. Let's get back to Arizona. Arizona is a very unique state, because we were rejected by statehood the first time. And the President at that time, President Taft, who was the only president to go on to serve at the Supreme Court, actually forced the Federal doctrine on Arizona. But he also said that the commitment was the multiple-use doctrine would be very advantageous not only for the state of Arizona, but for the Federal Government in utilizing it. Now, we may not have as much gas and energy that you guys have, but we are loaded with minerals. We are loaded.

So, this is a further attempt to victimize the West, not to empower them. But I keep coming back to that equal footing clause that states that what Eastern states got, we were entitled to without this Federal doctrine. I am going to ask you. If we were to return that equal footing clause to primacy, how would that affect your states, and how would they run more efficiently?

Governor Noem, we will go with you first.

Governor NOEM. Well, it would be a game-changer for us, specifically. It would right the ship, and give us an opportunity to at least be treated in a manner which gave us equal opportunity to succeed. It is not the Federal Government's job to come in and make sure that we succeed, or to put their thumb on the scales, but to give us an opportunity to at least produce and succeed as every other state gets the opportunity to.

Dr. GOSAR. Governor Gordon?

Governor GORDON. Thank you, Mr. Chairman, Congressman. I knew your dad, I know many of your siblings——

Dr. GOSAR. Don't hold it against me.

[Laughter.]

Governor GORDON. I won't. And I know your county very well. And the example you give in Sublette, where you were raised, is absolutely critical.

As you know, former Commissioner Joel Bousman has worked on trying to get primacy for that area, which has national forests, has BLM, has Federal leasing involved. And it would be, to the good governor of South Dakota's comment, a game-changer.

Really, states know how to do this. We have done it better than anyone else on sage-grouse habitat, and your home county, Sublette. And it really is thanks to state government, not the Federal Government, that we got a recipe that protects the wildlife, allows for energy development, and makes sure that the communities of Pinedale, Big Piney, and others have families that can live there and make a reasonable living.

Dr. GOSAR. Yes. So, I am one of these people that gets tired of playing defensive politics. So, I am going to highlight a program called SNPLMA, the Southern Nevada Land Exchange Project. It was by the late Harry Reid. And what he found was that Las Vegas was surrounded by BLM. He couldn't grow anymore. So, what he dug up is that he found in the inventory of Federal laws that the government had to get rid of the land they had no use for, or didn't have a direct aspect for. And, voila, Vegas grew. BLM sold land right and left. Maybe we ought to be looking at that law. If it was good enough for Harry Reid, it should be good enough for us, as states, and the supremacy of the state over its jurisdiction.

Mr. Chairman, I yield back and I thank the witnesses for attending today.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the gentlelady from Puerto Rico, Mrs. González-Colón.

Mrs. GONZÁLEZ-COLÓN. Thank you, Mr. Chairman, and thank you, both governors, for being here.

Happy to see you, Governor Noem.

Governor NOEM. Good to see you again, too.

Mrs. GONZÁLEZ-COLÓN. We were here together when I actually arrived here in Congress. And I am listening to you both in terms of that experience, and my main concern will be how, if in any way, the management engagement from BLM was done with your state. Was there any engagement before the publication of the rule?

Governor NOEM. Not with our office or with our state, specifically, no. There was an opportunity to listen and gather some information at one time. I would say it is a very different—well, it has happened. Waters of the U.S. was proposed much the same

way. The 30x30 rule, which is absolutely a land grab by the Federal Government that is now being rebranded and brought forward, we are starting to see this as a pattern coming out of this Administration.

Mrs. GONZÁLEZ-COLÓN. You were saying in your testimony, in your statement that the proposed rule will also impact public safety in a negative way in your state. Can you elaborate on that?

Governor NOEM. Well, it is going to risk people's lives because it will not allow us to manage the Black Hills National Forest and Forest Service lands throughout that area in a way that protects our communities and homes that are there. We have seen devastating fires in the area. And because it is such a populated forest, if we do not manage it, it will increase that risk of wildfire, and we will lose people.

The rule completely ignores that aspect, and does no analysis on what public safety ramifications may happen if they follow through on it.

Mrs. GONZÁLEZ-COLÓN. You know that I represent Puerto Rico in Congress, and we don't have the Bureau of Land Management back home.

Governor NOEM. Right.

Mrs. GONZÁLEZ-COLÓN. But I think it is important to know what kind of repercussions could be in the whole nation if we don't pay attention to this. Why should the general public and nationwide be concerned about the way this rule is being imposed?

Governor NOEM. Well, it will have long-lasting effects as far as precedent that it is setting for how every other rule is done. That is what I see consistently coming from the government, is once you allow them to overstep Federal law or to trample on our states' rights, they will continue to do so. And they will reference back to, well, we have already used this mechanism before under a rule through BLM, and they will continue to push it.

That is why it is important to stop this, because, specifically on this rule, there is no scientific data, there is no analysis. They have purposely declared it not a major rule so they don't have to provide for you what the economic impact could be on the country.

And for us specifically, it is our way of life. It is the people that live there and make a living off the land.

Governor GORDON. And if I may, here is a direct impact.

Governor Noem talked about forests. And we have seen that in California, we have seen that in Wyoming, we have seen that in Montana, really, everywhere across the West.

The other thing we have seen, and I will point to Colorado a few years ago, where a massive grass fire overwhelmed communities. If we aren't able to treat invasive species on our Federal estate, there is a grass called cheatgrass, there is another one called Japanese brome. Both of them grow under really rapid conditions. They are annual grasses and they are like gasoline. In fact, they are characterized as being able to change the ecology of an area. So, if we are not able to treat that, and a spark hits that land, and a wind comes up, you will have devastation that can wipe out communities. We have seen it in Colorado. Governor Noem, Rapid City on the western edge, had real problems, and none of that was taken into effect.

In fact, earlier today, I said one of the things that this Administration could do to get off their butt and actually do something about conservation is make sure that we get Rejuvra approved. The Ag Department says it is OK, EPA says it is OK, the Bureau of Land Management can't figure this out. That is one of the most important things they could do for conservation.

Mrs. GONZÁLEZ-COLÓN. And I need to agree with you. You said a few minutes ago that Secretary Perdue visited Wyoming to see what is going on in real life there. He did the same thing in Puerto Rico after the hurricanes. That is the kind of politics we should be pushing from our executive branch.

I want to say thank you, both of you. Thank you for the conservation you do and your people do in your lands.

I yield back.

The CHAIRMAN. The gentlelady yields back. I now recognize myself for questions and, again, want to thank both of you for coming here today and spending your valuable time with us.

Governor Noem, in your testimony, you talked about how this rule has no scientific basis. You talked about how the Administration is classifying it as a minor rule. And we held up the 88-page minor rule that they are proposing.

And I know a few years ago I was out in Wyoming and South Dakota and in the Black Hills area, and I was there on a very sad day. It was a day that one of the mills in South Dakota closed, one of the few mills remaining out there. And I wasn't planning to meet with you, Governor Noem, but there was a forest fire that very day, and you had to fly over to be there for the forest fire.

And I will say that some things do change, probably since you have been on the Committee. We actually passed out two bipartisan pieces of forestry legislation this week, one of them with a 39 to 0 vote, and it was on Good Neighbor Authority, which I know you worked on when you were here in Congress. And that bill had passed the Ag Committee 51 to 0. So, we are starting to wake up and realize the benefits of forest management. This will allow tribes and counties to do some of the same work that the states are able to do.

But when I was there, I reviewed a report. And I have a forestry background. It was written not just by bureaucrats, but retired bureaucrats from the Forest Service, on how the forests should be managed. And it was offensive to me from a scientific standpoint on the basis that there was no science or knowledge that went into it. It was purely a biased report written to influence how the forest was going to be managed.

So, it didn't appear to be a great day in the Black Hills with a mill closing down, a forest fire raging, and a new withdrawal from, if you will, from the Forest Service on land. But you mentioned that Good Neighbor Authority is working, and things are happening better in the Black Hills. I know both of you utilize the Good Neighbor Authority. Can you talk about how that and other programs that are run by the state can actually make conservation better and make our Federal lands better?

Governor NOEM. Well, in the Black Hills we have utilized Good Neighbor Authority to cooperate with other layers of government, with the state, with counties, with outside associations. And we

have run incredible projects that have allowed us to go out and manage the forest to make sure that we were considering all aspects of what a successful forest looks like.

Those are the kind of rules, suggestions, and regulations that I believe we should be focusing on in Congress to cut strings rather than to tie more on to us, to allow us the freedom to look at what specifically is happening in each situation and adapt to that. That was used very successfully for us to defeat and push back the pine beetle epidemic that we were dealing with at that time that was making the Black Hills so dangerous. And it worked overwhelmingly.

Since then, we have seen more and more regulation coming in. Specifically, the GTR that was put forward by the Forest Service that cut our cubic cord feet was pretty devastating for us to see that it wasn't built on anything on the ground. And that is what is another aspect that is impacting the Black Hills right now, why we are seeing our mills being threatened and our timber industry struggling.

I know Governor Gordon has been deeply involved in this, as well, as we have been trying to brainstorm on how we can keep the economy going.

It is so interesting to me that we import a lot of our lumber from Canada, while we have excess lumber here that we just don't allow ourselves to utilize to help support our country. And now we have lumber from California from burned-out wildfires that is being shipped all the way to South Dakota to our two mills. It doesn't make any sense.

The CHAIRMAN. I know, I almost passed out when I heard the solution was to ship in logs from California, and all that freight. Think of the carbon emissions on that.

Governor NOEM. Absolutely, they are actually doing it.

The CHAIRMAN. Governor Gordon.

Governor GORDON. And Mr. Chairman, the lesson is well learned in that particular instance. That is because the mill industry in the Northwest is dead. We put it out of business.

So, in order to take care of those logs, we had to figure out a way, at enormous cost, both carbon and to the taxpayer, to get those logs to South Dakota, just to get them taken care of.

Good Neighbor Authority has worked. It is incredibly valuable. We are working on it, obviously, in the Black Hills, but also in the western part of our state.

And I will point out one other thing that is really critical about this. As we look at the Colorado River and the challenges it has had over the last several years, if we don't manage our watersheds well, we will compound our problems with droughts. We will compound our water shortage issues.

And Mr. Chairman, as a forester, you know very well that when somebody says we are going to take this offline, we are not going to manage the forest, succession doesn't stop. You end up with post-successional forests that are tinder boxes. You end up with all kinds of strange things that happen. Management happens when we actually have the ability to do something.

The CHAIRMAN. And the point I would like to make as we wrap up this panel is that, when we choose not to manage, we make a

management decision. And if the Federal Government, the bureaucracy in the Federal Government is truly concerned about conservation, then let the people who know how to do conservation actually do conservation. Because the Federal Government's track record on conservation is really pretty poor. If you look at it compared to tribal governments, to state governments, and to private, you are looking at two different areas and, actually, two different universes.

So, thank you to the witnesses for being here today.

And Governor Gordon, you mentioned a great point. When these trees burn, they are releasing carbon dioxide. When they fall down and deteriorate over time, it is actually methane. They release CH_4 from the digestion from the bugs that are eating them. So, you can burn it up as CO_2, or let it rot and create CH_4, or you can utilize those products and create good jobs in rural economies.

But again, thank you both for being here today. And those were the last questions we have for Panel II.

Some members of the Committee may have some additional questions for the witnesses that we will ask to respond in writing.

We will now move on to our third panel. While the Clerk resets the witness table, I will remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

I would also like to remind our witnesses of the timing lights, which will turn red at the end of your 5-minute statement, and to please remember to turn on your microphone.

As with the second panel, I will allow all witnesses to testify before Member questioning.

At this point I would have liked to have introduced the Bureau of Land Management Director, Tracy Stone-Manning, to testify on H.R. 3397, a bill with explicit actions for the Director to take. However, the Director declined our invitation to testify, and instead we have Principal Deputy Director Nada Wolff Culver.

Principal Deputy Director Culver, you are now recognized for 5 minutes.

STATEMENT OF THE HON. NADA WOLFF CULVER, PRINCIPAL DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, WASHINGTON, DC

Ms. CULVER. Thank you, Chairman Westerman, Ranking Member Grijalva, and members of the Committee. I am Nada Wolff Culver, the Bureau of Land Management's Principal Deputy Director. I appreciate the opportunity to express the BLM's concerns regarding H.R. 3397, which would deprive the BLM of critical tools necessary to manage the challenges facing public lands today. The BLM opposes the bill.

I also appreciate the opportunity to be here on a panel with my fellow Colorado residents, and I am also thankful to get to speak at this hearing today to get a chance to reiterate the intent and the content of the rule, how it works, consistent with the day-to-day management of our public lands.

On behalf of the American people, the BLM manages approximately 245 million acres of public land, primarily in 12 Western

states, as well as 700 million subsurface acres. Congress provided clear direction to the BLM in the Federal Land Policy and Management Act, or FLPMA, to manage public lands for multiple use and sustained yield, specifically to manage for uses such as renewable and conventional energy development, livestock grazing, timber production, fish and wildlife habitat, recreation, and conservation, including protecting cultural and historic resources, watersheds, and scenery. FLPMA also directs the BLM to "take into account the long-term needs of future generations."

Today, public lands are under severe stress from increasingly frequent and intense wildfires, historic drought, influx of invasive species, and changing conditions on the ground driven by climate change. Simultaneously, public lands are under pressure from ever-increasing types and amounts of use.

Simply put, the BLM's ability to continue to manage for the multiple uses outlined in FLPMA, which are a vital economic driver for communities across the West, depends on the resilience and the health of America's public lands.

The proposed rule would help provide necessary direction to public land managers to work toward resilient, healthy landscapes that can support the full breadth of multiple use now and into the future. Recognizing that not every use can always occur on every acre, the BLM is working to ensure the appropriate balance of uses within the multiple-use framework on every acre.

Conservation, defined in the proposed rule as protection and restoration, is a part of this balance and, as one type of multiple use, supports the continued resilience of the public lands. The proposed rule would direct land managers to identify intact landscapes and degraded landscapes, and consider whether and how land health, habitat, clean air, and clean water can be maintained or improved or restored as necessary.

At the same time, the proposed rule would direct the use of the best available science and data, including Indigenous knowledge in decision making.

The proposed rule also outlines a tool to support restoration, and to offset the impacts of development: conservation leasing. With conservation leases, the BLM could leverage private investment toward restoration and mitigation efforts taking place on public lands while working with partners, industry, and the public to site energy development and to conserve greater sage-grouse and wildlife habitat.

The BLM received feedback from states, localities, and developers that such a tool is necessary to support durable lands restoration and mitigation on public lands to offset the impacts of development. The rule is responding to that input.

And this is an important point overall: the concepts and the direction in this proposed rule arise out of years of the BLM's experience in implementing FLPMA and working with public land users on the ground. They have been discussed and implemented internally and externally. This proposed rule reflects the lessons learned, the needs identified, and the continuing conversations that BLM has with so many partners across this country who depend on the resources of our public lands.

The BLM is currently in the process of receiving feedback on this proposed rule. The rule was published in the Federal Register on April 3, opening a 75-day public comment period. To date, the BLM has hosted five informational sessions and provided numerous briefings to a wide range of the interested public around the West and around the rest of the country. The BLM has received nearly 120,000 comments thus far.

While our public outreach has been robust, in response to several requests, including from members of this Committee, today we are announcing an additional 15 days for public comment, bringing the comment period to 90 days. We will consider the valuable input we have received and continue to receive to inform the final rule.

I am optimistic that this rule would help achieve our shared goals discussed by everyone here today to continue to manage public lands so they can support the multiple uses that we rely on now, while also maintaining the health of the lands for future generations.

Every day, the BLM seeks a careful balancing across many uses and resources to steward the public lands for all. The proposed rule would help guide balanced management in a manner that does not elevate one use over others. The BLM would continue to permit multiple uses on the public lands, and conservation will remain compatible with many other uses.

Thank you again for the opportunity to present this testimony, and I look forward to your questions.

[The prepared statement of Ms. Culver follows:]

PREPARED STATEMENT OF NADA WOLFF CULVER, PRINCIPAL DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to express our concerns regarding H.R. 3397, which would require the Director of the Bureau of Land Management (BLM) to withdraw the proposed Conservation and Landscape Health rule (88 Fed. Reg. 19583 (April 4, 2023)) and prohibit the BLM from taking any action to finalize, implement, or enforce the proposed rule or any substantially similar rule.

The BLM's management responsibilities are at a pivotal moment, as our shared public lands face new and growing challenges resulting from a changing landscape, such as unprecedented drought and wildfire, while at the same time demands from commercial and recreation uses are increasing. The proposed rule is intended to provide tools to land managers on the ground to most effectively respond to these challenges and fulfill the BLM's mission so that our public lands can continue to support the people and wildlife that depend on them. It could help to ensure that the BLM has the ability to continue to responsibly manage energy development, grazing, mining, recreation, conservation, and other uses in a balanced manner consistent with the multiple-use, sustained-yield mission of the Bureau. It is important to note that this rule is at the proposed rule stage and the final rule could include modifications.

Every day the BLM provides for a careful balancing across many uses and resources to steward the public lands for all. The proposed rule clarifies a framework confirming this approach and is consistent with the BLM's responsibilities, including under Section 102 and Section 103(c) of the Federal Land Policy and Management Act (FLPMA), to uphold its multiple use mission while ensuring the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations. The proposed rule is intended to help guide balanced management that does not elevate one use over others. The BLM permits multiple uses on the public lands and would continue to do so should this rule be finalized. Conservation principles, which are already established in BLM administrative policy and instruction memoranda, as well as applicable precedent, will continue to be compatible with many other uses and are key to ensuring that the public lands can continue to support multiple uses now and into the future.

H.R. 3397 would unnecessarily interfere with the rulemaking process, and limit BLM's ability to manage for the challenges facing public lands today. The BLM strongly opposes this proposed legislation.

Overview

On behalf of the American people, the BLM manages approximately 245 million surface acres, located primarily in 12 western states. The Bureau also manages about 30 percent of the nation's onshore mineral resources across 700 million subsurface acres, including beneath surface areas managed by other Federal agencies, as well as state and private lands. Pursuant to the multiple-use mandate set out in FLPMA, the BLM manages public lands for a broad range of uses and values, such as renewable and conventional energy development, livestock grazing, timber production, hunting and fishing, recreation, and conservation—including protecting scenic, cultural, and historic resources, watersheds, and scenery. FLPMA also directs the BLM to manage the public lands for sustained yield, so that the many resources of the public lands will continue to be available into the future. Approximately 155 million acres are managed for livestock grazing, and approximately 24 million acres are under lease for oil and gas development, with tens of thousands more acres leased or permitted for renewable energy development, outdoor recreation, or other uses. Public lands managed by the BLM also provide vital habitat for more than 3,000 species of wildlife and support fisheries of exceptional regional and national value.

For more than 75 years, the BLM has evolved to meet the needs of the Nation while maximizing opportunities for conservation, recreation, and commercial uses on public lands. Today, public lands are under severe stress from increasingly frequent and intense wildfires, historic drought, an influx of invasive species, and changing conditions on the ground driven by climate change. At the same time, the pressures of use and development on public and private lands are increasing.

The challenges posed by maintaining the health of public lands in the face of a changing world are making it increasingly difficult for the Bureau to provide for the needs of the American people—whether through food, fiber, habitat, forage for livestock, energy needs, outdoor recreation opportunities, or many of the other uses of the public lands. For the BLM to continue to deliver on its multiple-use and sustained-yield mission, the Bureau needs to manage for the health of lands today, so that their resources and values remain available and in a condition that best meets the needs of current and future generations of Americans.

The proposed rule would help provide necessary direction to public land managers to work towards resilient, healthy landscapes that can support the full breadth of multiple use. The proposed rule would direct land managers to identify intact landscapes and consider whether and how land health can be maintained or improved. As proposed, it would direct land managers to identify where lands are unhealthy or degraded, and to consider how they might be restored. The rule proposes land managers use the best available science and data, while meaningfully incorporating Indigenous Knowledge, to ensure that management is science-based and driven by conditions on the ground. In addition, with the recognition that not every use can always occur on every acre, the BLM is working to ensure the appropriate balance of uses within the multiple use framework on every acre. Conservation is a part of this balance and supports the continued resilience of the public lands.

Among several meaningful updates, the proposed rule also seeks public and stakeholder input on conservation leasing as a potential tool that would support restoration and offset the impacts of development. Under this approach, the BLM could potentially leverage private investment by allowing members of the public to invest restoration and mitigation dollars on public lands, which will also provide industry with a tool to offset their impacts on public lands. This could provide a path to facilitate responsible development while ensuring the public benefits from those mitigation efforts. The proposed rule also attempts to respond to prior feedback from states, localities, and developers that such a tool could help to support durable mitigation and restoration on public lands. Responding to this input by providing additional structure for such an approach could improve the BLM's restoration and mitigation efforts.

The BLM is currently in the process of receiving and reviewing feedback on this proposed rulemaking to ensure it achieves these important goals without unnecessary disruption to existing management. The proposed rule was published in the Federal Register on April 3, 2023, opening a 75-day public comment period. To date, the BLM has hosted five informational sessions, including two virtual meetings and three in-person meetings, to provide the public with opportunities to learn more about the proposed rule, as well as numerous briefings to a wide range of the interested public. The BLM has received more than 120,000 public comments, and will

consider and respond to the comments, using this valuable input to inform the final rule.

The Federal Land Policy and Management Act of 1976 (FLPMA)

Congress provided clear direction to the BLM in the agency's organic act, FLPMA. FLPMA requires public lands to be managed for multiple use and sustained yield unless otherwise specified by law. FLPMA 302(a), 43 USC 1732(a). In doing so, it defined the term "multiple use" at FLPMA § 103(c), 43 USC § 1702(c), to mean:

> [T]he management of the public lands and their various resource values so that they are utilized in the combination *that will best meet the present and future needs of the American people*; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic *adjustments in use to conform to changing needs and conditions*; the use of some land for less than all of the resources; a combination of *balanced and diverse resource uses that takes into account the long-term needs of future generations* for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated *management of the various resources without permanent impairment of the productivity of the land and the quality of the environment* with consideration being given to the relative values of the resources and *not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output*." [emphasis added]

Moreover, Congress further declared:

> "[I]t is the policy of the United States that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, *will preserve and protect certain public lands in their natural condition*; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use . . . ." [emphasis added]

To ensure the BLM is able to meet these priorities, FLPMA provides that "in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public . . . ." To date, the BLM has established and maintains regulations for a wide variety of uses, from grazing to off-road vehicle management, from areas managed to protect natural values to mineral resources to rights-of-way. However, the BLM has not established comprehensive regulations governing the conservation elements of BLM's mission to manage for multiple use and sustained yield, which is increasingly necessary in light of the challenges resulting from our changing landscape.

Ultimately, the proposed rule would maintain the BLM's commitment to its multiple-use and sustained-yield mission, helping to provide management direction to fulfill its congressionally directed obligations. If finalized as proposed, the rule would help enable the BLM to deliver on all aspects of the charge Congress has given the Bureau and fulfill its mission, now and into the future. The proposed rule would better address conservation (defined to include restoration and protection) as a "use" among other "multiple uses" and would establish direction and management tools for land managers to consider and better protect and restore healthy public lands.

The Proposed Rule

The BLM's ability to manage for the multiple use and sustained yield of public lands depends on the health of the ecosystems and the ability of the lands to deliver associated services, such as clean air and water, food and fiber, renewable energy, and wildlife habitat. Ensuring resilient ecosystems has become imperative, as public lands are increasingly degraded and fragmented due to adverse impacts from climate change and a significant increase in authorized uses. The proposed rule as issued aims to provide a framework to restore degraded habitat, protect intact landscapes, and ensure informed decision making in planning, permitting, and programs, by identifying best practices to manage lands and waters to achieve desired conditions. The rule would also incorporate opportunities for Tribal co-stewardship and include Indigenous Knowledge as part of informed decision-making.

The proposed rule defines conservation to include restoration and protection. It clarifies that conservation is one of the multiple uses of public lands under FLPMA's multiple-use and sustained-yield structure, as courts have already held, but it

explicitly does not prioritize conservation over other uses. The proposed rule is consistent with the plain language of FLPMA.

Promotes Restoration of our Lands and Waters

The proposed rule would direct the BLM to seek opportunities for restoration across the public lands to enable achievement of its sustained yield mandate, and it encourages active management to achieve ecosystem resilience where appropriate. The proposed rule seeks public input on the concept of conservation leasing, which BLM believes could ultimately provide a durable mechanism to support restoration of public lands in a manner consistent with the BLM's administration of other uses.

Conservation leases could be issued in targeted areas to support the BLM's mission and policy goals through one of two allowed uses—restoration or mitigation—and for a term consistent with those outcomes, for up to ten years as a standard term. While conservation leases would effectively restrict some other purposes, they would not disturb existing authorizations, valid existing rights, or state or Tribal land use management. In its current form, the proposal does not contemplate the BLM requiring conservation leasing; rather, the BLM would review applications from qualified third parties and ensure the proponent is experienced in and qualified to achieve the proposed restoration or mitigation outcomes by leveraging non-Federal funding. Proposals would be evaluated to determine if the proposed use would be suitable at the proposed location, considering other potential uses of the lands. The existence of a conservation lease could also provide support for successful restoration. For example, a non-profit sporting organization could put people to work on public lands to restore mule deer or elk habitat, and a conservation lease would help ensure that the work would take hold and flourish.

Conservation leasing could also serve as an important tool for compensatory mitigation, which compensates the public for the unavoidable impacts of development on public land through investments in restoration and other mitigation measures. Compensatory mitigation could facilitate responsible development on public lands while ensuring ample availability of healthy rangelands for other multiple uses. Currently, however, there are often too many obstacles for partners to engage in successful compensatory mitigation on public lands. In their current form, the conservation leasing provisions in the proposed rule come, in part, in response to input from state, local, and industry partners who requested a reliable path to pursue compensatory mitigation on public lands to facilitate development projects, including participation by mitigation fund holders. Decisions to issue a conservation lease would utilize the appropriate NEPA process to ensure adequate public engagement and informed decisions.

Provides for Balanced, Responsible Development

To support balanced and informed decision-making, the proposal would broaden the use of the fundamentals of land health, currently applied within the BLM's grazing program, and apply them consistently across other land management programs. Incorporating land health standards and guidelines broadly into land management is a best practice employed by state and Federal land management agencies, including the U.S. Forest Service.

Extending the applicability of the fundamentals of land health would ensure the BLM programs will more formally and consistently consider the condition of public lands during decision-making processes. Expanding assessments to a scale beyond an individual grazing allotment could allow the BLM field offices to leverage those broader assessments with the goal of making individual decision-making processes more timely and efficient. The BLM has already seen success in BLM field offices that are currently leveraging broader land health assessments. Moreover, by using land health assessments and building conservation into land management, the proposal would enable the BLM to work more effectively with local communities and industry to identify areas of low resource conflict that are better suited to development uses while acknowledging areas important to other community needs or protection.

In addition, as noted above, conservation leasing could provide a vehicle to more effectively carry out compensatory mitigation for the unavoidable impacts of development projects on public lands. The proposed rule does not contemplate the BLM requiring compensatory mitigation to be carried out via conservation leases or only on public lands; it simply provides another vehicle to support compensating the public for loss of use and resources on their public lands.

Protects the Healthiest Intact Landscapes

To help direct resources to areas where they will have the strongest and most beneficial impact, the proposed rule would direct land managers to identify the most suitable intact landscapes for conservation. Intact landscapes are defined in the

proposed rule as unfragmented ecosystems free of local conditions that could permanently or significantly disrupt, impair, or degrade the landscape's structure or ecosystem resilience, and that are large enough to maintain native biological diversity, including viable populations of wide-ranging species. Intact landscapes have high conservation value, provide critical ecosystem functions, and support ecosystem resilience. Moreover, fragmentation of these landscapes can impact their ability to deliver critical services, including clean drinking water and flood mitigation.

To this end, intact landscapes would be managed at the local level under the proposed rule. When revising a land use plan, the BLM would review available information to identify intact landscapes and then determine which, if any, landscapes should be managed to protect intactness. In doing so, the BLM would consider a range of potential uses in accordance with its multiple-use management approach, and evaluate their impacts using the best available scientific information.

The identification of any intact landscapes would be subject to notice and public comment as part of the larger land use planning process. Identification of an intact landscape does not require it be managed in any particular manner; rather, managers would retain the discretion to determine whether an area should be managed to protect its intactness or should be open to other uses. In identifying the areas that are most suitable for management as intact landscapes, the proposed rule would enable the BLM to work with communities to identify areas that the communities have targeted for strategic growth and development, as managing those areas for intactness is less likely to be appropriate.

One of the principal tools that the BLM currently has available to manage intact, native landscapes on public lands is the designation of areas of critical environmental concern (ACEC), as provided by FLPMA. FLPMA directs the BLM to give priority to the designation and protection of ACECs when making land management decisions. Notably, ACECs can be designated to protect a wide range of values, including recreation, research, and cultural resources.

Currently, the BLM's process for designating ACECs is established partially in regulation and partially in guidance. The proposed rule would formalize much of that guidance in regulation, ensuring consistent identification and management, while reducing duplicative steps in the management of these important sites. This would leverage the BLM's more than 40 years of experience inventorying, evaluating, and managing ACECs through the land use planning process to protect sensitive areas for future generations.

Conclusion

The BLM is committed to its core mission of multiple use and sustained yield, which includes managing for healthy lands today so that the BLM can deliver on its important, congressionally-mandated, multiple-use mission now and in the future. The proposed rule would help the BLM respond to the pressures posed by unprecedented drought, intense wildfires, loss of wildlife, and an influx of invasive species. Given the significant challenges the BLM faces in maintaining the health of the public lands, the BLM again emphasizes its stringent opposition to the proposed legislation. Thank you again for the opportunity to present this testimony, and I look forward to your questions.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. NADA WOLFF CULVER, PRINCIPAL DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT

Ms. Wolff Culver did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

Question 1. During the hearing, Representative Curtis asked for a listening session in San Juan County, Utah.

1a) Will you respond to Representative Curtis's request and hold a listening session in his district?

1b) Will you hold this listening session before the comment period closes on July 5, 2023?

Question 2. During the hearing, Representative Fulcher asked for a listening session in Idaho.

2a) Will you respond to Representative Fulcher's request and hold a listening session in Idaho?

2b) Will you hold this listening session before the comment period closes on July 5, 2023?

Question 3. During the hearing, Representative Gosar asked for a listening session in Arizona.

3a) Will you respond to Representative Gosar's request and hold a listening session in Arizona?

3b) Will you hold this listening session before the comment period closes on July 5, 2023?

Question 4. During the hearing, Representative Boebert expressed concern over the lack of in-person listening sessions and the decision of the BLM to hold these listening sessions in metropolitan areas.

4a) Will you respond to Representative Boebert's concern and hold a listening session in her district?

4b) Will you hold this listening session before the comment period closes on July 5, 2023?

4c) Why did the BLM choose to hold an in-person listening session in Denver and not Grand Junction, despite Grand Junction being the "Western headquarters" of the agency?

Question 5. During the hearing, Representative Rosendale expressed concern over the lack of in-person listening sessions and the decision of the BLM to hold these listening sessions in metropolitan areas. He specifically noted the Montana Delegation letter sent on May 11, 2023, asking for a listening session in Montana.

5a) Will you respond to Representative Rosendale's concern and hold a listening session in Montana?

5b) Will you hold this listening session before the comment period closes on July 5, 2023?

5c) Why has the agency not responded to the Montana delegation's letter?

Question 6. How many more in-person listening sessions will you hold?

Question 7. Representative Peltola expressed concern her rural and remote residents were unable to participate in listening sessions on this rule. Many rural and remote residents don't have access to broadband to connect to virtual sessions. Also, the closest listening session for Alaskans is over 2,800 miles from Anchorage and Fairbanks, Alaska to Reno.

7a) How will you accommodate an in-person listening session for rural and remote residents in Alaska?

Question 8. How often does the BLM meet with the stakeholders and leaseholders and local, county, and state governments to discuss their management of the lands within those states?

Question 9. In your written testimony, you state, "The BLM has already seen success in BLM field offices that are currently leveraging broader land health assessments."

9a) Will you provide a list of what field offices are conducting land health standards and guidelines? Please provide details on the frequency of the assessments and what the uses of the lands are where these standards are being applied.

9b) How long have these offices been conducting this practice?

9c) If BLM field offices are currently doing this, why is the proposed rule needed to expand land health standards and guidelines beyond grazing?

Question 10. In your written testimony, you clearly state, "While conservation leases would effectively restrict some other purposes, they would not disturb existing authorizations, valid existing rights, or state or Tribal land use management."

10a) Several Members, from both sides of the aisle, have expressed concern about the future uses of lands. The testimony clearly states conservation lease would restrict some uses. Please provide a list of what uses a conservation lease could restrict.

10b) What parameters will the BLM put on conservation leases? Currently, there are no details on acreage, number of times a contract can be renewed, or who can obtain a lease. Please provide details on each of those items.

Question 11. In your written testimony, it states the rule "clarifies that conservation is one of the multiple uses of public lands under FLPMA's multiple-use and sustained-yield structure, as courts have already held, but it explicitly does not prioritize conservation over other uses."

11a) What court decisions is this referencing?

11b) Will you provide the court cases and summaries from the Office of General Counsel supporting this statement?

Question 12. The submitted testimony agonizes the agency is facing challenges to provide for the needs of Americans. Specifically stating, "The challenges posed by maintaining the health of public lands in the face of a changing world are making it increasingly difficult for the Bureau to provide for the needs of the American people—whether through food, fiber, habitat, forage for livestock, energy needs, outdoor recreation opportunities, or many of the other uses of the public lands." If this is true, why would the agency then propose a rule that would limit its ability to provide these needs through the multiple uses of public lands?

Question 13. I have sent 65 questions for the record to the BLM and Secretary Haaland during past hearings where this rule was addressed. All have gone unanswered.

13a) Will you respond to all QFRs sent about this rule?

13b) Will you respond before the comment period closes on July 5, 2023?

13c) Will you respond before issuing a final rule?

Question 14. On May 17, 2023, I sent a letter with 13 of my colleagues asking Secretary Haaland to extend the comment period by 75 days and hold more in-person listening sessions.

14a) Will you commit to a comment period extension of at least 75 days?

14b) Will you respond to my letter in writing?

14c) Will you respond before the comment period closes on July 5, 2023?

14d) Will you respond before issuing a final rule?

14e) Why did BLM only extend the comment period by 15 days and not the requested 75 days?

Question 15. During the hearing, Governor Noem of South Dakota raised a concern about foreign entities pursuing conservation leases. These foreign entities could be bad actors, such as China, looking to restrict America's ability to be independent in our production of energy, minerals, and food.

15a) Did the BLM consider foreign entities pursuing conservation leases as part of its rulemaking?

15b) What safeguards will the agency put in place to restrict conservation leases from being obtained by foreign entities controlled by the Chinese Communist Party (CCP) or under direct CCP influence?

15c) What safeguards will the agency put in place to ensure conservation leases do not make America more dependent on countries with worse environmental and labor standards for energy, minerals, and food?

15d) Will the BLM allow conservation leases to be obtained near military bases in the West?

15e) How many foreign entities controlled by the CCP or under direct CCP influence currently have leases on BLM lands?

15f) What current processes are in place at BLM to analyze whether current lessees are not under the influence of the CCP?

Question 16. On June 13, 2023, the Small Business Administration Office of Advocacy sent a letter to Secretary Haaland expressing great concern over the impact of this proposed rule to small businesses and even questioned the legality to issue conservation leases under FLPMA. The letter states in part:

> *"The proposed rule lacks a proper factual basis for certification that the rule will not have a significant economic impact on a substantial number of small entities."*

"BLM's proposed rule has unintended consequences that are contrary to the agency's goals and the statutory requirements for land management under FLPMA."

"The proposed rule offers too much discretion to BLM that may result in elevating conservation above the other principal land management uses."

16a) Have you received and read this letter?

16b) Have Director Stone-Manning and Secretary Haaland received and read this letter?

16c) Please provide the factual basis that the rule will not have a significant economic effect on small businesses under the Regulatory Flexibility Act.

16d) Who was involved in the determination that this rule would not have a significant economic effect under the Regulatory Flexibility Act?

16e) During the hearing, you testified the BLM had not consulted with any small businesses on this determination under the Regulatory Flexibility Act. Will you commit to consulting with small businesses now to determine whether this rule will have a significant economic effect on small businesses?

16f) Will you respond in writing to the Small Business Administration Office of Advocacy letter?

16g) Will you respond before the comment period closes on July 5, 2023?

16h) Will you respond before issuing a final rule?

Question 17. Deputy Director Culver, both Governors testified saying this rule will significantly impact their state economies, yet the BLM determined it was not a significant rulemaking and would not have a significant effect on the economy. Even the Small Business Administration Office of Advocacy is refuting this claim. Did anyone from the BLM request that this rule be deemed not significant by OIRA?

Question 18. The word "conservation" appears in FLPMA 33 times, primarily in reference to the designation of specific areas within the National Landscape Conservation System.

18a) Please provide the specific section(s) of FLPMA the BLM is using to justify elevating conservation as a "use" under FLPMA.

18b) Does the word conservation appear in Section 102 of FLPMA?

18c) Does the word conservation appear in the definition of multiple use as defined by section 103(c) of FLPMA?

Question 19. Why do you believe this rule would be a more effective alternative to address climate change and conserve land as opposed to proactive forestry practices, which store and retain carbon in a continual cycle of growing, harvesting, and replanting?

Question 20. The BLM seeks comments on this question: "Should the rule expressly authorize the use of conservation leases to generate carbon offset credits?" The federal government should not engage in carbon banking. This is completely incompatible with the agency's multi-use and sustained yield mandate.

20a) Under what legal authority does the BLM have the ability to sell carbon offset credits on public lands?

20b) Does FLPMA, which was passed in 1976, contemplate the issue of carbon offset credits?

Question 21. On the Bureau of Land Management's website, there are a few industry specific Frequently Asked Questions (FAQ) documents. However, there is not a document for all the current, multiple uses of BLM land under FLPMA.

21a) How are these actions not evidence of BLM choosing a predetermined outcome before the public comment period is even over?

21b) Will you create FAQ documents for all current, multiple uses on BLM lands?

21c) Why is there no FAQ document for timber harvesting?

21d) Why is there no FAQ document for oil and gas production?

21e) Why is there no FAQ document for mineral development?

Question 22. Deputy Director Culver, Governor Noem and Governor Gordon testified about the continued locking up of lands and the detriment to their states. I am afraid the administration does not care about these concerns. There are many

land management tools to restrict use. Another, vaguely defined conservation lease is not needed.

22a) Does a wilderness area conserve land?

22b) How many BLM acres are currently designated as wilderness?

22c) Does a wilderness study area conserve land?

22d) How many BLM acres are currently designated as wilderness study areas?

22e) Does a national monument designation conserve land?

22f) How many BLM acres are currently designated as national monuments?

22g) Does an Areas of Critical Environmental Concern (ACECs) conserve land?

22h) How many BLM acres are currently designated as ACEC?

Question 23. Under BLM's existing regulations, the agency charges rental fees of at least fair market value for usage of BLM land. How do you plan to determine fair market value of conservation leases?

Question 24. Under this rule, BLM would be required to identify intact landscapes as a part of the RMP process and would have to develop a restoration plan with any new or revised RMP. Staff would also have to report annually on the results of land health assessments. These are just some of the various new requirements placed on BLM employees by this rule.

24a) How will the agencies be able to meet all of these new undertakings when they cannot even meet requirements in existing statute like quarterly lease sales under the Mineral Leasing Act?

24b) Will you request more funding from Congress in order to meet these new requirements?

Question 25. Under Executive Order 13211, Federal agencies are required to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action that is likely to have a significant adverse effect on the supply, distribution, or use of energy. Amazingly, the Department concluded that the rule would not affect energy supply or distribution. I have heard from conventional energy stakeholders as well as renewable energy stakeholders who have expressed serious concern that this rule would limit their ability to produce energy on BLM lands.

Please provide the documentation to the Committee to support the assertion that the rule would not affect energy supply or distribution.

Question 26. The rule itself is relatively silent about how the conservation leases themselves will be granted. Will they be done upon request, or will they be granted competitively according to an auction system?

Question 27. Will the conservation leases be limited to surface activities or include mineral rights? If they will include mineral rights, how does BLM intend to ensure that an appropriate return is granted for American taxpayers?

Question 28. Will current oil and gas production, permits, and leases be exempt from the rule and thus be allowed to be processed and or developed once the rule is in place?

Question 29. In meeting the requirements and or intent of the rule—establishing ACEC's for example—do you anticipate the barring of future, or revoking pending, oil and gas leases or permits in areas that are currently available or potential future development?

Question 30. Please provide the factual basis, including supporting documentation, for how BLM came to the determination that this rule will not have an effect on the economy of $100 million or more.

Question 31. Please provide the factual basis, including supporting documentation, for how BLM came to the determination that this rule will not increase costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

Question 32. Please provide the factual basis, including supporting documentation, BLM's claim in the rule that the "proposed rule would benefit small businesses by streamlining the BLM's processes."

Question 33. Please provide the factual basis, including supporting documentation, for how BLM came to the determination that this rule will not have significant

adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Question 34. Please provide the factual basis, including supporting documentation, for how BLM came to the determination that this rule will have "no substantial direct effects on federally recognized Indian Tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, and that consultation under the DOI's tribal consultation policy is not required."

Question 35. Is the definition of conservation in this rule consistent with the definition of conservation that has never been publicly provided for the purposes of the administration's 30 by 30 Initiative.

Question 36. Why is the BLM proposing to remove the public comment period on ACECs as part of this proposed rule?

Question 37. In regards to the relationship with RMPs:

37a) How many RMPs will need to be updated if this proposed rule is finalized?

37b) What will be the cost and time of those RMP updates?

37c) If RMPs will not need to be updated, why is the BLM proposing a rule that would dictate land managers act inconsistently with their own resource management plan?

Question 38. The proposed rule states that "Some public lands could be temporarily closed to public access for purposes authorized by conservation leases, such as restoration activities or habitat improvements." How long would these temporary closures last?

Question 39. How many recreation visits to BLM lands are attributed to commercial recreation, such as outfitting and guiding, versus non-commercial recreation?

Question 40. The rule defines the term "high-quality information" to specifically include Indigenous Knowledge. Despite this, BLM did not consult with any tribes on this proposed rule. Therefore, should I assume that the proposed rule itself does not rely on "high-quality information"?

Question 41. Why does the proposed rule not use the definition of "public lands" that appears in FLPMA?

Question 42. Why does the proposed rule not define multiple use?

Questions Submitted by Representative Levin

Question 1. How is the Bureau of Land Management aiming to balance the growing demand for renewable energy in the face of the climate crisis with conservation, which is essential for climate resilience?

Question 2. Can you provide some of examples of how the Administration is already working to strike a balance between those two important priorities?

Question 3. While I support the general concept of conservation leasing, I want to make sure that any final conservation rule fully incorporates the feedback of key stakeholders, including those developing renewable energy projects. Deputy Director Culver, thank you for your announcement this morning that BLM will be extending the comment period to allow for additional engagement, including with those seeking to develop renewable energy projects. Will you commit to working with these important stakeholders to ensure their concerns are incorporated into the final rule?

The CHAIRMAN. Thank you, Principal Deputy Director Culver. I now recognize Ms. Kathy Chandler-Henry, Board Chair of the Eagle County Board of Commissioners, to testify for 5 minutes.

Commissioner Chandler-Henry, you are now recognized.

STATEMENT OF KATHY CHANDLER-HENRY, BOARD CHAIR, EAGLE COUNTY BOARD OF COMMISSIONERS, EAGLE, COLORADO

Ms. CHANDLER-HENRY. Good morning, Chairman Westerman, Ranking Member Grijalva, and members of the Committee. Thank you for the opportunity today to testify in opposition to H.R. 3397, and to express my support for the BLM's proposed public lands rule.

I was lucky to grow up in the small town of Eagle in the central mountains of Colorado. Spending time on my family's ranch and exploring the mountains and surrounding areas instilled in me an ethic to protect these places.

Eagle County has grown since I was a kid. Our surrounding public lands, ranching heritage, and beautiful mountains make Eagle County a uniquely desirable place to visit, to call home, raise a family, ski, hike, raft, hunt, or fish. But our public lands are challenged by the impacts of changing climate, continued population growth, and increased demands on our natural resources. We must balance these demands with protecting our mountain ecosystems.

The proposed public lands rule helps with this balancing act by clarifying the ability of BLM to consider conservation values when developing resource management plans, to manage for resilient ecosystems, and to promote collaboration among public land users.

Over 80 percent of Eagle County's nearly 1.1 million acres is public lands. Eagle County is home to portions of the White River National Forest, which is the most visited forest in the nation, more visitors than Yellowstone, Yosemite, Grand Canyon, and Rocky Mountain National Park combined. Eagle County is also home to the BLM's Castle Peak and Bull Gulch Wilderness Study Areas.

About a quarter million acres in Eagle County is managed by the BLM. Like the rest of Colorado, where only 16 percent of BLM's 8.3 million acres are durably protected, most of these lands in Eagle County are not permanently conserved. These public lands contribute to our world-class outdoor recreation experiences, and help ensure that our local economy thrives.

Tourism and outdoor recreation account for roughly 50 percent of Eagle County's annual revenues. Maintaining our proud ranching history alongside tourism and ski resorts can be seen throughout the county with numerous grazing allotments on both BLM and Forest Service lands.

I would like to applaud the BLM for creating a new tool, conservation leases, as part of the proposed rule. These leases would be temporary, allowing local groups to work with BLM on restoration projects or renewable energy companies to enter into leases for compensatory mitigation. This is a very promising and complementary tool to support landscapes across my county and around the West.

Clarification in the proposed rule that appropriately balances conservation values with other types of land practices will allow the BLM to create management plans that benefit rural economies like ours.

The proposed rule further establishes a guiding principle that BLM manage for resiliency in public lands through protection of intact, native landscapes and restoration of degraded landscapes.

Eagle County is a headwaters county. Our community members rely on public lands not only for their quality of life and wildlife habitat, but also to provide our communities with safe drinking water. Water from Eagle County flows into the mighty Colorado River, and it helps provide water for drinking, agriculture, power, and industry for 40 million people downstream. Maintaining healthy watersheds that can be resilient in the face of drought and fire is a priority for our county, and we believe the proposed rule will assist in that resilience.

The management of public lands has a significant impact on our local communities. Having a Federal land management partner with clear direction to work with us on balancing multiple uses, including conservation, will only strengthen the collaboration we already rely on, and will provide our communities with more certainty that our needs will be considered in BLM's planning and land management decisions.

If enacted, H.R. 3397 would undermine BLM's ability to ensure conservation of critical public lands. The bill would prevent local managers from working with communities like ours to protect important recreation and conservation areas that are vital to our economies and ways of life.

In conclusion, I support the BLM's proposed public lands rule. It will empower the agency to deliver on its multiple-use mandate by placing conservation values on par with other uses on our public lands. As climate change, energy development, recreation, and tourism pressures continue to grow, this rule will promote ecosystem resilience.

Clarification of BLM's multi-use approach and providing tools to collaborate with all users is the best method of managing these public lands that we so dearly love.

Thank you so much for your consideration.

[The prepared statement of Ms. Chandler-Henry follows:]

PREPARED STATEMENT OF KATHY CHANDLER-HENRY, EAGLE COUNTY COLORADO COUNTY COMMISSIONER

Introduction

Good morning, Chairman Westerman, Ranking Member Grijalva, and members of the committee. Thank you for the opportunity to testify in opposition to H.R. 3397, and to express my support for the Bureau of Land Management's (BLM) proposed Conservation and Landscape Health or Public Lands Rule.

I was lucky to grow up in the small town of Eagle, in the central mountains of Colorado. Spending time on my family's ranch and exploring the mountains and surrounding public lands instilled in me a conservation ethic to protect these places for my children and their children to enjoy.

When I graduated high school, Eagle County only had 7,000 residents. Now there are 56,000. Our surrounding public lands, ranching heritage, and thriving outdoor recreation economy make Eagle County a uniquely desirable place to call home, raise a family, or to visit to ski, hike, boat, hunt or fish. But we are in danger of loving these lands to death. Our public lands are challenged by the impacts of a changing climate, continued population growth, and increased demand for natural resources, development and outdoor recreation. Balancing the demands on natural resources with protecting our mountain ecosystem is one of the top goals of the Eagle County commissioners.

The proposed Public Lands Rule helps with this balancing act by clarifying the ability of the BLM to consider conservation values when developing Resource Management Plans. It allows us, in concert with the BLM, to manage for resilient ecosystems, especially important in this time of threats to western water and increased wildfire dangers. And finally, the Public Lands Rule promotes the BLM's mission of multiple use and allows collaboration among users, including timber, grazing, extraction, mining, and recreation to mitigate and restore our treasured public lands.

Consideration of Conservation Values

Over 80% of Eagle County's nearly 1.1 million acres is public lands. Eagle County is home to portions of the White River National Forest (the most-visited national forest in the nation with over 17.8 million visitors per year—more than Yellowstone, Yosemite, Grand Canyon, and Rocky Mountain National Parks combined). Eagle County is also home to Eagles Nest, Holy Cross and Flat Tops Wilderness Areas, and the BLM's Castle Peak and Bull Gulch Wilderness Study Areas.

About a quarter million acres in Eagle County are managed by the BLM. Like the rest of Colorado, where only 16% of BLM's 8.3 million acres are durably protected, most of those Eagle County lands are not permanently conserved.

These public lands contribute to our world-class outdoor recreation experiences and help ensure our local economy thrives. Maintaining the historic ranching cultural identity alongside tourism and ski resorts can be seen throughout Eagle county with numerous grazing allotments on BLM and Forest Service lands.

I'd like to applaud the BLM for creating a new tool—conservation leases—as part of the proposed rule. These "leases" would be temporary, allowing local groups to work with BLM on restoration projects or renewable energy companies to enter into leases for compensatory mitigation purposes to offset the impacts of projects on public lands elsewhere. This is a very promising and complementary tool to support intact, well functioning landscapes across my County and around the West.

Clarification in the proposed rule that appropriately balances conservation values with other types of land practices will allow the BLM to create management plans that benefit rural economies like ours.

Management for Resilient Ecosystems

The proposed Rule furthermore establishes a guiding principle that BLM manage for resiliency in public lands through protection of intact, native habitats, and restoration of degraded habitats.

Eagle County is a headwaters County. Our community members rely on public lands not only for their quality of life and wildlife habitat, but also to provide our communities with safe drinking water. Water from Eagle County flows into the mighty Colorado River and helps provide water for drinking, agriculture, power and industry for 40 million people downstream. Maintaining healthy watersheds that can be resilient in the face of drought and fire is a priority for our County and our state, and we believe the proposed BLM rule will assist in that resilience.

Multiple Use and Collaboration

Eighty-five percent of BLM lands in our local field office are open to oil and gas development. These include popular recreation and wildlife areas on the Colorado and Eagle Rivers. We've worked for years to protect these areas and prevent permitting of potentially damaging uses that could fragment these intact landscapes.

The management of public lands has a significant impact on our local communities. Having a federal land management partner with clear direction to work with local communities on balancing multiple uses, including conservation—like what is proposed in the new rule—will only strengthen the collaboration we already rely on and will provide our communities with more certainty that our needs will be considered in BLM planning and land management decisions.

These BLM lands play an important role in supporting world-class recreation opportunities that create Colorado's $9.6 billion outdoor recreation economy. Tourism and outdoor recreation account for roughly 50% of Eagle County's $181 million in annual revenues. Eagle County has worked hard to create a diversified economy that includes and balances development while conserving our world class public lands. We rely on having federal land management partners that work with us to balance these needs.

If enacted, H.R. 3397 would tie the hands of the BLM, undermining the agency's ability to ensure conservation of critical public lands in Eagle County and across the West. The bill not only derails the agency's effort to balance conservation with other multiple uses, it puts an end to any "substantially similar rules." H.R. 3397 would prevent the agency from balancing its management practices, preventing local

managers from working with communities like Eagle County to protect important recreation and conservation areas vital to our economies and ways-of-life.

I would like to commend the BLM agency staff who have led an inclusive public process. They have conducted outreach to solicit feedback and information on the proposed rule that they can consider before revising and proposing a final rule. I appreciate that the BLM offered a 75-day public comment period and hosted five informational meetings, including one in Colorado. H.R. 3397 would shut down and lock out the public's ability to participate and provide meaningful feedback on this important rule before the comment period is over.

Conclusion

I support the BLM's proposed public lands rule. It will empower the agency to deliver on its multiple use mandate by placing conservation values on equal footing with other uses on our public lands. As climate change, energy development, recreation and tourism pressures continue to grow in Eagle County and Colorado, this rule will promote ecosystem resilience. Clarification of BLM's multi-use approach and providing tools to collaborate with all users is the best method of managing these public lands we love.

The CHAIRMAN. Thank you, Commissioner Chandler-Henry. I now recognize Ms. Kathleen Sgamma, the President of the Western Energy Alliance.

You are recognized for 5 minutes.

STATEMENT OF KATHLEEN SGAMMA, PRESIDENT, WESTERN ENERGY ALLIANCE, DENVER, COLORADO

Ms. SGAMMA. Thank you, Mr. Chairman and Ranking Member Grijalva.

I really am glad that we have 15 more days to comment on the rule. I am very glad to hear that, Deputy Director.

But I think this rule is so nebulous, and it raises so many different questions that I don't think it should have been put out as a proposed rule. I think it should have been put out as a request for information, or an advanced notice of proposed rulemaking, because there are so many nebulous concepts in this rule, I don't see how BLM goes through this comment period, even the extended comment period, and comes out with a rule that can really withstand legal challenge.

There are so many concepts that BLM has redefined within this rule that Congress simply had defined already in FLPMA. So, we have conservation leases, which were not contemplated by NEPA. We have conservation being elevated to a principal use on par with the principal uses that are very clearly defined in FLPMA.

So, while BLM would like to change what FLPMA says, Congress is the only one who can change FLPMA.

And right now, you look at what are the principal uses. They are specifically livestock grazing, mineral exploration and production, fish and wildlife management and development, recreation, and timber. But conservation is a goal, it is not a use. So, were Congress to want to change that, they certainly could. But BLM simply does not have the authority to redefine FLPMA.

I mean, with this rule, BLM is really attempting to give itself power to set broad questions of policy that Congress simply did not give it.

BLM had its chance, specifically with FLPMA, to set wilderness study areas. It did so. It reported to Congress on that, I believe,

in the early 1990s. It seems that BLM now wants to use areas of critical environmental concern in a wilderness study area-like manner. It seems to want to re-play-out history. And Congress gave it its chance. So, BLM really needs to stay within the boundaries that Congress gave it. And if BLM doesn't like those boundaries, if members of this Committee who mostly are not here want to change that, they need to do the hard work of changing the law.

So, we don't see how this rule comes out in a way that will stand, really, the test of not only time, but of any kind of legal challenge. It seems to be that BLM is just defining itself new powers.

I think the governors did such a great job of talking about all that was wrong with the rule. And I know we are kind of long on time here, so I don't need to use my full time for that. I would just echo many of the things they would say.

And I am particularly concerned with how BLM has redefined terms that it simply doesn't have the ability to do.

So, I appreciate the ability to be here today. We really call on BLM to rescind this rule, and we certainly support H.R. 3397. Thank you.

[The prepared statement of Ms. Sgamma follows:]

PREPARED STATEMENT OF KATHLEEN SGAMMA, PRESIDENT, WESTERN ENERGY ALLIANCE

Chairman Westerman and Ranking Member Grijalva, thank you for the opportunity to testify today. It has been six years, 51 weeks since I appeared before the Senate Committee on Energy and Natural Resources to testify on the Bureau of Land Management's (BLM) Planning 2.0 rule, a rule that was overturned by Congress in 2017 under the Congressional Review Act (CRA) and a rule that is only different from BLM's proposed conservation and landscape health rule by the terms used and the add-ons attached. I wonder if many aspects of this new rule don't run afoul of the CRA requirement that a rule so overturned "may not be reissued in substantially the same form . . ."

With the proposed conservation and landscape health rule, BLM is attempting to upset the balance on federal lands that has been in place for nearly 50 years, since the passage of the Federal Land Policy and Management Act (FLPMA) in 1976. With this rule, BLM would eventually become an agency like the National Park Service that is focused primarily if not solely on conservation and preservation, rather than remain the foundational multiple-use agency that FLPMA, BLM's organic statute, requires.

Nearly 40% of the United States consists of lands managed by federal, state, or local government in various designations.[1] Americans enjoy 112 million acres of wilderness areas,[2] 85 million acres of national parks,[3] 58.5 million acres of roadless areas in National Forests,[4] 95 million acres of wildlife refuges,[5] 39 million acres in BLM's National Landscape Conservation System, and 21.3 million acres of Areas of Critical Environmental Concern.[6] Further, Interior Secretary Haaland has withdrawn from energy and mineral leasing 589,000 acres in Alaska, Minnesota, Nevada, and New Mexico and is contemplating another withdrawal of 225,000 acres in Colorado.

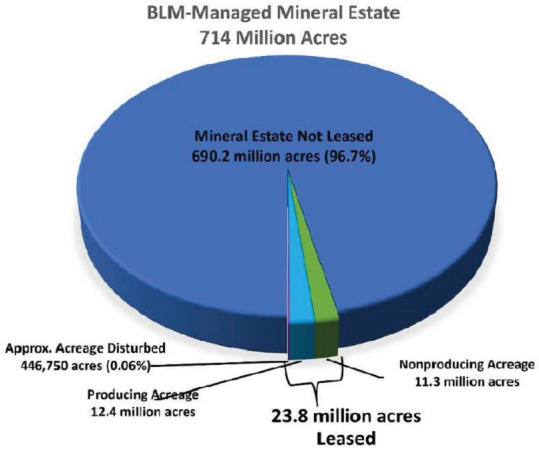
Among the vast 714 million acres of federal landholdings and mineral estate, there are extensive working landscapes that contribute to the wealth and prosperity of all Americans. These lands are appropriate for, ". . . the Nation's need for domestic sources of minerals, food, timber, and fiber", as FLPMA states. Within FLPMA,

[1] USGS Gap Analysis Project, U.S. Geological Survey (USGS), July 5, 2022.
[2] Aldo Leopold Wilderness Research Institute home page, U.S. Forest Service Rocky Mountain Research Station, accessed June 8, 2023.
[3] National Park System About Us page, U.S. National Park Service, accessed June 8, 2023.
[4] Welcome to Roadless Area Conservation, USDA Forest Service, accessed June 8, 2023.
[5] National Wildlife Refuge System, U.S. Fish & Wildlife Service, accessed June 8, 2023.
[6] Public Land Statistics 2021, U.S. Department of the Interior/Bureau of Land Management, June 2022, Table 5-1.

Congress specifically defined "principal or major uses" as limited to mineral exploration and production, livestock grazing, rights-of-way, fish and wildlife development, recreation, and timber. Of course FLPMA calls for the protection of the environment, water, and cultural resources, but does not list conservation as a use.

With the conservation rule, BLM is elevating conservation to a use ostensibly on par with the FLPMA-defined uses and tipping the balance that has been, however imperfectly, maintained on its 244 million acres. Further, because conservation-only would apply everywhere and is not compatible with anything, it would always be in direct conflict with productive uses. BLM would have the difficult task of trying to navigate through those conflicts, which past experience has shown is not something at which BLM excels. The rule is a bridge too far from FLPMA. The majority of BLM lands are appropriate for productive multiple uses. These productive activities are important not only to supply Americans with the basics of modern life, but also to sustain rural communities across the West.

At Western Energy Alliance, we are proud that oil and natural gas producers operating on federal lands provide about 10% of American production and return $9.2 billion in revenue to the American people. Leased acreage is at a historic low even as federal onshore revenue is at a high. We are much more efficient on federal lands, producing more from less land, a balance that the members of Congress who passed FLPMA in 1976 would be proud of and which I hope this committee appreciates today. We produce a huge resource for the American people while protecting the land and disturbing just 0.06% of public lands.[7]



Those who claim we should not produce oil and natural gas on federal lands because of climate change conveniently ignore the fact that if we do not produce them on federal lands, we must produce from nonfederal lands or import the energy from overseas where it is not subject to strict environmental standards. Federal production is some of the most sustainable in the world because of all the additional protections on federal lands. In the continued absence of energy sources that do everything that oil and natural gas do, just saying "no" to federal production means less clean energy and more greenhouse gas emissions.

FLPMA's intent was a sensible approach to the management of federal lands. However, BLM's proposed conservation rule would impose unduly restrictive measures that violate the multiple-use and sustained yield mandate by closing or

[7] Fiscal Year 2022 oil and gas statistics, BLM, February 10, 2023. We calculate surface disturbance using the method BLM has historically used of five acres per federal well. This chart was released yearly by BLM during the Bush Administration. Since BLM stopped releasing it during the Obama Administration, likely because the low disturbance didn't fit the preferred narrative, Western Energy Alliance re-creates it every year. The five-acre disturbance was used by BLM to account for all disturbance resulting from the well pad, including roads to access the well pad. Because of horizontal and directional drilling that reduce surface disturbance up to 70% by clustering multiple wells per pad, we believe five acres overestimates surface disturbance but have stuck with it as a conservative estimate.

restricting unnecessarily large amounts of land to productive uses. Not only would the rule change the face of FLPMA, but it attempts to enable BLM to sidestep its statutory mandates in the Mineral Leasing Act, the Taylor Grazing Act and the 1872 Mining Law. If finalized, the rule would make it more difficult to develop in energy-rich basins across the West, decrease investment, and prevent job creation.

Whereas in the Planning 2.0 rule BLM called it "landscape-level" planning, BLM is now talking about "intact landscapes." Whereas Planning 2.0 called for downplaying the voices of communities that derive their livelihoods from multiple uses on federal lands and their elected officials, in the current rule BLM would shut down public comment completely when designating Areas of Critical Environmental Concern (ACEC) and not even bother to engage the public in determining what areas would be subject to conservation leasing. We find the following aspects of the rule particularly troubling:

- Making conservation a multiple use and prioritizing ecological resilience and intact landscapes over productive uses, thereby expanding the intent of FLPMA and providing BLM an avenue to preclude FLPMA-defined uses on public lands. Essentially anything designated an intact landscape will be managed as an ACEC or wilderness.
- Establishing a conservation leasing program that is completely at odds with the concept of leasing in FLPMA. BLM simply does not have the authority to issue leases for conservation to the exclusion of FLPMA-specified land uses. Ironically, the proposed rule's purported interest in promoting FLPMA's goals is at odds with FLPMA's fundamental requirement of land use planning. Even if BLM possessed statutory authority to issue conservation leases, it could only do so after designating areas as eligible for conservation leasing through a land use planning process and complying with the National Environmental Policy Act (NEPA). The rule appears to side-step the NEPA requirement. BLM does not seem to have considered how federal and state governments would be compensated for the loss of mineral and grazing revenues.
- ACECs have historically been used to preclude productive multiple uses. The rule would greatly expand the size and use of ACECs and make it more difficult to remove ACEC designations. The rule would allow interim management for ACEC nominations that have not yet gone through the required planning process. Large-scale ACECs could severely decrease the amount of land available for productive uses.
- Adding several new definitions not found in the law or revising definitions to establish conservation as a priority in planning and permitting processes. For instance:
    - "Intact landscape" and "resilient ecosystems" are new concepts that would aid in designating large amounts of land off-limits to FLPMA-defined uses. The rule lacks objective standards so that their meaning and the resulting management would lie in the eye of the beholder.
    - "Landscape" has been expanded to include watersheds and ecoregions.
    - "Protection" is a common notion now redefined as conservation, indicating a step further than FLPMA's standard of "undue degradation". "Unnecessary and undue degradation" has been expanded to encompass harm to the land or resources that BLM peremptorily deems excessive or disproportionate.
    - "Casual use" is redefined to apply only to short-term, noncommercial uses, thereby obviating casual activities related to oil and natural gas that do not cause significant surface disturbance as previously defined.
    - "Sustained yield" includes the new concept of "ecosystem resilience" and violates FLPMA by erasing the concept of "multiple use" from the definition. The proposed rule seeks to transform FLPMA's sustained yield goal to a preservation mandate in a manner inconsistent with FLPMA and its judicial interpretation.
    - "Important resources" are now arbitrarily determined by BLM, giving itself broad discretion.

  The numerous, nebulous concepts in the proposed rule and the questions arising about how they would be applied to land management indicate that BLM should have pursued an Advanced Notice of Proposed Rulemaking or a Request for Information instead of advancing a proposed rule. We have joined

other groups including the Public Lands Council, National Cattlemen's Beef Association, American Mining and Exploration Association, Safari Club International, National Association of State Departments of Agriculture, American Farm Bureau Federation, and Federal Forest Resource Council in requesting BLM withdraw the proposed rule and engage meaningfully with appropriate stakeholders before moving forward with this rule. At the very least, BLM should acknowledge that this is a major rulemaking, extend the comment period, and hold meaningful public meetings in every state with significant BLM lands.

- Formalizing a compensatory mitigation framework to offset impacts to important, scarce, or sensitive resources to the *maximum extent possible*. Compensatory mitigation applied to the maximum extent possible is highly subjective and could be used to preclude development. Fundamentally, the Mineral Leasing Act does not permit BLM to require compensatory mitigation of federal lessees and require them to offset on-lease impacts with off-lease mitigation actions.
- Requiring a Fundamentals of Land Health review prior to authorization for use, a process currently applied only to grazing. BLM already struggles with large backlogs in grazing permit renewals because of this review requirement. Applying it to all uses would only serve to increase permitting backlogs for all productive uses.

Thank you for the opportunity to testify. I look forward to discussion during the hearing to better understand BLM's intentions. I urge Congress to pass H.R. 3397 to overturn BLM's conservation and landscape health rule.

The CHAIRMAN. Thank you, Ms. Sgamma, and thank you to all the witnesses. We will now move to questions. And for the first round of questions, I recognize the gentlelady from Colorado, Mrs. Boebert, for 5 minutes.

Mrs. BOEBERT. Thank you, Mr. Chairman, and thank you to the witnesses for being here today, especially from Eagle County.

Principal Deputy Director Culver, nearly 50 percent of my district is Federal lands, and more than 90 percent of the BLM's 245 million acres are located in Western rural communities. Consequently, this rule will negatively impact rural America significantly more than urban areas. Why did BLM hold its in-person meeting off to brief the public on this rule in Denver, away from where most rural stakeholders actually are?

Ms. CULVER. Thanks for the question, Congresswoman. I am really glad to get the opportunity, as someone who was at all of the public information sessions, as well as some additional briefings we have been doing, to let you know that we——

Mrs. BOEBERT. I am short on time. So, I just would like to know why it was held in Denver, away from stakeholders.

Ms. CULVER. We held three information sessions in three areas where we felt a lot of people would be able to attend, and we——

Mrs. BOEBERT. Where were all three of those areas?

Ms. CULVER. Our three in-person information sessions were held in Denver, Colorado; Albuquerque, New Mexico; and Reno, Nevada.

Mrs. BOEBERT. Right. And Denver is a very urban area. And my rural area in Colorado's 3rd District, half of the state of Colorado nearly, is impacted the most by this. And you chose to have that meeting in person in Denver, rather than on the Western Slope or Southwest Colorado.

Just this week, I heard from one of my constituents who is a farmer and rancher in Mesa County that this unconstitutional rule could prevent her livestock from grazing on BLM land where they

currently graze and where she has an active permit. Ranchers and farmers across the West still do not have clear answers as to what the impact of this rule will be on their current grazing leases or what happens when they are up for renewal even.

We heard from one of my colleagues on the other side of the aisle today that other multi-use activities won't be harmed. But let me ask you this. Will this rule lock up more land and prevent other multiple-use activities under the guise of conservation?

Ms. CULVER. No, it will not, Congresswoman. We have had——

Mrs. BOEBERT. There will be no additional land held up, locked up, and no multiple use will be prevented from this rule? That is your promise to my constituents and everyone——

Ms. CULVER. BLM implements multiple-use management on every acre of public land, as prescribed in FLPMA.

Mrs. BOEBERT. Since the rule was proposed with little to no stakeholder input, there are over 86,000 submitted public comments from a wide range of stakeholders who have a lot of questions. And I want to dive into some of those that have been sent to me.

What law passed by Congress has given the BLM the authority to propose this rule? Because it sure seems like the BLM is trying to rewrite FLPMA here, and has no authorization from Congress for this rule, similarly to what we heard Ms. Sgamma speak to.

Ms. CULVER. We are implementing the Federal Land Policy and Management Act, including our authority to implement for multiple use and sustained yield.

Mrs. BOEBERT. Do you feel that the BLM is defining new powers through this FLPMA and through this rule?

Ms. CULVER. We are following FLPMA and Congress' direction to manage for multiple use.

Mrs. BOEBERT. We heard concerns earlier from both Governor Noem and Governor Gordon about this rule and how it will prevent active forest management, which is a very big issue, especially in my district. We have had four of the largest wildfires in our recorded history in my district, and it will lead to more wildfires.

Is active forest management, including mechanical thinning, consistent with the BLM's definition of conservation in this proposed rule?

Ms. CULVER. Absolutely.

Mrs. BOEBERT. You will allow mechanical thinning to continue.

Ms. CULVER. BLM manages every acre under our multiple-use mandate, and restoration in many places includes that kind of active management.

Mrs. BOEBERT. OK. Let the record show that this rule will not affect mechanical thinning and the active management of our forests. I want the record to show that you have promised that, because what we are seeing, what we are hearing, the questions that are coming up, this looks like a huge threat to forest management.

Is this rule an attempt to further the Administration's 30x30 agenda?

Ms. CULVER. I just at least want to finish answering your last question.

Active forest management is part of restoration, so different tools are appropriate in different places. I just want to finish my sentence since you want to make sure we have the record clear.

Mrs. BOEBERT. Well, I was asking if mechanical thinning would be impacted. Would it be reduced or restricted?

Ms. CULVER. And then, in terms of the agenda, I think certain aspects of different management could certainly be considered conservation that would support the America the Beautiful——

Mrs. BOEBERT. OK, I just want you to answer my last question that I had asked previously.

Is this an attempt to further the Administration's 30x30 agenda, and eventually go into the 50x50 agenda that we hear so much of?

Ms. CULVER. This is the BLM implementing its multiple-use and sustained-yield mission under the Federal Land Policy and Management Act, to do that so that we can continue to support all the uses we have been talking about today.

Mrs. BOEBERT. So, you want to further the Administration's 30x30 agenda to lock up 30 percent of America's lands and waters by 2030.

Ms. CULVER. This rule will not lock up——

Mrs. BOEBERT. Thank you. My time is expired.

The CHAIRMAN. The gentlelady's time has expired. The Chair now recognizes the gentlelady from Alaska, Mrs. Peltola.

Mrs. PELTOLA. Thank you. I just wanted to see if Ms. Wolff Culver would like to answer any of the previous questions in more detail.

Ms. CULVER. Thank you so much for that opportunity. I really appreciate the opportunity to reiterate that the way we have defined conservation in this rule is to include both restoration and protection. Those are active uses under the Federal Land Policy and Management Act. It is part of the specific direction we have from Congress, and is some of our additional policy right now.

We see active restoration as a vital part of managing our Federal lands, and we are very grateful for the funding that Congress has given us to do even more restoration of our public lands.

Mrs. PELTOLA. OK. And I am sensitive about the issue that Representative Boebert brought up about rural people not having access to public comment. And I am just wondering if you can explain how remote people in Colorado were able to make comment, although the hearing was in Denver.

Ms. CULVER. Certainly. Thank you for the opportunity.

We did have two virtual listening sessions. Recordings are posted online, along with all the slides, frequently asked questions, documents, a user's guide, and numerous fact sheets. We wanted to provide that support in as many places as possible.

In those information sessions, we did have quite a few people from different states who came, which was wonderful to see. We had Coloradans in Albuquerque, we had Wyomingites in Colorado and in Denver, and we had Californians in Nevada.

At the same time, our BLM leaders around the West have been meeting with their local communities. I know that our Colorado State Director spent most of the last week in Western Colorado meeting with the counties, CCI, with Colorado cattlemen. Similar in Wyoming, in Arizona, all around the West. So, we are trying to

give every opportunity for people to ask questions, and then to submit comments.

Mrs. PELTOLA. OK. That is really good news. And I really appreciate the virtual forums, the Zooms and things like that, the Teams meetings.

I just want to put a plug in for Americans who don't have access to broadband, Internet, or Wi-Fi. There are many, many Americans, certainly across Alaska and across the United States, who either can't afford it or there just isn't stable and quality Internet to stay connected, especially on a visual platform. A lot of times, when people have their videos on, you just drop off.

And one of the frustrations I have had is the state agencies and the Federal agencies who say, "Go to our website, look at our website," and some of them are challenging to navigate, and you have to have Internet to be able to even get onto the website.

So, I was very sensitive to her concerns about rural and remote people being able to be part of the public process, and I appreciate your answer for the ways that you were able to be inclusive.

Thank you, Mr. Chairman. I yield back my time.

The CHAIRMAN. The gentlelady yields back.

And regarding the comment period, I do appreciate the wink and a nod on 15 days, even though we requested in our letter 75 days. I still think 15 days is totally unacceptable, especially when you think about people having to travel from different states to come to one of those hearings, or to do it online, where they may not have access.

I now recognize the gentleman from California, Mr. LaMalfa, for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman. Yes, 15 days, you might not even find out about the 15 days until most of it has gone by. Typically, these numbers are 60, 90, or 180, round numbers like that.

That all said, under the BLM rule, there is the thought that this could require any use or permitted activity to be offset by a separate conservation lease. That is a concern. Can you comment? Is that a scenario where, let's say, somebody is seeking a grazing lease or a timber, any kind of permitted activity, do you see a scenario where a separate conservation lease could be required of this person, and then will it cost them money in order to have to have a lease for a conservation area?

And I am directing that to Principal Deputy Director Culver, please. Thank you.

Ms. CULVER. Sure, thank you for the opportunity. And if I am not answering all of it, I am sure you will follow up with me.

The idea with the conservation leases is it is one way that an entity who is carrying out a permitted activity on public lands that results in an unavoidable impact to public lands could mitigate, could offset that. It doesn't require that every activity be offset. That generally happens on a case-by-case basis.

As with the rest of this rule, it is a framework for, if you are seeking to offset impacts that occur on public lands, one option would be to do that offset on public lands, and one tool could be a conservation lease.

Mr. LAMALFA. So, that is a scenario where—let's say I am seeking a grazing lease. I might have to offset that with a conservation lease and I won't have to pay for this lease?

Ms. CULVER. Thanks for clarifying the question.

No, right now we continue to manage grazing under the Taylor Grazing Act and our current grazing policy. This rule wouldn't affect that.

Mr. LAMALFA. OK. That is just an example. How about a timber operation, where you have mechanical devices and such?

Ms. CULVER. Similarly, the requirements for compensatory mitigation happening so far on BLM lands have happened in the context of mining, where we have regulations requiring that.

And also when we are working with states. So, as noted here, we work very closely with states. We manage the habitat and they manage the wildlife. Often these states require mitigation for loss of wildlife habitat that may be happening for a permitted activity on BLM land.

Mr. LAMALFA. So, it sounds like you might be deferring to states on that.

Ms. CULVER. Yes.

Mr. LAMALFA. There is also a question here that these conservation leases could be part of a tool or a requirement to have carbon offset credits. Are we looking at activities, permitted activity, possibly being required to have to have carbon offsets to do them?

Ms. CULVER. The rule doesn't contemplate implementing that kind of requirement.

One of the questions that we wanted to get input on from the public is should we be defining the types of permitted uses more specifically for conservation leases?

Should we be permitting use of them for carbon offset credits?

Again, like the compensatory mitigation issue you raised, those requirements would be coming from a separate agreement or project, or from a state policy.

Mr. LAMALFA. A great amount of effort is being made on this whole carbon content situation. Do you know what the percent of our atmosphere actually is carbon dioxide?

Ms. CULVER. Not off the top of my head, sir.

Mr. LAMALFA. Well, I will give you the number. It is 0.04 percent of our atmosphere. Not some much higher number that the average person on the street thinks it is anywhere from 20 to 50, with all the advertising out there. It is 0.04 percent. In 1960, it was 0.03.

So, what we are talking about is, over this period of time, a change of 1/100 of 1 percent in carbon is what everybody is getting hysterical about, and this is going to be so very detrimental to our country, its economy, and basically replace our economy with those of some other country in the Pacific Rim, or maybe offsetting clean American natural gas with Russian natural gas, which is known to be 40 percent dirtier flowing into Europe or what have you.

So, I would be very cautious that we would look at carbon credits as some type of an additional offset in order for legal and necessary permitted activities.

With that, Mr. Chairman, the time has flown by and I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the gentlelady from Oregon, Ms. Hoyle, for 5 minutes.

Ms. HOYLE. Thank you, Mr. Chairman and Ranking Member.

I represent Oregon's 4th Congressional District, and the BLM manages 2.1 million acres of O&C lands in Western Oregon. About 800,000 of those acres are in Oregon's 4th District, and the rest are in Mr. Bentz's district. And I have spoken to this Committee before about how these lands are unique, with a checkerboard ownership pattern of tribal, private, state, and Federal lands. They are important to me, they are important to my district. And the O&C lands represent the vast majority of the timber lands that the BLM oversees, like well over 95 percent.

For over a century, the O&C lands have provided wildlife habitat, recreational opportunities, stream buffers for fish habitat, and for timber harvests that are crucial to Oregon's rural economies. In fact, the O&C Act of 1937 was one of the first Federal conservation laws, and it is directed that all timber lands should be managed under sustained yield so that harvest levels are in balance with forest growth. And later on, the Federal Land Policy Management Act of 1976 made sure that the BLM manages all its land for sustained yield and multiple uses.

However, section 701(b) of FLPMA is clear. If there are inconsistencies between FLPMA and the O&C Act, the O&C Act shall prevail. So, that brings me to my concern today.

I am confused about why the BLM's public land rule does not mention the O&C lands, and my concern is there is no mention of them, nor an acknowledgment that the O&C Act even exists, much less that it would prevail in an inconsistency. So, was this an oversight, or is this an intentional change in policy?

And to you, Ms. Wolff Culver, I would like to know, and the counties I represent would like to know, they deserve to know, whether the BLM intends to implement this rule on O&C lands.

Ms. CULVER. Thank you for the question.

Right now, as you noted, FLPMA specifically acknowledges the Oregon and California Lands Act, and the BLM manages land in Oregon under both authorities, and ensures that we comply with both of them. And our intent with this regulation is the same. We are not amending the Federal Land Policy and Management Act, nor are we seeking to change the O&C Act or the Taylor Grazing Act, for example. We currently manage in a way that complies with all of those bills, all of those laws, and we would continue to do so.

Ms. HOYLE. To follow up, what I would like to know, because again, these lands are unique and my concern and the concerns of my constituents are that this is a change in policy. I would like to know if you could put that in writing in this rule that, in the case of inconsistencies of FLPMA and the O&C Land Act, that the O&C Land Act will prevail.

Ms. CULVER. Certainly, and thank you for following up. Certainly, we do not intend to change the way that FLPMA defers to the O&C Act, and can certainly take into account how we might be more explicit about that in the rule, because the intent here was not to undermine that relationship between the two laws.

Ms. HOYLE. Thank you for saying that is not your intent, but it is important to me, it is important to my constituents, it is important to these lands that are absolutely unique, and especially as we see drought and wildfires and all of the challenges of managing

multiple uses and multiple ownership of lands, it is critical that the O&C Land Act prevails.

And what I would like, and I don't know but I would guess that my colleague, Mr. Bentz, would like, certainly, what my counties would like, is clarity in writing. I appreciate you saying, "We would like to see that," but what I would like to see is I would like to see that in writing, explicitly in this rule.

Ms. CULVER. Thank you. Understood.

The CHAIRMAN. Does the gentlelady yield back?

Ms. HOYLE. I yield back, sorry.

The CHAIRMAN. The gentlelady yields back. The Chair now recognizes the gentleman from Idaho, Mr. Fulcher, for 5 minutes.

Mr. FULCHER. Thank you, Mr. Chairman.

Ms. Culver, thank you for being here. I appreciate you taking the time to do this.

Where is your boss?

Ms. CULVER. The Director is at a meeting in Utah.

Mr. FULCHER. So, that meeting was more important than showing up and talking about this issue in front of the Natural Resource Committee?

Ms. CULVER. The Director was scheduled to be in the West, meeting with all of our executive leadership team across the BLM.

Mr. FULCHER. OK. Ms. Culver, on May 11, the entire Idaho Delegation sent a letter addressed to the Director, and it was on this issue.

[Slide.]

And basically, it expresses concern, in fact, I think it is up on the board right now. It expresses concern about this issue. It asks for a public hearing, and it describes how devastating this rule, if implemented, is going to be on our state.

And I have to tell you, being from Idaho, I am not feeling the love here. You don't call, you don't write, you don't respond, because we never get any response at all.

Were you even aware of this letter, Ms. Culver?

Ms. CULVER. Yes. We have received a lot of letters with different asks, either for extensions or for us to complete the rule, to undertake this rulemaking, et cetera.

Mr. FULCHER. Is it typically your habit not to respond to those, or is it still forthcoming?

Ms. CULVER. You will receive a response, absolutely.

Mr. FULCHER. OK. Thank you for that. Ms. Culver, just to point out the importance of this, 62 to 63 percent of my state is Federal lands. The only state by percentage more is Nevada. Utah is right there with us, about that same percentage. But 33 million acres, 33 million.

And by the way, thanks to lack of management, not climate, somewhere between a half million and a million acres a year burns up. And that is because of fuel load, and because we can't touch the ground that we live on, for the most part. We can't put any intelligence into the management of that. That is how significant this is to us.

I think I know exactly why the Director isn't here, and that is because she didn't want to answer these questions. I at least thank you for showing up.

Mr. Chairman, I would like to submit for the record a copy of this letter from the Idaho Delegation, with your permission.

The CHAIRMAN. Without objection, so ordered.

[The information follows:]

May 11, 2023

Tracy Stone-Manning, Director
Bureau of Land Management
U.S. Department of Interior
1849 C Street NW
Washington, DC 20240

Dear Director Stone Manning:

As the Bureau of Land Management (BLM) considers a major shift in the long-standing and well understood multiple-use approach of federal land management, we are discouraged to see Idaho was not listed as one of the sites for in-person public meetings regarding the proposed Public Lands Rule. Further, we were disappointed to see not only was Idaho not included, but the in-person locations are geographically concentrated away from many of BLM's constituents. For example, the closest in-person meeting for Idaho residents is Reno, Nevada, a trip that can take anywhere between 5 and 14 hours by car.

Additionally, while significant strides have been made in rural broadband development, some Idaho residents still lack reliable coverage needed to communicate and participate in a virtual meeting. This includes those in sparsely populated areas. With the COVID emergency ending, it is important for the BLM to meet with shareholders in person and face the public.

Idaho has 12 million acres of BLM managed land, and this rule will significantly impact how Idahoans interact with those public lands. By categorizing conservation as a use, rather than an outcome, this rule will effectively ensure the uses Idahoans have traditionally enjoyed on our public lands will be placed in competition with conservation, rather than in harmony. This action is in direct conflict with the congressional mandate to manage public lands for multiple use.

Given the impact this rule will have on all Idahoans, we urge you to hold in-person meetings in Idaho to gather feedback from the stakeholders that this proposed rule will impact. The BLM is proposing extensive management practice changes with the capacity to severely disrupt multiple uses from grazing to recreation as well as other considerations such as Tribal access. Therefore, it is imperative that the BLM hears directly from Idahoans, in the state of Idaho, in-person. We would also encourage you to personally attend these in-person meetings as head of the BLM. That would offer both direct feedback and good interaction with your Idaho State Director and her team. We look forward to a modification of the schedule for in-person meetings soon.

Sincerely,

Mike Crapo
U.S. Senate

James E. Risch
U.S. Senate

Mike Simpson
House of Representatives

Russ Fulcher
House of Representatives

Mr. FULCHER. Ms. Culver, have you been to Idaho before?

Ms. CULVER. Yes. My mother-in-law is from Shoshone.

Mr. FULCHER. Have you spent any time with the stakeholders that work on that land, that live there, that attempt to operate or make a living on that land?

Ms. CULVER. Yes, in my capacity at the BLM, I have not done an official tour, but yes, I have spent a lot of time——

Mr. FULCHER. So, then you know, if you have met with these people, that a proper grazing project is conservation, that proper recreational access is conservation, that a proper thinning program or a timber managed program is conservation.

So, then you understand why we are concerned about making a separate category for conservation inadvertently makes it compete with other forms of conservation in conjunction with other uses. The multiple-use structure has been in place for decades, and the worst problem we have in my home is not being able to execute on it.

And the arrogance, quite frankly, just the flat-out arrogance for the Administration, for yourselves to promulgate something like this, thinking you know better than the people who live on this property, who depend on it, who work on it, who have the biggest vested interest in it, and biggest investment in it, to see it prosper for years and years and generations and generations, the arrogance is unbelievable, especially when the majority of the Administration, I would say, probably hasn't even been there.

I want to just summarize. I think you get a pretty good feel of where we are at, but I am just going to summarize here this request. I would like to have an in-person hearing in my state. The closest in-person hearing to Idaho was Reno, Nevada. Depending on where you are, that is a 5-hour drive, minimum, or a 14-hour drive, maximum, for my constituents, the people who are impacted the most by this.

I am going to assume you can't answer that question now, but I want an in-person hearing. Or maybe you can.

Ms. CULVER. No, I cannot answer the question right now, but I appreciate the request.

Mr. FULCHER. But I am going to get a response back on this letter?

Ms. CULVER. Absolutely.

Mr. FULCHER. I am going to restate, creating a category of conservation as a use makes it compete.

There is significant arrogance by making this decision and imposing it on the people who live there.

And conservation is an all-of-the-above approach.

Mr. Chairman, I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the gentlelady from New Mexico, Ms. Leger Fernández, for 5 minutes.

Ms. LEGER FERNÁNDEZ. Thank you so much, Mr. Chairman, and thank you for the testimony to all three of our witnesses. I always love it when our entire witness panel is women, because we have a lot of women in agriculture, a lot of women in ranching, a lot of women in conservation in New Mexico.

And the issue about grazing is as important to us in New Mexico as it is to any of our other Western states. That is a key element of our economy. It is a key element of our heritage. In New Mexico, we have been grazing sheep and cattle and now ibex and a lot of other things on our lands for centuries. Since before there was a United States, we have been grazing on those lands. And then some of those lands were lost and taken into public land, even

though they had been used in common by the people who lived there before we became part of the United States.

So, the issue of will the proposed rule affect existing grazing permits or leases, that is key to us. So, Deputy Director Culver, tell me what the answer is to that once again, and where can we look to find that in our rule and the previous regulations you have issued?

Ms. CULVER. I think at the outset I want to just re-emphasize that the rule sets out a framework. It doesn't make any decisions. Any on-the-ground decisions will be made by local land managers. I would encourage everyone to search the word "local" in the rule if you are looking at it online. We really emphasized that. That process will not change. In terms of day-to-day decisions on managing grazing, that will not change, that will continue to be managed at the local level. The rule itself, again, doesn't change the Taylor Grazing Act. It doesn't affect any existing authorizations.

In the context of conservation leasing, a conservation lease would have to be issued in a way that respects any existing, permitted, authorized use. So, the issuance of a conservation lease would only occur over a grazing permit if those two uses were consistent.

Ms. LEGER FERNÁNDEZ. For example, a rancher that might already have a grazing lease could come and work with you, and decide, "How can I work with the existing USDA programs to actually also restore?" Because we do know that, with that many hundreds of years of grazing, there is work that needs to be done. Is that right?

Ms. CULVER. Yes. The BLM manages 155 million acres for grazing. We see that use as key to the success of the concepts in this rule and, in particular, conservation leasing as an opportunity for ranchers to work with the entities who may be providing funding for some of the practices that they already are, as you noted, undertaking, but might be more formally set out in a lease, and might be a source of additional income.

Ms. LEGER FERNÁNDEZ. And this issue of being able to bring additional income in is really important, because when we look at the statistics there are way too many ranchers and farmers who actually don't make a profit on their lands. It is consolidated. We have a lot of small holdings, so that issue is really important to them.

What about future permits and leases? Will this affect future grazing permits and leases?

Ms. CULVER. The rule itself doesn't take a position, one way or another. I think what it looks at is what different—there are certain aspects of conservation. Grazing practices can be one aspect. We are trying to set out a framework to ensure those are taken into account.

Ms. LEGER FERNÁNDEZ. Great. And I am looking at page 19,591, where you actually do explicitly state that it is not intended to preclude uses such as grazing, mining, and recreation, and they would not disturb existing authorizations, valid existing rights, or state or tribal land use management. So, you have that in there as you discuss the rule. And I think making sure that you can now point to

specific places in the rule will help this clarity, because my constituents also want that clarity.

The State Land Commissioner testified, was it last week or 2 weeks ago? And she is in favor of this process, but also wants to make sure that there is a commitment to continue to do that work with the state and the tribes. Do we have that commitment from you?

Ms. CULVER. Yes, I appreciate the opportunity to acknowledge that request. We have heard it.

Again, what we are putting in here is what we intended the rule to say and how we expect it to work. And if it needs to be clearer, that is the feedback we are looking for right now, and we are so appreciative to get it.

Ms. LEGER FERNÁNDEZ. OK, thank you.

And Mr. Chair, I would ask unanimous consent to enter into the record one letter of various that we have seen from the Office of the Governor of the Pueblo of Tesuque in opposition to H.R. 3397. It is dated June 15, 2023.

The CHAIRMAN. Without objection, so ordered.

Ms. LEGER FERNÁNDEZ. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The gentlelady's time has expired. The Chair now recognizes Mr. Stauber for 5 minutes.

Mr. STAUBER. Thank you very much, Mr. Chair.

The Department of the Interior has told this Committee that the new conservation leases created by this rule are simply a new tool for folks to offset impacts of activities on Federal lands, and are not a new requirement. However, given this Administration has a track record of moving the goalposts left and right to their political benefit, we cannot rely on what they say. We must watch what they do.

Ms. Sgamma, do you believe that this rule would create a new requirement for companies to purchase conservation leases for energy projects on Federal lands?

Ms. SGAMMA. I think that is the goal, yes. And they do not have the authority to require that type of off-site mitigation.

Mr. STAUBER. And what kind of impact will this have on the small businesses?

Ms. SGAMMA. Well, I think the Small Business Administration's Advocacy Office said it best in a recent letter. Yes, this will impact small businesses. Most of our companies are independent producers, small producers, with an average of 14 employees.

Mr. STAUBER. And I agree with you that this rule will have a significant impact on small businesses. And as it turns out, the U.S. Small Business Administration's Office of Advocacy agrees.

And Mr. Chair, I ask unanimous consent for the SBA Office of Advocacy comment letter on the BLM's proposed rule sent this Tuesday to Secretary Haaland be entered into the record for today's hearing.

The CHAIRMAN. Without objection, so ordered.

[The letter can be found on page 38.]

Mr. STAUBER. I want to quote from that letter: "Given the rule has the potential to impact a substantial number of small businesses across various industry sectors, BLM must properly and

thoroughly consider these impacts and modify the proposed RFA analysis accordingly."

Ms. Culver, the Department of the Interior determined that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. But you failed to conduct an initial regulatory flexibility analysis, or even provide the factual basis for certifying that small businesses won't be impacted. Why did you refuse to analyze this rule's impact on our small businesses?

Ms. CULVER. I appreciate that question. When we looked at the economic analysis that we created as part of this rule, we looked at——

Mr. STAUBER. Did you create that yourself, or with the small businesses?

Ms. CULVER. It was done by experts within the BLM.

Mr. STAUBER. OK, and not small businesses that may be affected. Is that correct?

Ms. CULVER. The BLM prepared an economic analysis as part of the rule.

Mr. STAUBER. No, ma'am. My question was you didn't talk to small businesses that could be affected by this. You just said no.

Ms. CULVER. No, it was prepared by an expert at the BLM.

Mr. STAUBER. OK. So, you didn't consult with small businesses. That is correct?

Does your department not care about small businesses and their successes, which are the engine and innovators of our economy?

Ms. CULVER. I couldn't agree more that our public lands are a key to supporting the success of so many small businesses around the West and around the country. We really value those partnerships and the support they provide.

Mr. STAUBER. Why didn't you include the small businesses in your decision?

Ms. CULVER. I am not quite sure what you are asking. However, I think we prepared the economic analysis, the evaluation of significance, working with the Office of Information and Regulatory Analysis, the Office of Management and Budget, the Department of the Interior, Council on Environmental Quality, and all of those agencies that provide that direction to us.

Mr. STAUBER. That is the same Department of the Interior that banned mining in northeastern Minnesota for political reasons only? That is the Interior Department you are talking about.

As I just noted, the SBA's Office of Advocacy has called foul on you for failing to conduct this analysis, and has called on the BLM to "provide a supplemental document with an initial Regulatory Flexibility Act analysis that includes a discussion of the impacted small entities, what if any impacts those small entities may face, and what regulatory alternatives the agency considered."

Yes or no, will you commit right now to fulfilling the Office of Advocacy's request?

Ms. CULVER. I need to review their request and look at what is in the rule, because we did complete the required analysis. So, I really look forward to reading that comment.

Mr. STAUBER. Mr. Chairman, this Administration has continually failed to consider small businesses in their reckless regulatory

onslaught. I appreciate you holding this hearing today to allow us to conduct oversight on this rulemaking, and I look forward to working with you and the Committee on Small Business to stand up for small businesses across this country. And I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the gentlelady from California, Ms. Kamlager-Dove, for 5 minutes.

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair. And I just have to say that the whiplash you get in this Committee is unbelievable.

Last panel, the governor, both of them, complained about how this rule takes away public input, and they got an amen corner from my colleagues on the other side of the aisle. But last week, we had a Committee hearing, and the Committee balked at the need for public input as it relates to mining and its impact. So, I guess it just depends on who the public is.

Deputy Director Culver, I want to know more about ACEC, and how it integrates with the needs of and coincides with respect for tribal communities.

And Mr. Chair, I ask unanimous consent to enter two resolutions into the hearing record. One is from the National Congress of American Indians, outlining how ACEC can elevate tribal traditional knowledge and protect tribal traditional cultural resources. And the second is by the Affiliated Tribes of Northwest Indians identifying new pathways for designating conservation areas that protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems of processes.

The CHAIRMAN. Without objection, so ordered.

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair.

And I want to enter it into the record, and I am asking you this question because I have actually heard from some of my colleagues that they know what is best when it comes to tribes. They either appropriate or discredit viewpoints of Indigenous peoples based on, I guess, political points they want to score. But folks have actually said that there is no need for meaningful consultation. There is actually no need for consultation by Indigenous communities, which I find outrageous. And it actually strikes me quite often as settler colonialist rhetoric, which makes all of my hair stand up on the top of my head.

So, do you believe that we should be speaking for tribes without including them into these processes and discussions?

Ms. CULVER. Thank you for the question. Your hair looks great.

[Laughter.]

Ms. KAMLAGER-DOVE. Thank you.

Ms. CULVER. This Administration, from Day 1, has committed to making sure that we are engaging in meaningful consultation with tribes, and not just in a pro forma way, but a proactive way to ensure additional engagement. That is why we have committed to co-stewardship, and have really led the way at the Department of the Interior on that issue.

Ms. KAMLAGER-DOVE. Thank you. Because, as we have heard, people actually want to feel included in discussions, including tribal communities that don't want other folks speaking for them.

Can you go a little deeper in terms of how this proposed rule incorporates requests from tribes and Indigenous communities, and sort of what co-management, co-stewardship actually looks and feels like, and should in a non-appropriated way?

Ms. CULVER. Thank you for the question.

Ms. KAMLAGER-DOVE. A long question——

Ms. CULVER. I appreciate the opportunity to talk about this.

One of the aspects of this rule that we are very proud of is that it explicitly incorporates requirements to evaluate Indigenous knowledge as part of the best available science that we are taking into account in decision making.

We also explicitly emphasize the importance of consulting and working with tribes when we are doing land use planning, where we allocate lands for different management.

And in the context of areas of critical environmental concern, we received numerous letters, and the resolutions also that you mentioned from tribes, asking that we formalize the process for identifying and protecting and designating those areas to be managed. It is one tool the BLM has. It is required under the Federal Land Policy and Management Act for us to use it, to prioritize its use, and it explicitly considers historic and cultural resources.

So, what we have done in this regulation is note the importance of evaluating whether an ACEC could be designated, just another acronym here at the BLM, whether we would use that, and to look at proposals from tribes, and to consider opportunities for co-stewardship. And what that could look like is how we incorporate Indigenous knowledge into the management decisions, or how we might work together, for example, to ensure that there is adequate education about the resources for which that area was designated.

Ms. KAMLAGER-DOVE. Thank you for that explanation and response.

I was having some discussions with some different tribal communities. And when I was sharing what I was hearing in this Committee, and I was questioning if they felt that they were being silenced, they said, "Keep asking questions about this issue, because it is important that we are seen and valued in these discussions."

So, with that I want to thank you for your responses.

I yield back, Mr. Chair.

The CHAIRMAN. The gentlelady yields back. The Chair now recognizes the gentleman from Montana, Mr. Rosendale, for 5 minutes.

Mr. ROSENDALE. Thank you, Mr. Chair. I appreciate that.

Ms. Culver, as I sit here and listen to all of this, as much as you would try to deny it, what I see and what I read, and the reality is the BLM trying to expand its powers, an attempt to expand your powers.

And the fact that no hearings have been held in the areas where the impacted land is located demonstrates, quite frankly, the complete disregard that the agency has for the opinion of the people that are going to be impacted by it the most. Holding a hearing in an intensely urban area, instead of out in the field, where the people that are going to be impacted, the people that are actually managing those lands now, nowhere near them, is an insult, quite frankly.

The Montana Delegation also sent a letter out to the Department of the Interior and to BLM, trying to obtain a hearing to be held in the areas that were going to be impacted. Again, nothing. We sent that back on May 11.

This rule completely contradicts the Taylor Grazing Act and FLPMA. It does contradict it. And the Supreme Court has recently ruled in agency over-reach, *West Virginia v. EPA*, and now you have heard it from Congress that you are getting outside of the lines.

So, please, save money, save time, save aggravation for the people across this nation who have to go through that legal process to show that this is out of line, and simply stay in your lane. OK? We make the laws. Stay in your lane. That is where we need to stay.

Ms. Sgamma, we have heard navigating through conflicts is not something that the BLM excels at. Can you give us some examples in your experience where the BLM failed to mitigate conflict, and how it has affected your members?

Ms. SGAMMA. I am not sure I can think of a specific example right off the top of my head. But in general, when you look at the definition of conservation leases, you can't help but see that the way it is defined in the proposed rule is going to preclude productive uses. So, I don't see how there isn't an inherent conflict with that.

And I think you are absolutely right, that Congress simply hasn't given BLM the power to redefine away FLPMA terms.

Mr. ROSENDALE. Thank you. Do you believe that this rule, would it be enacted, in any way provides more clarity about how the lands can be used, or how they should be managed? Or does it produce more ambiguity and subjectivity?

Ms. SGAMMA. I think it is really nebulous at this point with this proposed rule, which is why we have joined with Public Lands Council, the Cattlemen's Beef Association, American Mining and Exploration Association, Safari Club International, and others asking that this rule be pulled back, or at least go through another iteration of comments once BLM has a chance to react to everything that they are given in this comment period, because there are just too many new terms and too many questions raised.

Mr. ROSENDALE. Thank you so much. And if the rule would take effect, do you believe it would result in better or worse outcomes for the environment and the land quality, and why?

Ms. SGAMMA. Well, again, I think it is so nebulous, how this is intended and how it would be actually used, that I don't know what would come out of this. And that is why I think BLM needs to do another round of public comment and explain itself better.

Mr. ROSENDALE. And would your definition of public comment include areas that are actually where the lands are located, so that the people that are in the field managing them might be included?

Ms. SGAMMA. I do agree, indeed, that this should be out in rural areas because it is really rural areas where this is most impacted.

Mr. ROSENDALE. Thank you so much.

Mr. Chair, I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the Ranking Member, Mr. Grijalva, for 5 minutes.

Mr. GRIJALVA. Thank you very much, Mr. Chairman.

Commissioner, let me ask you a question. Before I ascended into this position, I was a County Commissioner, Chair of my local County Board. And there is a mythology that goes on about this is the West, and this is the West that it has always been, and this is the West that it will continue to be.

The West has changed. The dynamics are different. And at least in my county we had to deal with habitat restoration and a conservation plan in order to deal with endangered species, deal with land use decisions. And those are all difficult and done at the local level.

But at the end of the day, it was in response to guidance, it was in response to a law, a Federal law, and the end result was benefit: more assurity about what zoning was, a conservation ethic that got strengthened in terms of protection of areas, and no grazing rights were lost, no mining operation in the Silver Bell Mountains was closed, dire consequences did not hit my county of Pima. In fact, it is highly supported and seen as something important.

My question about mythology is you have heard back and forth today that this rule provides an opportunity for local communities to look at restoration and conservation as a legitimate use of BLM lands. That is all it does. It doesn't change the fundamental ground that we are working with, but it provides an opportunity for the future. And I think, more importantly, the word doesn't get used enough, but the restoration of areas that need to be restored.

The mining industry left messes all over the West that nobody talks about. No restoration, no remediation, the taxpayer having to carry that burden. Here is an opportunity. Could you speak to what it means to local people to have this opportunity, and why a kind of mythology that doesn't exist can't help us going into this century in dealing with issues like climate.

Ms. CHANDLER-HENRY. Thank you so much for that very perceptive question, Congressman Grijalva, and you have really hit the nail on the head.

In our county, we really rely on collaboration. We rely on working with our Federal land managers. Our small businesses are based on outdoor recreation and tourism, our small businesses rely on conservation values, and they rely on the certainty that this proposed rule would implement to look at those conservation uses on par with every other use.

In our county, we have to pay businesses to come in and take the timber out for our forest restoration programs. It is not a big moneymaker for us. Oil and gas is negligible. Our extractive industry is tourism, outdoor recreation. We are a rural area. We work hand in glove with our ranchers and our conservationists. The conservation district is run by our ranchers. It works with our open space, and we work closely with BLM to make all that work.

Mr. GRIJALVA. Deputy Director, the proposition that we are seeing here today, either there is no rule because the freedom and fundamental life of our nation is at stake in this rule—talk about restoration. Talk about the new players that haven't been talked about in this part of the discussion, because restoration is a use. And the way this is being interpreted is that restoration for many communities—and conservation—is an important element that we are adding to the portfolio about what BLM should be doing.

I don't want to repeat the 1872 law of mining, where we get to do nothing but give mining everything they want. This rule gives the public, regardless of where you live, you own part of this public land, each individual in this country, and the response has to be landscape. It can't be short-term parochial, with collateral damage being OK here but conservation being important somewhere else. Please.

Ms. CULVER. We really intentionally defined the conservation aspects of this rule as including both restoration and protection, considering those both very active uses. We have received, as I mentioned before, a lot of funding recently from Congress for restoration. We see that as something that this rule can really help us implement.

Our public lands will benefit from this type of restoration, whether it is making them more resilient for fire or drought, or addressing impacts of other development. And the intent of this rule, the way it is structured, the actual words of it, it is a structure, it is a framework.

And what we are ensuring is that one element of conservation restoration is taken into account in decision makings, looking for those opportunities, identifying the best places to do that. And the rule is very explicit that we do that with our partners, as we always do.

Mr. GRIJALVA. Thank you. I yield back, Mr. Chair.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the gentleman from Oregon, Mr. Bentz, for 5 minutes.

Mr. BENTZ. Thank you, Mr. Chair, and I thank all of the witnesses for their patience. My question is directed to Principal Deputy Director Culver, and I just wanted a little background.

My district in Oregon is larger than the entire state of Washington. I think we have somewhere around 72,000 square miles of space in my district. And of that, about 50 million acres is public land. Exactly how much is BLM and how much is Forest I couldn't tell you, but there is a lot more BLM than Forest. So, this rule has a great importance to me and to the people I represent.

I am looking at your Bureau of Land Management 43 CFR part 1600 to 6100 that was published in the Federal Register on April 3. I am looking at, I think, about the fourth page, and it would suggest that there is a gap in your regulations. You agree with that, of course, because it says so right here in your document. Right? I am reading it: "This proposed rule is intended to address this gap in the Bureau's regulations." What is that gap?

Ms. CULVER. Thank you for the question, Congressman Bentz. The reference there is the lack of explicit regulations discussing this particular aspect of the multiple use and sustained yield.

Mr. BENTZ. I think it would be better to carry that a little further, because I have been studying this the entire time I have been sitting here, trying to figure it out. And I want you to tell me what it actually means.

Because the way I read it, and you can tell me if I am right or wrong, but the way I read it is it suggests that you are now going to take conservation as—it is never defined, by the way, in here, so I am not sure what it is. I did dig up a definition of it. It is fairly

broad: "The act of protecting the Earth's natural resources for current and future generations." That is the National Geographic Society's definition. Is that yours?

Ms. CULVER. In the rule we define conservation as "maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions."

Mr. BENTZ. Are you reading that out of your BLM U.S. Department of the Interior Manual H-4180? Is that where you are getting that?

Ms. CULVER. I am reading it out of section 6101.4 of the proposed regulations, sir.

Mr. BENTZ. It is suggested in this article by Michael Bloom out of my law school, a faculty guy, "BLM defines rangeland health as the degree to which the integrity of the soil and ecological processes of rangeland ecosystems are sustained." Are you trying to change the standard that currently is in your manuals with this rule? I think you are, but you can tell me. You have to be. There is a gap, you are filling it, so you have to be changing, right?

Ms. CULVER. We are providing additional detail on how to carry out this work. And if we need to update manuals and guidance, we will do that.

Mr. BENTZ. Additional detail. You are filling a gap with something. So, you are saying it is not changing anything. This is just additional detail of something that already exists. Is that your argument?

Ms. CULVER. We are setting out a framework of how to explicitly address these two aspects of conservation, protection and restoration, with specific tools and processes in the regulation.

The gap, in part, refers to the fact that this is a portion of our regulations that was reserved for additional regulation. And the BLM promulgates new regulations as we see the need for more direction.

Mr. BENTZ. OK. Then at least you do agree these are additional regulations, and there will be additional work to be done across the entire scope of your activities as a bureau. Is that correct?

Because that is exactly what it says here on the fourth page: "The proposed rule recognizes the BLM has three primary ways to manage resilient public lands," and then it walks down through how the proposed rule would require the BLM to plan for and consider conservation as a use on par with all other uses, and identify the practices and ensure conservation actions are effective in building resilient public lands.

And then it goes on to say that you currently can't apply some of these standards, but you are going to start doing so. It says they are applicable to grazing now, but you want to extend that applicability to other activities on public land. I mean, it is in your rule. So, am I correct there? That is a new step on your part.

Ms. CULVER. The rule would apply. The land health standards that currently apply specifically to grazing, consideration of grazing, make that explicit to apply to other uses. We have heard for a long time from the grazing community that they comply with these fundamentals of land health, and that should be explicitly applied to other uses of the public lands.

Mr. BENTZ. I have to hop back to the O&C lands because, indeed, as Congresswoman Hoyle suggested, there needs to be much clarity in the rule. And I think she was trying to ask about the letter they sent to you, one of the county commissioners from one of the counties that has a lot of this type of land in it, conservation as a use cannot be applied to O&C timber lands. Is that correct?

Ms. CULVER. The way we have defined conservation in the regulations includes restoration, which is certainly something that we do in compliance with the O&C Act. So, we would apply this regulation in a way that complies with the Oregon and California Lands Act.

Mr. BENTZ. Thank you, Mr. Chair. I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the gentleman from California.

Mr. Huffman, you are recognized for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chairman, and it would be easy to forget that we are talking about public lands that belong to the people of the United States if you are listening in to this hearing where so many questions and speeches seem to suggest that these public lands should simply be available to various extracting industries for commercial purposes, and that they should continue to have the type of impunity that they have had for decades.

But I think that the BLM public lands rule is on the right track. I don't think it is wildly controversial at all. BLM has been in the conservation business for a long time, and has done all kinds of rulemakings and policy guidance for every type of extractive industry that operates on BLM lands, but never for conservation. So, I would say it is about time.

And I want to just enter into the record two letters that Congresswoman DeGette and I have sent on this matter. One is from February this year, signed by 40 Representatives in support of this rule, and another from earlier this week, where we co-led a letter with Senator Martin Heinrich of New Mexico outlining the positives that we see in this common-sense step reflected in the proposed rule. We had 45 Representatives and Senators sign that letter. So, Mr. Chairman, without objection, I hope we would like to enter that into the record.

The CHAIRMAN. So ordered.

[The information follows:]

Congress of the United States
Washington, DC

February 15, 2023

Hon. Debra Haaland, Secretary
U.S. Department of the Interior
1849 C St., NW
Washington, DC 20240

Dear Secretary Haaland:

In order to combat the climate and biodiversity crises, we encourage you to shift the focus of the Bureau of Land Management (BLM) to emphasize conservation by utilizing all the administrative tools at your disposal. These tools include designating Wilderness Study Areas, meaningful protection for Areas of Critical Environmental Concern (ACECs), and connecting landscapes for safe travel for

wildlife. We urge you to use your statutory authority established by theLand Policy and Management Act (FLPMA) to provide protections for our public lands and waters and drastically increase the opportunity of overcoming these crises.

Under FLPMA, the Department of the Interior has the authority to update inventories of the resources it manages—including areas that qualify for wilderness designation, ACECs, and other conservation areas. Under section 202 of FLPMA, once such inventories have been completed, the Interior Department may then move to administratively protect lands as new Wilderness Study Areas. Managing these BLM lands in a wilderness-like state would help achieve President Biden's goal to protect 30 percent of lands and waters by 2030.

Our remote lands are frequently overlooked in conversations about addressing the climate crisis, but their contributions will be crucial. Public lands not only support complex ecosystems, but also can sequester carbon and make areas more resilient to the impacts of climate change.

The largest opportunity to protect our public lands lies with the BLM. For years, DOI and the BLM have not utilized their ability to protect these lands, leaving critical habitats vulnerable to degradation of their unique resources. Without proper protections, these lands face many threats that could jeopardize wilderness-quality values the BLM stated these lands have.

FLPMA directs the BLM to give priority to the designation and protection of ACECs. These are places where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes. For decades, this designation has gone largely underutilized, with inconsistent identification, designation, and management. If fully embraced, ACECs can preserve and protect historical and cultural resources and sites as well as promote public access and enjoyment of the open air, outdoor areas and historic resources of the nation.

Protecting new Wilderness Study Areas and ACECs in a durable way as envisioned in FLPMA would be a significant step to mitigate climate change and reach the administration's 30 x 30 goal. Thank you for your commitment to the stewardship of our nation's public lands.

Sincerely,

Jared Huffman
Member of Congress

Diana DeGette
Member of Congress

Doris Matsui
Member of Congress

Eleanor Holmes Norton
Member of Congress

Melanie Stansbury
Member of Congress

Adam B. Schiff
Member of Congress

Jill Tokuda
Member of Congress

Julia Brownley
Member of Congress

Stephen F. Lynch
Member of Congress

Earl Blumenauer
Member of Congress

André Carson
Member of Congress

Gwen S. Moore
Member of Congress

Donald S. Beyer Jr.
Member of Congress

Katie Porter
Member of Congress

Barbara Lee
Member of Congress

Suzanne Bonamici
Member of Congress

Nanette Diaz Barragán
Member of Congress

Salud Carbajal
Member of Congress

Pramila Jayapal
Member of Congress

Mike Levin
Member of Congress

Raúl M. Grijalva
Member of Congress

Mike Thompson
Member of Congress

Teresa Leger Fernández
Member of Congress

Mark DeSaulnier
Member of Congress

Jan Schakowsky
Member of Congress

Mark Pocan
Member of Congress

Betty McCollum
Member of Congress

Joe Neguse
Member of Congress

Brittany Pettersen
Member of Congress

Rick Larsen
Member of Congress

Steve Cohen
Member of Congress

Lisa Blunt Rochester
Member of Congress

Judy Chu
Member of Congress

Alexandria Ocasio-Cortez
Member of Congress

Raul Ruiz, M.D.
Member of Congress

Debbie Dingell
Member of Congress

Yadira Caraveo, M.D.
Member of Congress

Jason Crow
Member of Congress

Kevin Mullin
Member of Congress

Sara Jacobs
Member of Congress

Congress of the United States
Washington, DC

June 12, 2023

Hon. Debra Haaland, Secretary
U.S. Department of the Interior
1849 C St., NW
Washington, DC 20240

Dear Secretary Haaland:

On April 3, the Bureau of Land Management (BLM) published in theRegister a draft "Conservation and Landscape Health" rule. The draft rule provides tools for the BLM to improve the resilience of public lands in the face of a changing climate and biodiversity loss; conserve important wildlife habitat and intact landscapes; plan for development; and better recognize unique cultural and natural resources on public lands. We strongly support the progress and direction of BLM's long-overdue draft rule. We believe the final rule should build upon the draft to ensure that the rule achieves its potential to balance various multiple uses of BLM lands for the benefit of current and future generations.

The draft rule laudably:

- Clarifies conservation as a legitimate land use, alongside other land uses, and prioritizes lands to be managed for conservation.
- Promotes restoration of our lands and waters, empowering federal land managers and state partners to leverage federal dollars from the Bipartisan Infrastructure Law and the Inflation Reduction Act, towards restoration and improving land health.
- Includes regulations for Area of Critical Environmental Concern (ACEC), which are areas where special management is required to protect important natural, cultural, and scenic resources, or to protect from natural hazards.

- Provides for nomination of ACECs by tribes and members of the public.

The BLM oversees some of our nation's most spectacular landscapes, more than 85 percent of which remain in their natural state. These lands provide connectivity corridors and habitat for wildlife, allow for natural carbon sequestration, and provide clean water and air for local communities. Protecting our public lands also provides increased opportunities for recreation, including hunting and fishing.

Lands managed by the BLM are often overlooked in conversations about addressing the biodiversity and climate crises, but their contributions are crucial. Sustainable and resilient public lands are critical to Western economies and great quality of life. This draft rule provides an important framework to modernize BLM's conservation regulations and can be strengthened.

We encourage Interior to implement the draft rule by:

- Conducting an inventory of intact natural landscapes.
- Ensuring that identification and consideration of ACECs is prioritized and that ACECs are properly managed.
- Identifying and protecting habitat connectivity.
- Restoring streambeds and riparian areas.
- Protecting mature trees from a myriad of growing threats, including uncharacteristic wildfires and climate change.

In addition, the BLM should coordinate with tribal governments to refine the rule and ensure that it:

- Advances opportunities for co-stewardship.
- Incorporates Indigenous knowledge.
- Respects tribal sovereignty and treaty rights.
- Protects tribal cultural sites.
- Carries out tribal consultation in ways that honor tribes' unique historic and contemporary connections to public lands.

We support your commitment and stand ready to work with you and communities across the West to conserve public lands for generations to come. We look forward to the completion of this important rulemaking.

Sincerely,

Jared Huffman
Member of Congress

Diana DeGette
Member of Congress

Martin Heinrich
United States Senator

Richard J. Durbin
United States Senator

Dianne Feinstein
United States Senator

Earl Blumenauer
Member of Congress

Alex Padilla
United States Senator

Suzanne Bonamici
Member of Congress

Edward J. Markey
United States Senator

Raúl M. Grijalva
Member of Congress

Bernard Sanders
United States Senator

Doris Matsui
Member of Congress

Cory A. Booker
United States Senator

Ro Khanna
Member of Congress

Elizabeth Warren
United States Senator

Sydney Kamlager-Dove
Member of Congress

Adam B. Schiff
Member of Congress

Betty McCollum
Member of Congress

Maxine Waters
Member of Congress

Joe Neguse
Member of Congress

Yvette D. Clarke
Member of Congress

Mark Pocan
Member of Congress

Barbara Lee
Member of Congress

Gabe Vasquez
Member of Congress

Donald S. Beyer Jr.
Member of Congress

Chellie Pingree
Member of Congress

Ted W. Lieu
Member of Congress

Becca Balint
Member of Congress

Melanie Stansbury
Member of Congress

Nanette Diaz Barragán
Member of Congress

David Trone
Member of Congress

Zoe Lofgren
Member of Congress

Adriano Espaillat
Member of Congress

Brittany Pettersen
Member of Congress

Mark DeSaulnier
Member of Congress

Julia Brownley
Member of Congress

Judy Chu
Member of Congress

Sara Jacobs
Member of Congress

Eleanor Holmes Norton
Member of Congress

André Carson
Member of Congress

Katie Porter
Member of Congress

Mike Thompson
Member of Congress

Seth Magaziner
Member of Congress

Jerrold Nadler
Member of Congress

Ritchie Torres
Member of Congress

Mr. HUFFMAN. Thank you.

Deputy Director Culver, is it correct that congressional intent for the Federal Land Policy and Management Act, FLPMA, is to include conservation as part of BLM's multiple-use mandate?

Ms. CULVER. Thank you for the question. Absolutely, it is.

The definition of multiple use is very clear. It includes, for example, natural, scenic, scientific, and historical values. Those are certainly aspects of conservation, as are management of habitat.

And I think the quote that I have read a few times lately comes from the former governor of Idaho, Mr. Andrus, who was the Secretary of the Interior when FLPMA passed in 1976. And he talked about the importance of these public lands for all Americans, and said in response to the passage of FLPMA, "Conservation is no longer a pious ideal. It is an element of our survival." I take that as something that maybe we should have gotten around to these regulations earlier, as you note, but I take

that to reiterate that that was the intention at the time of the passage.

Mr. HUFFMAN. And is it fair to say that over the years you have done a lot of rulemaking when it comes to mining, and grazing, and oil and gas activities on our Federal public lands and other commercial uses?

Ms. CULVER. We do have standalone regulations for all of those activities, as well as for rights-of-way. And when we saw the need, we updated our regulations to address renewable energy, wind and solar explicitly. We just issued updated regulations on that today.

Mr. HUFFMAN. But you have never done a rulemaking for conservation?

Ms. CULVER. We have not.

Mr. HUFFMAN. So, that does not seem radical. It seems long overdue and sensible, putting it on equal footing.

And let's just establish that you are not putting a thumb on the scale for conservation and elevating it over other uses in your multiple-use portfolio, are you?

Ms. CULVER. We are not. And the rule is explicit that this is one of the multiple uses.

Mr. HUFFMAN. Thank you. The bill before us today would not only close the door to you taking this step, it would lock the door, and it would prevent you from doing other regulatory actions in this space. How would that tie your hands and your ability to carry out your multiple-use mandate under FLPMA?

Ms. CULVER. Thank you for that question and for pointing that out, that there may be unintended consequences or intended of such a law, because the rule itself actually reiterates numerous policies and activities that are already underway.

For example, compensatory mitigation, restoration, planning ahead for managing to restore habitat, working with our partners to identify the best places to manage for healthy public lands and to manage for restoration.

As I mentioned in my testimony, the ideas and the concepts and the tools in this rule and this proposed rule grow out of activities and ideas that are already underway at the BLM and have been for decades.

Mr. HUFFMAN. Thank you, Deputy Director.

I just want to note, as I close, that of the 245 million acres of public lands BLM manages, 90 percent are open for oil and gas leasing. The vast majority are open for hardrock mining. It is high time that we elevate conservation to equal footing with these other uses, and this rule seeks to do just that.

I will note, Deputy Director, that I have had some solar power developers that are a little bit nervous about this rule. I think they are misinterpreting what is going on here, but it would be very important, as you go forward, I think, to provide some assurance and clarity that, just as this would not prevent other uses, it would certainly not stand in the way of our renewable energy goals and solar development on public lands.

With that, I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the bill's sponsor for questions.

Mr. Curtis, you are recognized for 5 minutes.

Mr. CURTIS. Thank you, Mr. Chairman. I would like to direct my questions to the Deputy Director, and thank you for being here, and all the witnesses, for your long hours that you have been here.

Deputy Director, I am from Utah. BLM manages 22.8 million acres of public land in Utah. That is 42 percent of our state. If you go more specifically to my district, I don't have the specific numbers for BLM, but Federal lands represent about 90 percent, a high percentage of my district. Can you explain, given those numbers, why there were no public meetings in Utah about this rule?

Ms. CULVER. Thanks for the question. We identified a number of places to hold information sessions, and have again continued to provide responses and information sessions and briefings as requested.

Mr. CURTIS. The governors of South Dakota and Wyoming were here earlier, and they also expressed that there were no public meetings in their states with similar numbers. Do you not feel that you have missed something here by not coming to the people in these good areas and getting their input?

Ms. CULVER. Having worked on a number of regulations, and seen the Federal Government issue regulations for many years, I think we have one of the most robust outreach processes I have ever seen with the information sessions online, the information we have posted online, the information we have made available around the West, the amount of outreach going on from our State Directors, yes.

Mr. CURTIS. To be clear, then, you are saying states with significant impact by this rule didn't need to be heard from, and that that was adequate. Is that what you are telling me?

Ms. CULVER. With respect, Congressman, that is absolutely not what I am saying.

Mr. CURTIS. Then help me understand why you wouldn't hold a single public meeting. I don't know about the other states in the region, but these three I know about. Why wouldn't you hold a single public meeting, not one?

Ms. CULVER. We did not hold public meetings to receive comment. We held information sessions to provide additional information. And then we have been supplementing those with meetings held with our State Directors, our districts, and our field offices. Just as so many people have talked about how well they work with their local BLM, their state BLM, their districts, those are the people who we are having help us with additional outreach.

Mr. CURTIS. Let me get to that in a minute. BLM has not responded to letters my colleagues on the Committee and I have sent. How can Utah ranchers, farmers, and recreationalists have their voices heard, when you are not responding to our letters and you are not holding hearings? What do you want me to go back and tell them?

Ms. CULVER. We have been doing briefings for anyone who asks, and we are happy to continue doing that. We are in a public comment period right now. That is when we will respond.

Mr. CURTIS. Good. I am asking for a briefing in San Juan County.

Ms. CULVER. Understood.

Mr. CURTIS. You are willing to do that?

Ms. CULVER. I have responded to briefings. We have been doing most of them virtually. But I am sure we can figure that out.

Mr. CURTIS. That is a yes.

Ms. CULVER. I will need to confirm, but I am sure we can find a way to continue discussions with San Juan County.

Mr. CURTIS. No, I want an in-person briefing in San Juan County, where they are impacted by this in a dramatic way.

Ms. CULVER. I understand your request. As I said, we are not holding public hearings, but we are providing additional——

Mr. CURTIS. Are you willing to extend the comment period, given the fact that so many people have not been heard from?

Ms. CULVER. I am. Today, we announced the extension of the comment period by an additional 15 days.

Mr. CURTIS. Fifteen?

Ms. CULVER. Yes, sir.

Mr. CURTIS. That gives you 2 weeks to get down to San Juan County. I will meet with your scheduler immediately, as soon as you are ready.

Ms. CULVER. Having driven from Albuquerque to San Juan County to Salt Lake City on Monday, I think it can be done, but I hear you.

Mr. CURTIS. Please. We would like that to happen.

So, I am curious of two questions. One is it sounds like you are a little bit familiar with the geography in Utah. Can you give me an example where you feel like this rule would have made a difference in Utah in the last decade? What would it have preserved that was not preserved?

Ms. CULVER. Absolutely. To give an example that is from a little farther north in the state, we recently permitted the TransWest Express transmission line. As part of that process that line goes through a number of Western states, including Utah.

Mr. CURTIS. So, you are saying that would not have been permitted under this rule?

Ms. CULVER. What happened with that was the company, in its own discussions, agreed to compensatory mitigation to provide funding.

Mr. CURTIS. I only have 30 seconds left. Let me try to make a point with you.

Ms. CULVER. We could have worked out——

Mr. CURTIS. I know. This is my time.

Ms. CULVER. We could have worked——

Mr. CURTIS. I have 30 seconds.

Ms. CULVER. I know. I thought you wanted me to explain. I am so sorry.

Mr. CURTIS. OK. Thirty seconds, right? You have no funding in my district. You have two BLM agents for the entire Bears Ears area. How is funding going to change so that you have the resources to do this?

Ms. CULVER. Most of this will be part of our ongoing standard practices such as land use planning and permitting projects. We expect that it will be funded in that way.

Mr. CURTIS. All right. I am, unfortunately, out of time. Hopefully, you interpret from my results that we don't feel heard, that we feel

like we are doing a very good job of conservation ourselves. And I really would challenge you to point out anything where your involvement would have provided better conservation than what we have done. And I wish I could give you a chance to respond. I am out of time.

Mr. Chairman, I yield my time.

The CHAIRMAN. You can respond, if you would like.

Ms. CULVER. Thank you so much, Mr. Chairman. The example I was going to give with the transmission line, there are millions of dollars for compensatory mitigation. If we had had this opportunity, this rule, it would have been easier to work with local communities to propose projects and to implement those projects directly with the communities, instead of going through the National Fish and Wildlife Foundation.

Mr. CURTIS. I think my question is what would have been preserved, and particularly in the south, that was not preserved because this rule was not in place?

Ms. CULVER. So, I think what we are looking at is the rulemaking easier for our land managers to find that——

Mr. CURTIS. I know, but what would have been preserved that wasn't preserved by my locals that this law would help you do, this rule would help you do?

Ms. CULVER. I think there are significant restoration opportunities in San Juan County that this rule could help.

Mr. CURTIS. I am talking about preservation, not restoration, preservation. And you don't have the money for restoration, by the way.

Ms. CULVER. We have just received a lot of funding for restoration from the Congress, and we are very grateful for that, and we look forward to directing it around your state.

Mr. CURTIS. OK, but not a single example of what would have been preserved that wasn't preserved.

Ms. CULVER. This rule is a framework. It does not make a decision to preserve something that isn't already preserved. It provides a way to use that tool.

Mr. CURTIS. OK. I just want to point out that we are doing a very good job of preserving ourselves, and I am not sure that there is anything in this rule that will do a better job of preserving in the area.

Ms. CULVER. And our intent is to support those activities through the rule.

Mr. CURTIS. We can go on, Mr. Chairman, but I will yield.

The CHAIRMAN. I thought we were canning pickles or something. We are talking about preservation, I thought it was a conservation discussion, but the Chair now recognizes Mr. Gosar for 5 minutes.

[Laughter.]

Dr. GOSAR. Thank you very much.

I want to make it perfectly clear I am against this rule and so are my constituents. And that is why I am also requesting an in-person meeting in Arizona with the BLM, with my constituents, and myself. I think we deserve it, and we demand it.

Deputy Culver, the Federal Land Policy and Management Act at section 202(c)(9) requires the Bureau to coordinate the proposed

rule with states and local governments. This probably has been asked before, but has that occurred?

Ms. CULVER. Thank you for the question, Congressman. That section actually pertains to our land use planning process, where we certainly do coordinate closely with our cooperating agencies.

In terms of the rule itself, much of the input that we have received over the decades of implementing FLPMA with our partners is reflected in the rule.

Dr. GOSAR. So, yes or no? Is that a yes or a no?

Ms. CULVER. Yes, we have consulted with states and other partners over the years on the concepts in this rule.

Dr. GOSAR. Can you provide us with a report documenting the coordination process, including the steps you took to satisfy the criteria for coordination set forth in FLPMA, and efforts to reach consistency with the state and local positions?

Specifically, I would like the report to address the following four elements of this criteria:

(1) because of the importance of the public lands to Western states, and I made myself very clear in the first or the second panel, and in particular the rural areas and their economies. FLPMA section 202(c)(9) requires meaningful coordination by the BLM with state and local governments with respect to land use inventory, planning, and management activities.

(2) in addition, FLPMA section 202(c)(9) authorizes the elected and appointed officials of state and local governments to furnish advice to the BLM concerning the development and revision of land use guidelines, land use rules, land use regulations for the public lands with their respective states.

(3) FLPMA section 202(c)(9) also requires the BLM to provide state and local governments meaningful involvement in the development of BLM land use programs, land use regulations, and land use decisions for public lands.

And finally (4) under FLPMA section 202(c)(9), land use plans adopted by the BLM must be consistent with state and local plans to the extent possible, unless FLPMA any other Federal law requires otherwise.

Furthermore, the BLM must assist in resolving, to the extent practical, inconsistencies between the Federal land use plans and the state and local government plans. Are you capable of doing that?

Ms. CULVER. The rule would, at some point, I assume, if the rule is finalized, it will be carried out through the land use planning process, at which point we would be——

Dr. GOSAR. I think, first of all, you have to go through these four aspects. You haven't done them. And you have heard the parade of my colleagues saying you are way out in front of your skis.

The gentleman from Montana had it right. We are the people that are making the laws, not you. You are part of the enforcement aspect and implementation. And we have this all backward, really backward. And that is why I brought up the SNPLMA, the Southern Nevada land exchange that Harry Reid piloted, because if this is what you are going to continue to do, then it should be up to the states and to the local governments to go back and attain those jurisdictions over those lands.

I find this offensive. And he said, "Stay in your lane." I think that is the best advice I possibly can tell. And I will be very frank with you. I think more and more states need to take the BLM and the Forest Service to court, because you are too far over the skis, you are out of your lane. And that is not right.

This Constitution, this country was formulated on real basis. And when you look at the equal footings clause, particularly the Arizona model in regards to Taft, that formed contracts with the states. So, it is not if you are predisposing one part of multiple use over another, it is you must use all of those, otherwise you are subservient back to the state.

So, I tell you, I am very disappointed in what I have seen, and I hope that you will—I don't hope; I will be looking forward to your answers.

Thank you, I yield back.

The CHAIRMAN. The gentleman yields back. It looks like we are down to only one person left to ask questions. And since when I am talking, there won't be anybody to tell me I am over time, this could go on for a while. But again, I thank the witnesses for being here.

Ms. Sgamma, I am going to ask you, and it is going to be a difficult question I am going to ask you, because I am going to ask you to maybe help me role play, and I am going to do my best to be a rural Coloradan. You will have to pretend with my accent and maybe that you are out in rural Colorado and I am a friend, and I come up to you.

And I say, "Hey, Kathleen, I have known you for a while. You are a smart person. You follow all this stuff. I know you go to DC and you testify before committees, and you are really tuned in on what the Federal Government and the BLM is doing. I saw where they are proposing this new rule to do something with conservation and I thought that is what their job was, anyhow. I thought we spent billions of taxpayer dollars to fund agencies to take care of our land and practice conservation. What is this conservation easement thing I am hearing about, and how is it going to affect me here in Colorado?"

Ms. SGAMMA. Well, besides the fact that you really don't sound like you come from Colorado, I would have to say I think it is still pretty unclear what the intention is.

We keep hearing that this is just a framework, that this is just multiple use. But Congress didn't define conservation as a multiple use. So when you look at these conservation leases, you can't help but think that it is going to preclude other uses, it is going to preclude the grazing, it is going to preclude oil and gas development, solar, wind. So, at this point it is hard to say exactly what the impact will be.

But just looking at the plain language of it, and hearing what it is not going to do, it makes me nervous that when they say it is not going to do this, it is not going to stop grazing, or it is not going to stop energy development, that what we are going to actually see out of the rule is the exact opposite, that it will be used to stop those primary principal multiple uses on Federal lands, and that it will be used to elevate conservation above other productive uses so that it passes over that conservation.

Because we all do conservation on Federal lands. We are always conserving, we are restoring, we are reclaiming. Oil and gas companies are always reclaiming the land and restoring it. And we do that conservation in agreement with BLM. But it is going to pass over from conservation to preservation only. We see the BLM trying to become like the National Park Service, and move from its multiple-use mandate to a preservation-only type of mandate.

The CHAIRMAN. So, in layman's terms, they are saying it is not going to change anything, yet they need this massive rule to go into effect so they can do the job that they are already supposed to be doing?

Ms. SGAMMA. Right. BLM already has the ability to do conservation. In fact, there are 38 million acres in the Landscape Conservation System that BLM manages already. So, BLM clearly has been doing conservation.

What we are concerned about is when they say it is not going to stop grazing, it is not going to stop leasing, it is not going to stop mining, that, in fact, that is exactly what is going to happen.

The CHAIRMAN. And thank you for that. I was very confused when I saw this proposed rule come out, and I asked the same questions. Why? Why do they need this? What is the ulterior motive?

And we have heard that it is not going to do anything, but I am going to read from the letter that Mr. Stauber submitted for the record from the Small Business Administration Office of Advocacy, and this is directly from their letter: "BLM has not, however, clarified within the proposed rule how conservation leases will be compatible with the other principal uses laid out in FLPMA. In at least two instances, mining and grazing, the proposed rule is incompatible."

"Without proper clarification from BLM regarding the implications of conservation leases on other uses, and the inevitable incompatibility that may result, the proposed rule has the effect of placing conservation leases above other interests. This is contrary to the statutory intent outlined in FLPMA. As indicated above, BLM does not have statutory authority to create such additional uses that would make the other principal uses incompatible. According to the statutory text cited throughout this letter, Congress did not intend for land uses to be excluded on a programmatic level."

So, even the Small Business Administration disagrees and says that BLM apparently doesn't know, somebody doesn't know what they are talking about within the Administration.

And Ms. Culver, you talked about experts in the BLM, and I know you are a political appointee, I don't think you went through Senate confirmation, but your boss did. And I know politics change. And whoever is in the White House, their politics get to filtrate throughout the Administration. But was it political staff or was it career staff that wrote this 88-page rule?

Ms. CULVER. Thanks for the question, Mr. Chairman. The rule was written by career staff. We engaged subject matter experts throughout the BLM, both headquarters and around the West, in creating——

The CHAIRMAN. What would happen if the career staff said, "I am not going to write that rule?"

Ms. CULVER. Well, that did not happen, so I can't really speculate. As I mentioned, a lot of the ideas in this rule you can see reflected in BLM land use plans, and in decisions, and in discussions——

The CHAIRMAN. The bottom line is we know that nothing would happen. The career staff, they work for the Federal Government. There are no repercussions for when they do their work, when they don't do their work. Who do career staff answer to?

Ms. CULVER. They report generally to additional career staff.

The CHAIRMAN. Career staff report to career staff, who are writing rules. They answer to nobody. They have never been elected. They never have to go out and face the public. They can put their own views, their own biases. Whatever they want to they can write into these rules. And guess what? After you are gone and this Administration is gone, they will still be there, and they will be the ones enforcing these rules. They have full enforcement.

They also get to be the judge and the jury, because if somebody complains, there is an administrative law judge there in the agency that can rule in favor of the career bureaucrats. It is a broken system. It gets abused.

And that is the big problem that I have with this, because it is totally unnecessary. If there was leadership and people were doing the right thing, we would be conserving our lands. We would be providing access to it. But guess what? I know I am the only one left here, but we answer to people. We answer to voters all across this country. So, we are going to push back, because we don't think career bureaucrats buried in some cubicle over in some nondescript building should be determining what happens out on our Federal lands. And we are just not going to allow that to happen.

We may not be able to pass this law out of the House and the Senate and get the President to sign it, but either way it goes, I will be in contact with my friends over at the Appropriations Committee and have an amendment in the appropriations bill that says no appropriations shall be used to implement this rule that the BLM is proposing. It is sad it has to happen that way, but at the end of the day we do control the purse strings. They may still have their job, but it will be against the law if we are able to pass this in Appropriations.

And it is too bad we can't actually work on these things, and you all have hearings in all the states, that you respond to questions in letters that I write, that letters not just the House writes, but Senators write, as well, and we get to the point where it is the elected representatives facing off against the unelected bureaucrats. And as administrations change, unfortunately, the career bureaucrats don't.

So, with that, I want to thank the witnesses for being here today.

I do have some things for the record. I ask unanimous consent that the following letters from 93 different organizations representing a wide variety of stakeholders, including those involved in grazing, forest management, recreation, conservation, and energy and mineral development be added to the record for today's hearing.

Each letter details different concerns and expresses support for H.R. 3397 or opposition to the BLM proposed rule. These groups include the American Forest Resources Council; Public Lands Council; American Farm Bureau Federation; National Mining Association; Independent Petroleum Association of America; National Stone, Sand, and Gravel Association; and America Outdoors Association.

And without objection, so ordered.

[The information follows:]

ARIZONA CATTLE GROWERS' ASSOCIATION

Hon. Bruce Westerman, Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Re: H.R. 3397: A bill requiring the withdrawal of a proposed rule relating to conservation and public health

Dear Chairman Westerman:

The Arizona Cattle Growers' Association fully supports H.R. 3397, introduced by Subcommittee Chairman Curtis, which requires the Bureau of Land Management to withdraw its proposed rule relating to conservation and public health. We thank the Committee for holding a hearing on this important issue on June 15.

Every special designation of public land leads to the elimination or undue restriction of grazing. As drafted, the BLM proposed rule will have the same effect. Ranchers and their communities throughout the west are rightly concerned about the agency's proposal. Real conservation of public land requires the presence of people who care about the land. Simply tying up land with no responsibility for management will foment more of the conditions like out-of-control wildfires and invasive species that are the scourge of healthy landscapes.

Attached are ACGA's detailed comments on the rule submitted to the agency. Do not hesitate to contact Jeff Eisenberg of my staff if you have any questions about the comments or the rule.

Sincerely,

MIKE GANNUSCIO,
President

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ATTACHMENT

May 24, 2023

U.S. Department of the Interior
Director (630), Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Dear Sir or Madam:

The Arizona Cattle Growers is the largest and oldest association representing ranchers. Ranching is central to the history and development of our great state. As the federal and state governments own over 80% of the land in the state, public land is an integral part of agriculture in the state. For this reason, BLM decisions have an important effect on our members' operations. The BLM's proposed rule on "Conservation and Landscape Health", issued on April 3, 2023, is of great concern to us. We appreciate the opportunity to submit comments on this important proposal.

Grazing has a large footprint on BLM lands. Of the 245 million acres administered by the BLM, 155 million acres are dedicated to grazing. The Taylor Grazing Act of 1934 first recognized the importance of grazing for protecting public lands. Similarly, a guiding principle in the current proposal is to ensure the resilience of

BLM lands by "preserving and protecting certain public lands in their natural condition." Proposed 43 C.F.R. § 6101.5. A critical tool for accomplishing this goal is by protecting "intact" landscapes. Proposed 43 C.F.R. § 6102.1(a). As explained below, BLM land dedicated to grazing is "intact", "resilient" land. Because the proposal leaves very vague the boundaries between the overlapping relationship of "intact" and grazing land, our comments are aimed at clarifying the distinction by suggesting language to protect grazing operations that are meeting applicable management goals.

Grazing on BLM land is currently administered under the fundamentals of land health at 43 C.F.R. § 4180.1. The proposal characterizes these fundamentals as the "science for management decisions to build resilient public lands." 88 Fed. Reg. 19583, 19586. Land dedicated to grazing is expected to achieve the applicable standards and the management practices are expected to conform to the guidelines. 43 C.F.R. § 4180.2. Should the grazing land fall short, the authorized officer is required to take remedial action. The proposed rule applies the fundamentals of land health (taken verbatim from the existing fundamentals of rangeland health at 43 CFR 4180.1 (2005)) and related standards and guidelines to all renewable-resource management, instead of just to public-lands grazing. 88 Fed. Reg. 19583, 19586.

The preamble explains that conservation leases authorized under section 6102.4(a)(3) are "not intended to provide a mechanism for precluding other uses, such as grazing, . . ." 88 Fed. Reg. 19591. Nevertheless, a potential conflict arises between conservation leases and grazing arises when grazing leases are up for renewal. If a potential conflict is foreseeable in the proposed rule, it should be addressed and resolved in the final.

The regulations adopted in this proposal contain the process for ensuring that grazing BLM lands takes place on resilient lands. Under 43 C.F.R. § 4180.2(c)(1), the authorized officer is required to use monitoring to determine compliance with land health standards. See also proposed rule 43 C.F.R. § 6103.2(b). Should the grazing not meet the standards, the officer is to propose "appropriate action to address the failure to meet standards or to conform to the guidelines." Id. In other words, current regulations require grazing to be on resilient lands and prescribe the measures to ensure this happens. This framework for managing grazing is consistent with the proposed rule to maintain or restore resilient intact ecosystems. Proposed rule 43 C.F.R. § 6102.1(a).

The potential for conflict arises under proposed rule 43 C.F.R. § 6102.2(a), which requires authorized officers to "identify intact landscapes on public lands that will be protected from activities that would . . . significantly disrupt, impair, or degrade the structure or functionality of intact landscapes." Furthermore, authorized officers must determine during the planning process which tracts of public land will be put to conservation use. Proposed rule § 6102.2(b).

We recognize that there are any number of environmental groups that want to eliminate public land grazing and of course would assert that the grazing disrupts, impairs, and degrades the structure and functionality of intact landscapes. Under proposed rule 43 C.F.R. § 6102.5(b)(8), authorized officers are required to "consider a precautionary approach for resource use when the impact on ecosystem is unknown or cannot be quantified". This section opens the door for interminable fighting about the effects of grazing and whether existing monitoring data provides an accurate characterization of the resources of the land in question.

Fortunately, the foundations for land health point the way for resolving this uncertainty. As indicated above, the foundations require monitoring to measure compliance with the standards and guidelines. The need for quantitative data collection permeates the management prescribed in this proposed rule. The BLM should make management decisions based on facts, not the biases of individual stakeholders or even individual authorized officers. The federal government owes the public a duty of fairness in its administration of its legal responsibilities. The only fair way to administer grazing is to base decisions on empirical data.

There is wide-spread agreement among the range science community about range monitoring. The BLM has been a key participant in these discussions through the years and has the necessary access to this consensus to implement it effectively on its lands. There is no reason for grazing land management not to be based on facts. The "precautionary principle" has no place in the grazing arena where there are well-known systems for rangeland data collection. See proposed rule 43 C.F.R. § 6102.5(b)(8).

It may be that data collection is not possible with other resource uses of BLM lands, and therefore the impact of the use on ecosystem resilience is "unknown or cannot be quantified." This uncertainty may be due to the difficulty of measurement in a particular case, or because BLM does not have the staff to carry out its duties

under the law. However, individual ranchers should not be punished with the loss of their livelihoods because the federal government is unable to perform its duties in managing rangelands.

For the foregoing reasons, we propose amending proposed rule 43 C.F.R. § 6102.5(b)(8) as follows (the changes are in red):

> (8) Other than for grazing authorizations, consider a precautionary approach for resource use when the impact . . . .

In our view, the provisions of this rule should not affect continued grazing use of BLM lands that is in compliance with the fundamentals of land health and other applicable legal requirements. See 43 C.F.R. § 4130.1–1(b)(1). In a similar vein, the area of land in a grazing allotment that is meeting the fundamentals of land health standards and guidelines should not be reduced due to a reallocation of the land to a conservation use or to create "intact" land under the proposed rule. Changes in the existing rule and the proposal are necessary to effectuate this goal:

1. 43 C.F.R. § 4110.4–2, Decrease in land acreage, add a new paragraph (a) and reletter the subsequent paragraphs:

> (a) There may be no decrease in public land acreage available for livestock grazing with an allotment due to conservation use as provided under proposed rule 43 C.F.R. § 6102.2 for allotments that meet the fundamentals of land health standards and guidelines.

2. Under proposed rule 43 C.F.R. § 6102.2, add a new sentence at the end of existing section (a) as follows:

> (a) Provided that land allocated to grazing that is meeting the fundamentals of land health standards and guidelines shall not be identified for protection under this paragraph nor put to conservation use under paragraph (b).

As discussed above, grazing lands are intact that are resilient when managed properly. Moreover, most often ranchers have the most contact with the land and the resources and are in the best position to manage it. We would think the BLM should be reluctant to give up these valuable benefits by replacing grazing leases with conservation uses when grazing leases that are meeting land health standards come up for renewal.

Moreover, people, families, and communities depend on the economic benefits generated by grazing on BLM land. If the BLM can recognize that some of its authorizations, such as infrastructure and energy projects or mining, will cause "permanent impairment of ecosystem resilience," [1] then it should certainly honor its long-standing relationship with the many people who make "resilient" use of the land.

Thank you for your consideration of our views.

Sincerely,

MIKE GANNUSCIO,
President

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[1] 88 Fed. Reg. 19592

June 6, 2023

Tracy Stone-Manning, Director
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

Dear Director Stone Manning:

On April 3, 2023, the Bureau of Land Management (BLM) published the proposed rule on "Conservation and Landscape Health." The rule, which amends a long-standing interpretation of the Federal Land Policy and Management Act (FLPMA), has raised significant concern among the grazing community.

The undersigned organizations represent cattle and sheep producers who have, for generations, been partners with the BLM in managing the 245 million acres of federal land in the West as well as hundreds of millions of acres of private land nationwide. These producers are the original conservationists of these landscapes, having managed lands, waters, wildlife, and adverse conditions to ensure the resources remain healthy and resilient to provide for the diverse needs of people, animals, and the environment. These producers have always been the BLM's primary partner in fulfilling your mission of managing landscapes for multiple use and sustained yield. Yet, in the promulgation of the proposed rule, the BLM neglected to engage with these partners.

The proposed rule was developed without any stakeholder discussion or advanced notice. Despite the ongoing discussions about sage grouse plan revisions, mitigation, conservation practices, grazing regulations revisions, and resource resilience, the BLM did not provide any indication they were promulgating this proposal. Individually, each of the components of the proposed rule would have warranted substantive and detailed discussion. Together, they demand the BLM do the necessary work of engaging with stakeholders to avoid conflict and develop durable outcomes. This discussion certainly should be longer than 75 days during one of the busiest times of year for federal grazing permittees.

The five public information sessions have done little to compensate for the agency's lack of advanced discussion. Instead of holding dialogues in places where federal grazing permittees and other multiple use stakeholder groups operate, the agency elected to host briefings in urban centers. Each of these sessions has featured a briefing, after which BLM staff have been unable to answer questions about future implementation of the proposed rule, instead urging attendees to answer those questions in the public comments. The format of these events, the expectation that permittees from 12 western states would drive to just three urban centers, and the lack of meaningful dialogue with stakeholders at the briefings has left the grazing community with the conclusion that the BLM is not committed to open dialogue on this proposal.

To create a "durable mechanism" to improve landscape health, these concepts would have been more appropriately explored in one of the agency's more appropriate tools like a Request for Information, an Advanced Notice of Proposed Rulemaking, or—most appropriately, a scoping period attached to a programmatic Environmental Impact Statement. Instead, the agency moved straight to a proposed rule, inappropriately bypassing key stakeholder discussions and regulatory processes that would have informed a more durable process. For this reason, the undersigned organizations request BLM withdraw the proposed rule and begin again, engaging with stakeholders in a forum that would promote open dialogue and address fatal flaws in the existing proposal.

If the BLM instead forges ahead with the proposed rule, the undersigned organizations request a 105-day extension to the public comment period, to allow for a full 180 days. The undersigned organizations are actively engaging with other multiple use groups across the West, doing the hard work that should underpin federal lands management. Additionally, we request the agency hold public meetings and forums for discussion in each of the states where user groups were previously omitted: Washington, Oregon, California, Idaho, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, and Nebraska. While we appreciate the agency's recognition that some groups may prefer virtual meetings, virtual meetings should not replace in-person engagement in states where broadband access often precludes robust participation.

Over the last several generations, ranchers have been at the front of the line helping the BLM conserve wildlife habitat, reduce wildfire risk, support balanced multiple use, reduce on-range conflicts, and identify areas of greatest need. We urge the BLM not to compromise that relationship by forging ahead with a rule that will

undoubtedly result in ranchers and other multiple use groups being forced from the landscape over time. We support durable conservation, we support creative partnerships, and we have always been willing to do the hard work that partnership requires. We urge you to seriously consider our request and be willing to engage with this community into the future.

Sincerely,

Public Lands Council
National Cattlemen's Beef Assoc.
American Sheep Industry Assoc.
American Farm Bureau Federation
American Quarter Horse Association
American National Cattle Women
National Lamb Feeders Association
Arizona Cattle Growers Association
Arizona Farm Bureau Federation
Arkansas Cattlemen's Association
California Cattlemen's Association
California Farm Bureau
California Public Lands Council
California Wool Growers Association
Colorado Cattlemen's Association
Colorado Farm Bureau
Colorado Public Lands Council
Colorado Wool Growers Association
Florida Cattlemen's Association
Idaho Cattle Association
Idaho Farm Bureau Federation
Idaho Public Lands Council
Idaho Wool Growers Association
Montana Wool Growers Assoc.
Nebraska Cattlemen
Nevada Cattlemen's Association
Nevada Farm Bureau Federation
Nevada State Grazing Board Central Committee
Nevada Wool Growers Association
New Mexico Cattle Growers Assoc.
New Mexico Farm & Livestock Bureau
New Mexico Wool Growers Assoc.
North Dakota Farm Bureau
North Dakota Stockmen's Assoc.
Oklahoma Cattlemen's Association
Oregon Cattlemen's Association
Oregon Farm Bureau
Oregon Public Lands Council
Southern Arizona Cattlemen's Protective Assoc.
South Dakota Cattlemen's Assoc.
South Dakota Public Lands Council
Tennessee Cattlemen's Association
Utah Cattlemen's Association
Utah Farm Bureau Federation
Utah Wool Growers Association
Washington Cattlemen's Association

Indiana Sheep Association

Kansas Farm Bureau

Minnesota Lamb & Wool Producers Assoc.

Montana Assoc. of State Grazing Districts

Montana Farm Bureau Federation

Montana Public Lands Council

Montana Stockgrowers Association

Washington Farm Bureau

Washington State Sheep Producers

Wyoming Farm Bureau Federation

Wyoming Stock Growers Association

Wyoming State Grazing Board

Wyoming Wool Growers Association

June 7, 2023

Tracy Stone-Manning, Director
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

Dear Director Stone Manning:

On April 3, 2023, the Bureau of Land Management (BLM) released the proposed rule entitled "Conservation and Landscape Health", purportedly to "advance the BLM's mission to manage the public lands for multiple use and sustained yield" by "wise management decisions based on science and data." We write today to ask you, on behalf of the BLM, to uphold commitments you made in your June 8, 2021 testimony before the Senate Energy and Natural Resources Committee to "listen . . . and seek to work with all . . . That's how we find durable solutions, by working together.[1]" The proposed rule and process surrounding the rule fall short of that commitment.

Despite the significant implications of the rule for all multiple use and conservation communities, the proposed rule was developed without stakeholder input or advanced notification. The concepts of the rule are not new; for decades, the agency has contemplated improvements to landscape health evaluations, how to avoid "random acts of conservation", and how the agency can be more intentional about evolving land uses, however the mechanisms to address these issues have been difficult to find. There are few simple answers in natural resource management, so these are conversations that should be facilitated by the agency, with the involvement of all stakeholders, to develop durable solutions—not confined to a 75-day public comment period.

There are so many nebulous concepts in the proposed rule and the agency has thus far been unable to answer key questions about the concept of conservation leases. It is therefore unreasonable for the BLM to have published this proposal; instead, the agency should have pursued an Advanced Notice of Proposed Rulemaking or a Request for Information for a meaningful regulatory process. We therefore request the agency withdraw the proposed rule and reset the conversation to ensure appropriate stakeholders are at the table to find durable answers to some of the West's most pressing challenges.

Absent the BLM's willingness to restart the conversation, we request an extension to the comment period to facilitate robust discussion. We request a 105-day extension of the comment period to allow for the kind of meaningful back-and-forth that is required for such a significant shift in agency management. During that additional 105 days, we request you hold public meetings that provide opportunity for discussion in each state affected by the proposed rule. The current meeting schedule includes only three states of the 12 where BLM currently manages surface occupancy. Virtual meetings should not be a replacement for in-person engagement in 75 percent of the agency's footprint.

As the BLM moves through the regulatory process, we urge the agency to move with careful intention when engaging with the public. The undersigned organizations represent a wide variety of multiple use groups—people who live, work, recreate, and are generationally-invested in the 245 million surface acres and 700 million subsurface acres across the country.

Sincerely,

Public Lands Council	Federal Forest Resource Coalition
National Cattlemen's Beef Assoc.	Western Energy Alliance
American Sheep Industry Assoc.	American Forest Resource Council
American Quarter Horse Association	American Council of Snowmobile Associations

[1] https://www.energy.senate.gov/services/files/BB980035-6C2E-47E4-9614-8F5151232144

American Mining and Exploration Assoc.

National Association of Counties

Association of National Grasslands

Safari Club International

Partnership of Rangeland Trusts

American Farm Bureau Federation

National Assoc. of State Departments of Agriculture

America Outdoors Association

Farm Credit Council

Essential Minerals Association

Family Farm Alliance

Wild Sheep Foundation

American Exploration & Mining Association
Spokane Valley, WA

June 15, 2023

Hon. Bruce Westerman, Chairman
Hon. Raul Grijalva, Ranking Member
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Re: June 15, 2023 Legislative Hearing on H.R. 3397

Dear Chairman Westerman and Ranking Member Grijalva:

The American Exploration & Mining Association (AEMA) submits the following statement for the record for the above-referenced hearing.

AEMA supports H.R. 3397, which would require the Director of the Bureau of Land Management to withdraw its Conservation and Landscape Health rule, also called the Public Lands Rule. We urge the committee to approve it swiftly.

Who We Are and the Importance of the U.S. Minerals Mining Industry

AEMA is a 128-year-old, 1,400-member national trade association representing the mineral development and mining industry, with members residing across 46 states, 7 Canadian provinces or territories and 10 other countries. AEMA is the recognized national representative for the exploration sector, the junior mining sector, as well as mineral developers interested in maintaining access to public lands. Thus, AEMA represents the entire mining life cycle, from exploration to mineral extraction and then to reclamation and closure. More than 80 percent of our members are small businesses or work directly for small businesses.

American miners continue to play an indispensable role in building and defending our Nation. From foundations to roofs, power plants to wind farms, roads and bridges to communication grids and data storage centers, America's infrastructure begins and ends with minerals and mining. As just one example, steel resulting from mining operations directly supplies the construction and development of roads, railways, appliances, buildings, stadiums, bridges, airports, conventional and renewable energy facilities, and other structures. Steel is used to reinforce concrete and other construction materials and 6 billion tons of steel are used across the U.S. National Highway System. Steel requires iron ore for its production, and 65 percent of the global zinc consumption is used to coat steel, for purposes of making it resistant to corrosion. Other metals important to steel alloys, including manganese, chromium, nickel, aluminum, vanadium, tungsten, titanium, cobalt, and niobium, are specifically identified on the U.S. Geological Survey's (USGS') final 2022 list of critical minerals.[1]

Another example is copper, with its flexibility, conformity, conductivity, and resistance to corrosion, that make it an ideal and essential clean energy metal.[2] Forty-three percent of U.S. copper demand comes from the construction industry, as the average American home contains 439 pounds of copper. An electric vehicle (EV) uses approximately four times as much copper as a conventional car.

Infrastructure improvement and development at all levels depends on metals and mining. Beyond hard-rock mining, AEMA also represents the industrial minerals industry. Industrial minerals include any rock or mineral with economic value that is not used as a source for metals, gemstones, or energy production. Industrial minerals are classified as non-fuel minerals and differ from construction aggregates like sand, gravel, and crushed stone. Many different types of industrial minerals serve multiple uses, some of which are considered critical minerals and many of which are essential to our nation's economic and national security. The most widely used industrial minerals include limestone, clays, diatomite, kaolin, bentonite, silica, barite, gypsum, potash, pumice, and talc.

Similarly, there is no substitute for phosphorus in agriculture and in the development of our Nation's food supply. Phosphorus is essential for plant nutrition and plays a vital role in photosynthesis, energy transfer, root formation, seed formation,

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[1] https://www.federalregister.gov/documents/2022/02/24/2022-04027/2022-final-list-of-critical-minerals

[2] According to the World Bank, copper is used in ten low-carbon energy technologies. https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf

plant growth and improvement of the quality of fruits and vegetables. China has been the leading producer of phosphates, followed by the United States. The Society for Mining, Metallurgy & Exploration's (SME) website [3] provides a deeper introduction to industrial minerals and explains why securing domestic production is essential to America's future.

There is no question that the minerals we produce are indispensable to modern society. They are also essential to fighting climate change, and for zero-emission technologies such as wind turbines, solar panels, storage batteries and EVs. As these technologies are deployed in ever-greater numbers, the demand for minerals is skyrocketing, and our Nation must do more to keep up. The International Energy Agency (IEA) published a report at the end of July 2022 titled "Global Supply Chains of EV Batteries," and noted that demand for EV batteries will increase from 340 GWh today to about 3500 GWh by the year 2030. To meet that demand, 50 new lithium mines, 60 more nickel mines and 17 more cobalt mines would need to come into production.[4]

Congress has taken note of this surge in demand, and through the Infrastructure Investment and Jobs Act of 2021 and the Inflation Reduction Act of 2022, has decided—and we agree—that it is inappropriate, unwise and dangerous to rely on hostile, untrustworthy or unstable countries to supply our country's minerals. Congress has sent a clear message—**Now is the time to get serious about building a reliable mineral supply chain** (emphasis supplied). AEMA and its members stand ready to help build that supply chain right here in America.

Our members take great pride in producing the metals and other important minerals America needs for national and economic security, as well as the materials people use in their everyday lives. We are proud of our members' contributions across the communities and regions where they operate, many of which are rural areas facing significant economic and social development challenges. Notably, the U.S. mining industry is the safest, most environmentally responsible mining industry in the world. Our members have repeatedly demonstrated that mining and protecting the environment are compatible, as mineral producers make possible the development of society's basic needs and consistently minimize modern society's impacts on the environment.

We Need a Reliable Domestic Mineral Supply Chain

Recent global events have exposed the United States' supply chain vulnerabilities, highlighting the importance of an abundant and affordable supply of domestic minerals for America's future.

The fact is, global mineral demand is skyrocketing. As noted in a report from the International Energy Agency, keeping global temperature rise to below 2 degrees Celsius above preindustrial levels will quadruple the demand by 2040 for the minerals needed to build wind turbines, solar panels, and electric vehicles. A faster energy transition—reaching net zero globally by 2050 as the Biden Administration has called for—would require critical mineral inputs to increase sixfold by 2040.

Solar panels require silver, tin, copper, and lead; wind turbines use rare earths, copper, aluminum, and zinc; electric vehicles are built with copper, aluminum, iron, molybdenum; and rechargeable storage batteries use lithium, vanadium, nickel, cobalt, and manganese. Approximately 40 percent of the gold now produced is used in electronics and computer chips that are needed for clean energy technologies to meet carbon emission reduction objectives to address climate change.

President Biden has promised to convert the entire U.S. government fleet—about 640,000 vehicles by 2030—to EVs. That plan alone could require a 12-fold increase in U.S. lithium production to manufacture the lithium-ion batteries that power EVs, according to Benchmark Minerals Intelligence, as well as increases in output of domestic copper, nickel, and cobalt—and that's just for the U.S. Government vehicle fleet. The magnitude of the minerals needed for a 100 percent EV market is even more staggering, and simply cannot be ignored.

Unfortunately, a lack of access to economically viable mineral deposits and a lengthy, inefficient federal permitting system has resulted in the United States being increasingly dependent on foreign sources of strategic and critical minerals. It's time that we, as a Nation, recognize this vulnerability and the vital importance of minerals to our national security, our economy, and our everyday lives. We have heard a lot over the years about the importance of energy independence, but it is equally as important, if not more so, that we are minerals independent.

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[3] https://www.smenet.org

[4] https://iea.blob.core.windows.net/assets/4eb8c252-76b1-4710-8f5e-867e751c8dda/GlobalSupplyChainsofEVBatteries.pdf

The Department of Interior's recent mineral withdrawal on the Superior National Forest is a painful example of a lack of coherence in the Biden administration's strategy in establishing robust, secure mineral supply chains that could contribute to their goals of ramping up deployment of low-or zero-carbon energy technologies to fight climate change. Projects such as Twin Metals, located within the boundaries of the Superior National Forest withdrawal, and now in serious jeopardy because of the withdrawal, could supply more than 90 percent of the United States' nickel, 88 percent of our cobalt, and roughly 33 percent of the Nation's copper. Renewable energy technologies simply do not function without these metals, especially copper.

Made in America must include "mined in America" and sourcing minerals from U.S. mines that use state-of-the-art environmental protection measures, put a premium on worker health and safety, and have financial assurances that guarantee reclamation when mining is complete.

Recycling will play an important role in meeting increasing metal demand, but it will not be enough. The IEA's report estimates that by 2040, recycling metals from spent batteries could only supply about 10 percent of the minerals that will be needed.

The United States and our economy simply need more mines. According to the USGS' Mineral Commodity Summaries 2023, our country's import dependence for key mineral commodities has doubled over the past two decades, with the United States now 100 percent import-reliant for 15 of its key minerals and more than 50 percent import-reliant for an additional 36 key mineral commodities. This foreign reliance continues despite the existence of significant mineral deposits of many of these commodities within our borders. Moreover, U.S. mineral import reliance continues to increase as mineral demand from essential industries, such as energy and transportation, soars. Notably, the World Bank sees mineral demand for advanced energy technologies jumping by nearly 500 percent by the year 2050.[5] Copper demand alone may rise as much as 350 percent by 2050, according to one estimate.[6]

Access to Federal Public Lands is Vital for Domestic Mining

In the United States, most hardrock mining takes place on federal land, after a lengthy and rigorous permitting process that involves local, state and federal regulatory agencies and many diverse stakeholders. Even after the mine begins operation, it must adhere to a myriad of environmental laws and regulations, and financial assurance instruments ensure that cleanup and restoration will take place when mining activities cease. However, mineral deposits are unique and rare. Unlike other economic development or infrastructure projects that have some flexibility in choosing where they are sited and can move accordingly—mineral deposits are where they are.

Almost every year, the federal lands available for mineral entry shrinks. According to the GAO, the federal government manages about 650 million acres, or 29 percent, of the 2.27 billion acres of land in the United States.[7] Former Department of Interior Solicitor, John Leshy (now a professor at the University of California Hastings College of Law), estimated in 2021 that of the approximate 650 million acres of public lands, roughly 400 million acres are set aside for conservation and preservation purposes and are functionally off-limits to mining.[8] He also calculated that during the period from 1980 to 2020, the acres of conservation and preservation lands grew from 250 million acres to 400 million acres.[9] Federal lands have been withdrawn from mineral entry to protect a variety of "special places," from national monuments and wilderness areas to military bases. For example, the National Conservation Lands System already includes 35 million acres of pristine, culturally diverse and scientifically important sites that have been withdrawn from mineral entry, including: 122 national monuments, 28 of which are managed by BLM; 23 national conservation areas; 30 National Scenic and Historic Trails; 200 designated Wild and Scenic Rivers; 260 congressionally designated Wilderness

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[5] https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf

[6] https://www.sciencedirect.com/science/article/abs/pii/S0959378016300802

[7] GAO Letter report to Senator Tom Udall entitled "*Hardrock Mining: Availability of Selected Data Related to Mining on Federal Lands*," May 16, 2019, available at: https://www.gao.gov/assets/gao-19-435r.pdf.

[8] John D. Leshy, *America's Public Lands—A Look Back and Ahead*, 67th Annual Rocky Mountain Mineral Law Institute, July 19, 2021.

[9] *Id*.

areas; and 491 wilderness study areas.[10] Congress has closed or withdrawn areas to mineral exploration in favor of other uses, including for the following:

- National Parks;
- National Monuments;
- Indian reservations;
- Various types of Bureau of Reclamation projects;
- Military reservations;
- Scientific testing areas;
- Wildlife protection areas;
- National Wilderness Preservation System and Wilderness study lands; and
- Wild and Scenic River designated and study areas.[11]

After Executive Order 14008 in which President Biden set a goal of preserving and restoring 30 percent of U.S. lands and waters by 2030,[12] AEMA grew concerned that more withdrawals were on the way. That has proven to be true, as two withdrawals have been finalized in the first half of 2023 already, and more are in process.

Shrinking the available land base where mineral exploration and mining are allowed reduces the number of future mineral discoveries that can become mines. This ultimately increases the Nation's reliance on foreign minerals and thwarts the country's goals to increase domestic production and become more mineral independent. A 1999 report by the National Research Council of the National Academy of Sciences notes that "Only a very small portion of the earth's continental crust (less than 0.01%) contains economically viable mineral deposits."[13] The Academy further noted that, on average, 1,000 mineral targets must be examined before discovering the deposit capable of becoming a mine. Every time we declare land off-limits to mining, we shrink the playing field and stack the odds higher against discovery.

BLM Proposed Rule on Conservation and Landscape Health

It is against this backdrop that AEMA opposes the Bureau of Land Management's (BLM) Proposed Rule on Conservation and Landscape Health (Proposed Rule), which would significantly change the way BLM manages the 245 million acres of public land it oversees, most of it in western states. The Proposed Rule is illegal and should be withdrawn immediately. If BLM refuses to withdraw the rule, Congress must act swiftly and approve H.R. 3397.

While the Proposed Rule pays lip service to the Federal Land Policy and Management Act of 1976 (43 U.S.C. §§ 1701 et seq.) as amended, ("FLPMA"), it fundamentally violates FLPMA in multiple ways, including illegally adding "conservation" as a "use" when Congress did not include it in FLPMA's specific list of uses (FLPMA Section 103(l); redefining key terms already defined by Congress in FLPMA, "multiple use" and "sustained yield" (FLPMA Section 103(c and h)); contorting the scope and definition of "areas of critical environmental concern" beyond FLPMA's scope and using current administration "conservation," "restoration," and "ecosystem resilience" policies to impermissibly withdraw public lands from public use in violation of FLPMA § 204.

Since 1970, Congress has consistently and repeatedly recognized that minerals and mining are essential to all facets of our economy, society, and national defense. The U.S. Mining Law, as amended (30 U.S.C. 21a et seq.) ("Mining Law"), the Mining and Minerals Policy Act of 1970 (30 U.S.C. § 21(a)) ("MMPA"), the National Materials and Minerals Research Policy Act of 1980 (30 U.S.C. §§ 1601–1605) ("MMPRDA"), the Infrastructure Investment and Jobs Act of 2021 (30 U.S.C. §§ 1607, et seq.) (also known as the Bipartisan Infrastructure Law) ("IIJA"); and the Inflation Reduction Act of 2022 (H.R. 5376) ("IRA") all direct the executive branch agencies to respond to the Nation's need for domestic minerals (see e.g., 30 U.S.C. §§ 21a and 1602) and direct the Department of Interior ("DOI") to streamline the

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[10] BLM website: https://www.blm.gov/programs/national-conservation-lands.

[11] *See* BLM website: https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/locatable-minerals/mining-claims/locating-a-claim; *see also* Attachment 5, "List of Select Federal Laws Amending or Affecting the Mining Law of 1872," identifying principal laws under which federal lands have been withdrawn from mineral entry.

[12] *See* Executive Order 14008 "Tackling the Climate Crisis at Home and Abroad" (January 27, 2021) and the "America the Beautiful Initiative."

[13] National Academy of Sciences/National Research Council, "Hardrock Mining on Federal Lands" (1999), P. 23-24, available at https://nap.nationalacademies.org/catalog/9682/hardrock-mining-on-federal-lands

permitting processes for domestic mineral development. IIJA Section 40206; IRA § 13401. In stark contrast with these legal obligations, BLM's Proposed Rule § 6102.4(a)(4) "would preclude the BLM, subject to valid existing rights and applicable law, from authorizing other uses of the leased lands that are inconsistent with the authorized conservation use." FR at 19591.

The provisions requiring identification and conservation of "intact landscapes" and "watershed scale" ecosystems are simply new terms to articulate the Planning Rule 2.0 approach for landscape-scale planning that Congress killed in 2017.[14] These provisions violate the Congressional Review Act (5 U.S.C. §§ 801 *et seq*.) ("CRA"). BLM cannot legally breathe new life into this rejected approach. See 5 USCS § 801(b)(2).

In issuing the Proposed Rule, BLM violated a host of procedural laws that have substantive implications. The Regulatory Flexibility Act ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. §§ 601 *et seq*.) ("SBREFA"), requires federal agencies to prepare a regulatory flexibility analysis, subject to notice and comment under the Administrative Procedure Act, if the rule would have a significant economic impact on a substantial number of small businesses and governments. BLM summarily concluded—without making the required fact-based certification—that it did not apply, so did not conduct the required regulatory flexibility analysis. *See* FR at 19594. In similar cavalier fashion, BLM announced it would apply a categorical exclusion to the rulemaking and, therefore, violated its obligations under the National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq*.) ("NEPA").

Cherry-picking preferred Executive Orders (E.O.), while ignoring others, does not legitimize the Proposed Rule. Specifically, BLM leans on E.O. Nos. 13990 and 14008 to support the climate change and ecosystem resilience provisions in the Proposed Rule. However, BLM ignores E.O. 14017 and its focus on resilience—in America's supply chains—including critical and strategic mineral and rare earth element ("REE") supply chains and domestic sources. It is time that DOI and BLM acknowledge that energy transformation and climate change actions ***require more minerals*** and that national security demands domestic sources of minerals. The Proposed Rule would thwart these equally important administration policies.

Regardless of this administration's policy inconsistencies, Congress has spoken clearly and unequivocally on numerous occasions including FLPMA, the MMPA, the MMPRDA, the IIJA, and the IRA to define mineral exploration and production as a "major" and important use of public lands, one that is important for national security and America's economy. Conversely, Congress has not identified "conservation" as a "use." It is important to note that in explicitly defining "multiple use" and "sustained yield," FLPMA did not define conservation or include it in the Section 102(a) land use management directives though Congress clearly could have done so if it intended conservation to be a "use." FLPMA uses the word "conservation" in a very limited way. It is never used to establish land management objectives. Rather, it is only used in a restricted way to reference previously Congressionally designated conservation areas. In fact, there are only six sections in FLPMA that use the word "conservation":

- California Desert Conservation Area: Section 206(c), Section 303(e), Title VI, Section 601(c)(1), (c)(2), (d), (e), (f), (g)(1), (h);
- Conservation system unit or the Steese National Conservation Area: Section 302(d)(1);
- Alaska National Interest Lands Conservation Act: Section 302(d)(4) and (d)(6);
- Land and Water Conservation Fund: Section 318(d)
- Kings Range National Conservation Area: Section 602; and
- Conservation of the Yaquina Head Outstanding Natural Area: Section 603(c).

The limited ways in which FLPMA mentions conservation to describe lands that in 1976 were already designated for special management is additional proof that Congress never intended to authorize making conservation a "use" or a tool for BLM to use to restrict or prohibit multiple-use.

Where Congress intended conservation to be a "principal or major use" of federal land, it has enacted laws for that specific use. *See, e.g.*, 16 U.S. Code § 7202

[14] H.J. Res. 44, Pub. L. 115-12, 131 STAT. 76 (March 27, 2017): "Congress disapproves the rule submitted by the Bureau of Land Management of the Department of the Interior relating to "Resource Management Planning" (published at 81 Fed. Reg. 89580 (December 12, 2016)), and such rule shall have no force or effect."

(establishing the National Landscape Conservation System); 54 USCS § 100101 (establishing that the National Park System's purpose is to "conserve the scenery, natural and historic objects, and wild life"). Congress was further explicit in identifying an entirely different agency from BLM to focus on conservation—the National Park System. *Sierra Club v. United States DOI*, 899 F.3d 260, 292 (4th Cir. 2018) ("Thus, unlike other Federal lands, such as the national forests, the National Park System's sole mission is conservation.")). If Congress intended FLPMA to include conservation as a "use" or priority as BLM now suddenly suggests, Congress would have done so explicitly. *See, e.g., West Virginia v. EPA*, 142 S. Ct. 2587, 2608 ("Congress could not have intended to delegate' such a sweeping and consequential authority 'in so cryptic a fashion.'"); *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 485 (1996) ("Congress . . . demonstrated in CERCLA that it knew how to provide for the recovery of cleanup costs, and . . . the language used to define the remedies under RCRA does not provide that remedy."); *FCC v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 302 (2003) (when Congress has intended to create exceptions to bankruptcy law requirements, "it has done so clearly and expressly").

The Bureau of Land Management should focus on actual land management, rather than proposing to lock public lands away from any public use but "protection" and "ecosystem resilience." Make no mistake, our members are strong supporters of promoting conservation objectives not only for public lands but all of the country's resources and are ready to continue to work with BLM to further advance these goals. However, this will not be accomplished by the flawed and illegal provisions of the Proposed Rule. The Proposed Rule must be withdrawn by BLM or repealed by Congress.

AEMA has numerous, extensive concerns with the rule. The list below is not exhaustive and provides a brief summary:

- **The proposed rule violates the law**. Despite BLM's claims to the contrary, the "plain language" of FLPMA includes a list of "principal or major uses," including mineral exploration or development, domestic livestock grazing, timber production, fish and wildlife development and utilization, rights-of-way and recreation. The law specifies that its mandate "includes and is limited to" these uses. Notably, conservation or "nonuse" was not listed.
  - **If Congress intended for conservation to be a use "on equal footing," they would have included it in the statutory list. BLM cannot change that.** FLPMA Section 102(b) explicitly states: "The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation." Creating conservation leases and elevating conservation to a major or principal use is a substantial change, not a "clarification," as BLM asserts.
  - **BLM acknowledges the novelty of the conservation lease concept** when it says "FLPMA's declaration of policy and definitions of 'multiple use' and 'sustained yield' ***reveal*** [emphasis added] that conservation is a use on par with other uses under FLPMA." The idea that this concept is just now being "revealed" 50 years after the passage of FLPMA is absurd and unlawful.
  - **The rule bears many similarities to the Planning Rule 2.0 for landscape-scale planning**, which Congress repealed in 2017 through the Congressional Review Act. This proposal tries to repackage landscape-level planning as a tool to address climate change. This new justification for landscape-scale planning cannot be used to resurrect a concept that Congress has already rejected.
- **Conservation leases, ACECs, and preserving intact landscapes are de facto land withdrawals that undermine "multiple-use" standards outlined in FLPMA.**
  - The proposal would allow leases for conservation or compensatory mitigation. As worded, BLM could extend mitigation leases **indefinitely**, precluding the balance required under FLPMA.
  - Future uses under the proposed rule must be consistent with the purpose of the conservation lease. In testimony before the House Natural Resources Committee on May 16, 2023, BLM Director Tracy Stone-Manning acknowledged that "energy development and mining would likely not be deemed compatible with a conservation lease . . ."

- As such, conservation would not just be "on equal footing," it would be elevated above other uses.

- **Use of Areas of Critical Environmental Concern (ACECs) would be greatly expanded.**
  - Frequently abused to prevent development, the rule would allow ACECs to be larger and easier to designate. Areas nominated must be managed as an ACEC immediately, even before process is concluded.
  - No consideration of impacts to multiple use or mineral resources within the nominated area is required.

- **The rule will exacerbate permitting delays.**
  - Under the proposal, all lands will require a "Fundamentals of Land Health" review prior to authorization for use, a process currently applied only to grazing lands. BLM already struggles with large backlogs in grazing permit renewals because of this review requirement. Applying it to all uses would only serve to increase permitting backlogs for all productive uses.

- **Creates a New Zero-Impact Standard that Ignores How FLPMA's Unnecessary and Undue Degradation Mandate Effectively Protects the Environment While Allowing Multiple Use.**
  - The rule's unnecessary or undue degradation definition restates what BLM has implemented for nearly five decades to prevent excessive or disproportionate impacts.
  - However, the new conservation measures demand zero impact in ACECs, conservation leases, and intact landscapes, which is contrary to FLPMA's acknowledgement that some degradation is necessary for multiple use to occur and the requirement to minimize that degradation.

- **BLM's rule is incomplete, deficient, flawed and rushed.**
  - The Regulatory Flexibility Act (RFA) requires BLM to prepare a regulatory flexibility analysis, subject to notice and comment under the Administrative Procedure Act, if the rule would have a significant economic impact on a substantial number of small businesses and governments. BLM did not conduct a regulatory flexibility analysis before its arbitrary declaration that the rule "will not have a significant economic effect on a substantial number of small entities . . ."
  - BLM asserts the proposal will have an annual effect on the economy of $100 million or less, so they did not conduct an economic analysis. However, the agency's own "Sound Investment 2022" report shows multiple-use on BLM lands generated $201 billion in economic output last year.[15] If conservation leasing decreases activity by just 1%, that's **an impact of $2 billion annually**.
  - The report mentioned above notes BLM redistributed $2 billion to States for revenue-sharing programs, yet BLM arbitrarily determined the proposed rule has no federalism implications, so it did not prepare a federalism summary statement of the effects on the States.
  - Using BLM's own data from the Sound Investment report strongly suggests **BLM's claims regarding economic impact are false** and that it is **merely seeking to circumvent** an Economic Threshold Analysis and the CRA.
  - **The proposal violates NEPA.** BLM plans to use a Departmental Categorical Exclusion under NEPA, because the rule is "too broad, speculative or conjectural" to lend itself to "meaningful analysis." The rule is a "major federal action" subject to an EIS containing an analysis of the significant socio-economic impacts, and the environmental effects of foregoing critical and strategic mineral development.

[15] Bureau of Land Management, Socioeconomic Impact Report 2022, https://www.blm.gov/about/data/socioeconomic-impact-report-2022

Conclusion

BLM's Proposed Rule is illegal—it directly violates FLPMA in the many ways addressed above. It also violates numerous other federal laws. Moreover, BLM's attempts to circumvent procedural rulemaking requirements violate the federal laws designed to ensure transparency, accountability, and Congressional oversight.

Since 1970, Congress has consistently and repeatedly recognized that minerals and mining are essential to all facets of our economy, society, and national defense. It bears repeating that the Mineral and Mining Policy Act (1970), FLPMA (1976), the National Minerals, Materials Policy Research and Development Act (1980), the Energy Act (2020), the IIJA (2021), and most recently the IRA (2022) all direct the executive branch agencies to respond to the Nation's need for domestic minerals. Yet, the Proposed Rule brazenly ignores more than 50 years of Congressional intent and direction.

More lands continue to be withdrawn from mineral entry, and permitting timelines, costs, and risks have become intolerable. Our risky reliance on imported minerals is a direct result of five decades of ignoring Congress' clear directives that minerals should be mined from public lands to help satisfy the Nation's need for minerals. Despite the urgent need to increase domestic mining and reduce our dependency on foreign minerals, today it can take 10 years or more to permit a mine.

The findings in the IIJA that "critical minerals are fundamental to the economy, competitiveness, and security of the United States" and that "the Federal permitting process has been identified as an impediment to mineral production and the mineral security of the United States" must result in constructive action to streamline permitting and eliminate permitting impediments. Instead, the Proposed Rule will exacerbate America's dependence on foreign sources of minerals at a time when mineral demand is skyrocketing. The Biden administration's own goals of fighting climate change and reducing carbon emissions require more domestic mining—not less. The Proposed Rule fails to acknowledge any potential effects on our ability to develop minerals in the United States.

BLM simply cannot make the substantial land use policy and regulatory changes embodied in the Proposed Rule without Congressional action to amend FLPMA to authorize the agency's proposed change. Congress' power over federal lands is without limitations. *Nuclear Energy Inst., Inc. v. EPA*, 362 U.S. App. D.C. 204, 209, 373 F.3d 1251, 1256 (2004) (quotations omitted). And, while FLPMA Section 107 grants BLM discretion to manage public lands, it also requires BLM to manage lands "on the basis of multiple use and sustained yield[.]" 43 U.S.C. § 1701(a)(7); *see also Utah v. Norton*, No. 2:96-CV-0870, 2006 U.S. Dist. LEXIS 73480, at *5 (D. Utah Sep. 20, 2006). Unless and until Congress says otherwise, BLM must manage the public lands pursuant to FLPMA's multiple use mandates, notwithstanding the difficulties in achieving the balanced land management approach that FLPMA demands.

Under FLPMA, BLM must balance all multiple uses; it cannot pick and choose which land use directives to emphasize and which ones to subordinate or even deny. Given our Nation's need for a strong domestic mineral supply, and the proven benefits that modern mining provides to local communities, the federal government should not consider adding restrictions that would discourage or disincentivize mineral development. Now is the time for BLM to stop subverting Congressional mandates and, instead, work to facilitate the development of the critical resources that are needed now and available on America's public lands, for national security and the economic well-being of all Americans. Because BLM lacks the authority to reduce the scope of allowable multiple uses on public lands, BLM cannot proceed with the Proposed Rule and should withdraw it immediately. Failing that, Congress should repeal it through H.R. 3397.

We look forward to continuing to work with you to ensure America has a secure and affordable supply of the minerals and metals needed for our modern society.

Sincerely,

MARK COMPTON,
Executive Director

June 14, 2023

Hon. John Curtis, Chairman
U.S. House of Representatives
2323 Rayburn House Office Building
Washington, DC 20515

Dear Representative Curtis:

The American Farm Bureau Federation and state Farm Bureaus in the West appreciate the introduction of H.R. 3397, and we support your legislation. AFBF is the nation's largest general farm organization, with almost six million farm and ranch members in all fifty states and Puerto Rico. Our collective Farm Bureaus are farm and ranch families working together to build a sustainable future of safe and abundant food, fiber and renewable fuel for our nation and the world.

As you know, the American West is truly unique—not only in the landscape but in how ranchers serve as caretakers of our shared public lands. The Bureau of Land Management (BLM) is now proposing significant changes to how public lands are managed, including creating a new "use" under the definition of "multiple use," establishing a new kind of land lease for conservation, and elevating and promoting additional and likely restrictive land use designations, in addition to codifying mitigation requirements. We agree with the goal of your legislation, which would require BLM to withdraw the proposal.

Ranchers are delivering a return on the trust placed in them to care for public lands. They are clearing debris, spotting wildfire risks, and reporting other potential dangers to local law enforcement. Livestock grazing also brings overall health benefits to the land, from reducing wildfire risk and slowing the spread of invasive weeds to building robust root systems and spurring forage growth for native species. The University of Wyoming Extension analyzed the most recent USDA census numbers and found that for each pound of beef raised on public lands, Americans get $0.44 in ecosystem-related returns.

In addition to policy concerns over the proposal, we are disappointed in the way the proposed rule was developed. Our public lands ranchers partner with the BLM to fulfill the mission of landscape management. However, this proposal was released without stakeholder discussion or advance notice. Recently held public information meetings left our attendees with more questions than answers. We have encouraged BLM to withdraw the proposal, or at least extend the comment period for this extensive new land management plan.

Thank you for your support of America's public lands ranchers and the rural communities they live in.

Sincerely,

American Farm Bureau Federation
Arizona Farm Bureau
California Farm Bureau
Colorado Farm Bureau
Idaho Farm Bureau
Kansas Farm Bureau
Montana Farm Bureau Federation
Nebraska Farm Bureau
Nevada Farm Bureau
New Mexico Farm & Livestock Bureau
North Dakota Farm Bureau
Oregon Farm Bureau
South Dakota Farm Bureau
Utah Farm Bureau Federation
Washington Farm Bureau
Wyoming Farm Bureau Federation

American Forest Resource Council
Portland, Oregon

June 13, 2023

Senator John Barrasso
307 Dirksen Senate Office Building
Washington, DC. 20510

Rep. John Curtis
2323 Rayburn House Office Building
Washington, DC. 20515

Dear Senator Barrasso and Representative Curtis:

We are writing in support of S. 1435/H.R. 3397, legislation that would require the Director of the Bureau of Land Management to withdraw a proposed rule entitled "Conservation and Landscape Health" (88 Fed. Reg. 19,583).

AFRC is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. We do this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. We work to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands. AFRC represents over 70 forest product businesses and forest landowners throughout the West. Many of our members have their operations in communities adjacent to BLM managed land that this new rule will impact, and the management on these lands ultimately dictates not only the viability of their businesses, but also the economic health of the communities themselves. Rural communities, such as those affected by this rule, are particularly sensitive to the forest products sector in that more than 50% of all manufacturing jobs are in wood manufacturing.

We and our members share the goal of sustaining healthy, working lands through science-based management under the Federal Lands Policy and Management Act (FLPMA). However, the proposed rule would substantially rewrite the goals and implementation of FLPMA without Congressional authorization, limit public input and transparency in land management decisions, restrict multi-use management and public access of federal lands, and create new confusing, arbitrary standards and regulations that impede efficient and effective implementation of land management plans.

Conservation and landscape health are laudable goals that are consistent with modern, science-based forest management and other resource management objectives. These goals are also embodied and codified in existing multi-use federal statutes such as FLPMA. We have serious concerns about the lack of public involvement and engagement in determining the proposed rule's purpose and need; legal and congressional authorization; local and state government coordination; and environmental, economic, and social impacts.

We support S. 1435/H.R. 3397 and believe the proposed rule should be withdrawn. At a minimum, and absent legislation, the BLM should engage in a more inclusive and transparent process that would start with an advanced notice of proposed rulemaking that clearly outlines what "problem" the BLM is seeking to solve, what outcome the BLM is hoping to achieve, and what information the government is lacking and seeking to obtain from the public, issue experts, and interested stakeholder groups.

Thank you for your leadership and attention to this issue.

Sincerely,

TRAVIS JOSEPH,
President

American Exploration & Production Council

June 15, 2023

Hon. Bruce Westerman, Chairman
Hon. Raul Grijalva, Ranking Member
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman and Ranking Member Grijalva:

On behalf of the American Exploration & Production Council, I am writing in strong support of Congressman John Curtis' legislation, H.R. 3397, to require the Director of the Bureau of Land Management to withdraw a rule of the Bureau of Land Management (BLM) relating to conservation and landscape health, and to urge you to consider the significant implications of BLM's Proposed Conservation and Landscape Health Rule ("Proposed Public Lands Rule"). Thank you for holding today's hearing and for the opportunity to share our support for this legislation.

AXPC, representing 34 leading independent oil and natural gas exploration and production companies in the United States, is dedicated to promoting safety, responsible stewardship, and technological advancement in the production of oil and natural gas. Our members not only provide millions of Americans with high-paying jobs but also invest resources into local communities. We recognize the importance of ensuring positive environmental and public welfare outcomes and responsible stewardship of our nation's natural resources.

While we share BLM's interest in protecting and conserving public lands, we believe that the framework outlined in the Proposed Public Lands Rule contravenes BLM's statutory authority and raises concerns about its potential impact on the effective and legally defensible management of public lands and mineral resources. BLM's proposed rule ignores Congress' multiple use mandate, established under the Federal Land Policy and Management Act, which states that federal lands, resources, and uses must be utilized in a balanced combination that will best meet the needs of the people. If finalized, BLM's rule would disregard Congress' mandate and enact restrictive access to federal lands for a multitude of purposes.

Another primary concern with the Proposed Public Lands Rule is its lack of clarity. The proposal and the materials provided by BLM do not adequately explain how the rule will be implemented or its relationship to the current land management objectives and other recent agency rules, guidelines, and proposals relevant to public land management. Stakeholders require fundamental details, such as how the Proposed Public Lands Rule will protect large intact landscapes, to provide informed comments and engage in a meaningful dialogue.

Additionally, we have concerns regarding the conservation leasing framework proposed by BLM. While we recognize and support voluntary conservation actions, including those undertaken on public lands, we find the framework insufficiently explained and potentially impermissible under BLM's statutory authority. It is crucial to ensure that any regulations in this area align with legal requirements and strike a balance between conservation and responsible resource development.

Furthermore, it is worth noting that key aspects of the Proposed Public Lands Rule appear to exceed BLM's statutory authority. Should BLM finalize the rule in its current or substantially similar form, we believe that a reviewing court would likely find it "in excess of statutory jurisdiction, authority, or limitations" under the Administrative Procedure Act ("APA"). This potential conflict underscores the need for a comprehensive evaluation of the rule's implications before proceeding.

Thank you for holding today's hearing on this important legislation. AXPC urges members of this committee to vote in favor of H.R. 3397 as it allows for a more balanced approach to energy development and land management and the continued production of American-made energy on public lands. By passing this bill, we can ensure Americans continue to have access to affordable, reliable energy.

Sincerely,

ANNE BRADBURY,
President & CEO

June 15, 2023

Hon. Bruce Westerman, Chairman
Hon. Raul Grijalva, Ranking Member
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman and Ranking Member Grijalva:

We write today in support of H.R. 3397, a bill directing the Bureau of Land Management (BLM) to withdraw a proposed rule titled Conservation and Landscape Health (88 Fed. Reg. 19,583 (April 3, 2023)), that is being considered before the committee today. The undersigned organizations have members that conduct mining operations that are frequently located on federal lands that are subject to the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) jurisdiction under the Federal Land Policy and Management Act (FLPMA). As such, our members have extensive experience operating on federal lands managed according to the multiple use principles under FLPMA and have a long-standing commitment to environmental stewardship on these lands.

Access to federal lands for mineral exploration and development is critical to maintaining a strong domestic mining industry. These lands historically have provided and will continue to provide a large share of the metals and minerals produced in this country. That said, half of these lands are either already off-limits to or under restrictions for mineral development, rendering unknown amounts of resources on adjacent state and private lands inaccessible because of existing federal land restrictions. Further, despite our nation's abundant resources, the U.S. continues to be increasingly reliant on foreign sources of metals and minerals, including from geopolitical adversaries that do not share our values when it comes to environmental, labor and safety standards.

Recently, the BLM issued a proposed rule on Conservation and Landscape Health, contending that it would advance the Bureau's mission to manage public lands for multiple-use and sustained-yield by prioritizing the health and climate resilience of ecosystems across those lands. Alarmingly, if finalized, the proposed rule would be a dramatic shift in how public lands will be managed and unlawfully signal that conservation is a use on par with other uses of public lands under FLPMA's multiple-use and sustained-yield framework. The proposed rule also prioritizes designating Areas of Critical Environmental Concern (ACECs) and the avoidance of impacts to federal lands.

Based on recent testimony of BLM Director Tracy Stone-Manning, who described the rule as "procedural in nature," [1] the BLM believes that FLPMA provides for this reinterpretation of authority, overriding more than 50 years of congressional intent and direction. Regrettably, the proposed rule is likely to open the door to increased conflicts for even noncontroversial development activities due to the requirement that BLM plan for and consider conservation on equal footing with other multiple uses, while also identifying practices that ensure conservation actions are effective and emphasizing restoration across the public lands.

Another concerning provision of the proposed rule requires avoidance and mitigation, to the maximum extent possible, to address impacts to important, scarce or sensitive resources, and sets rules for approving third-party mitigation fund holders. This would result in the BLM applying a mitigation hierarchy to avoid, minimize and compensate for impacts to all public land resources, which the BLM has acknowledged would be difficult or even impossible to avoid.

The proposed rule would also require the BLM to consider a precautionary approach for resource use when the impact on ecosystem resilience is unknown or cannot be quantified and provide justification for decisions that may impair ecosystem resilience. In most cases, this would lead to the preemptive denial of many mining projects, further increasing our reliance on foreign sources of minerals vital to our economic and national security.

Additionally, the creation of conservation leases allowed by the proposed rule—with the opportunity for limitless renewals of essentially unlimited acreage—would illegally allow the preclusion of other multiple uses, such as grazing, mining and certain types of recreation. Conservation leases would effectively serve as *de facto* mineral withdrawals under the dubious guise of allowing environmental groups to support the conservation and the landscape health of highly mineralized public lands.

[1] House Natural Resources Committee Hearing, BLM FY24 Budget Request—May 16, 2023

It is also important to note that the BLM failed to fully account for impacts of the proposed rule by choosing not to complete an assessment of how it would affect a wide variety of small businesses under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act (SBREFA). It is also unconscionable that the Office of Information and Regulatory Affairs (OIRA), which typically reviews all significant rulemakings, allowed the proposed rule to proceed as "not significant," and therefore not subject to OIRA's review.

The Biden administration's self-sabotage of domestic mineral supply chains through a consistent barrage of withdrawals and land-use restrictions, including the proposed rule, is completely out of step with the dramatic increase in minerals production that is needed to keep up with new technologies, infrastructure, manufacturing and national security needs, let alone the administration's energy transition goals. Instead of putting more of America's vast mineral endowment off limits and ceding our nation's mineral supply chain security to other countries, the U.S. must prioritize policies that incentivize domestic mineral production that utilizes our world-class environmental standards to ensure we need not choose between mining and environmental protection.

Continued access to our public lands for responsible mineral development must be allowed if the U.S. is to supply the essential materials necessary for nearly every sector of our economy. For these reasons, we urge your support for H.R. 3397.

Sincerely,

Alaska Miners Association

American Coal Council

American Exploration & Mining Association

Arizona Mining Association

Colorado Mining Association

Idaho Mining Association

Mining Minnesota

Montana Mining Association

National Mining Association

Nevada Mining Association

New Mexico Mining Association

Rocky Mountain Mining Institute

Utah Mining Association

Women's Mining Coalition

Wyoming Mining Association

Council of Alaska Producers

June 14, 2023

House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Re: Comments supporting H.R. 3397 BLM Public Lands Rule

Dear Members of the House Committee on Natural Resources:

The Council of Alaska Producers (CAP) is writing to support H.R. 3397—To require the Director of the Bureau of Land Management (BLM) to withdraw a rule of the Bureau of Land Management relating to conservation and landscape health.

Formed in 1992, CAP is a non-profit trade association that works to inspire Alaskans to realize a shared goal of sustainable mineral production, providing economic and social benefits to our communities and the people of Alaska. CAP represents the interests of Alaska's five large metal mines and several advanced projects, informing members on legislative and regulatory issues, supporting and advancing the mining industry, and educating members, the media, and the general public on mining related issues.

CAP has grave concerns about the rule and appreciates the House Resolution requiring it be withdrawn. The legality of the rule in general is very questionable as it is contrary to the explicit provisions of a number of Federal statutes, including the Federal Land Management and Policy Act.

It would place onerous requirements on the BLM Field Office to re-do and re-write their resource management plans (RMPs) to accommodate the rule's regulatory and scientific analysis requirements. As we have seen on the Bering Sea-Western Interior (BSWI) and Central Yukon RMPs, such updates take many years. The rule implies development projects, like mines and related infrastructure on BLM lands, should not move forward until the updates are completed.

The rule ignores the fact that much of Alaska is already closed off to mining (wilderness areas, parks, etc.). It will inevitably close off (or very strictly restrict) mining and related infrastructure on very large additional areas in the name of conservation objectives that are not justified by science or in the rule.

As we have seen with the BSWI and Central Yukon RMPs, the use of Areas of Critical Environmental Concern (ACECs) has been abused in Alaska. Instead of protecting "special" areas, some alternatives in these two RMPs include numerous ACECs that would close off tens of thousands of acres and hundreds of stream miles. The rule promotes ACECs as the primary tool to achieve its conservation objectives.

The rule also advocates for preserving ecologically "intact" landscapes like they are unique and suggests avoiding any development in these areas. This may be true in other places, but in Alaska virtually everything is intact, so the implication is that virtually all BLM lands in Alaska should be closed off.

We believe the Donlin gas pipeline would be very difficult to move forward under the proposed rule since it passes through areas that the rule implies should not be developed. More broadly, we are not sure any mine in Alaska could advance that involves BLM lands. The rule completely ignores impacts to developing Alaska's mineral potential—of which many are critical minerals essential to the clean energy transition and could help meet the President's objectives to expand domestic critical minerals supply chain.[1]

Thank you for your consideration of this important resolution. We encourage the House Committee on Natural Resources to pass it from committee quickly.

Sincerely,

KAREN MATTHIAS,
Executive Director

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[1] Executive Order 14017 (E.O.), America's Supply Chains of February 24, 2001

Independent Petroleum Association of America
Washington, DC

June 15, 2023

Hon. Bruce Westerman, Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman:

The Independent Petroleum Association of America (IPAA) writes in support of H.R. 3397 (Rep. Curtis), a bill to require the Director of the Bureau of Land Management (BLM) to withdraw a rule of the BLM relating to conservation and landscape health. IPAA is a national upstream trade association representing thousands of independent oil and natural gas producers and service companies across the United States. Independent producers develop 91 percent of the nation's oil and natural gas wells. These companies account for 83 percent of America's oil production, 90 percent of its natural gas and natural gas liquids (NGL) production, and support over 4.5 million American jobs.

IPAA is pleased to support H.R. 3397 as it aims to withdraw the misguided rule that is currently being proposed by BLM. IPAA believes the proposed rule is a gross overreach of BLM's directive and violates the statutory authority given to BLM under the Federal Lands Policy and Management Act of 1976 as well as misaligning with the Congressional intent in creating and delegating powers to the BLM. H.R. 3397 goes far in reiterating the intent of Congress to clear any ambiguity for further regulations.

Aside for Congressional intent and agency overreach, the content of the proposed rule will have devastating impacts on the U.S. economy and hinder U.S. energy security by curtailing energy production on federal lands. In 2019, the United States produced record levels of crude oil (12.2 million barrels per day) and natural gas (40.7 trillion cubic feet)—increases of 11.3% and 10.6% from 2018 levels, respectively. The United States, as a result, enjoyed its best energy security since 1970 and became a net energy exporter for the first time since 1952. Oil production in federal areas, both onshore and offshore, routinely exceeds 20% of total U.S. production. For gas, federal onshore production constitutes approximately 10% or more of total U.S. production, or between 3 and 4 trillion cubic feet.

Furthermore, FLPMA mandates the productive use of federal land. FLPMA directs the agency to manage *all public lands* "in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber *from the public lands* . . .." This policy determination was not delegated to the Agency. Instead, Congress delegated the responsibility to manage the public lands in a way that provides these specific raw materials for productive use. The current proposed rule is elevating a non-use function to have equal footing with all other active uses.

IPAA commends the Natural Resources Committee for bringing these issues to light during the legislative hearing for H.R. 3397. We look forward to partnering with you on other multiple-use initiatives for our nation's public lands.

Respectfully,

DANIEL T. NAATZ,
Executive Vice President & Chief Operating Officer

National Sand, Stone & Gravel Association
Alexandria, VA

May 24, 2023

Hon. Bruce Westerman, Chairman
Hon. Raul Grijalva, Ranking Member
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman and Ranking Member Grijalva:

On behalf of the 450 members of the National Sand, Stone & Gravel Association (NSSGA), we write to share our support for H.R. 3397, a bill to require the Bureau of Land Management (BLM) to withdraw their newly proposed rule entitled "Conservation and Landscape Health" (88 Fed. Reg. 19583 (April 3, 2023)). This legislation provides certainty to aggregate producers, as BLM's proposed rule would dramatically shift how public lands will be managed.

NSSGA represents the aggregates and industrial sand industry of our country, with over 9,000 facilities and more than 100,000 employees in high-paying jobs. This industry procures 2.5 billion tons of aggregates annually, which are crucial in sustaining our lifestyle and constructing our nation's infrastructure and communities. The products sourced by this industry are fundamental components required for building roads, airports, transit, rail, ports, clean water and energy networks.

If the proposed rule is adopted, access to public lands for all purposes, including energy, material development, grazing, forest management and recreation would become more difficult, bringing substantial and adverse modifications to the Bureau's management approach for the 245 million acres of land under its supervision. For the aggregates industry, the process of sourcing and supplying materials used to create building blocks for our nation does not need to be more stringent, and this rule will significantly impact our ability to access needed construction materials for infrastructure projects. As America begins to rebuild our aging infrastructure, the aggregates industry needs continual support rather than forced limitations.

NSSGA supports policies that properly outline ways to best maintain our country's ecosystems and wildlife habitats. However, the proposed rule limits local land managers' capacity to conserve areas in need. It is crucial that local farmers, ranchers, hunters, miners and community stakeholders have their voices heard when implementing broad regulatory changes, as they know their land and local ecosystems best and will provide the most efficient ideas for finding a path to long-term conservation. The adoption of this rule severely cuts out any local voices and grants too much decision-making power to BLM. We urge Congress to work with BLM to ensure that cooperation with local patrons is at the top of the priority list when altering any laws to deal with conservation efforts.

We hope Congress will vote to remove this burdensome overreach of BLM and work alongside community stakeholders to reach lasting sustainability goals without limiting the future potential of multiple industries that rely heavily on public land use.

Please reach out to my office should you have any questions.

Sincerely,

MICHAEL W. JOHNSON,
President & CEO

RESOURCE DEVELOPMENT COUNCIL
Anchorage, Alaska

June 15, 2023

House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Re: Support H.R. 3397

Dear Chair Westerman, Ranking Member Grijalva, and Members of the House Committee on Natural Resources:

The Resource Development Council for Alaska, Inc. (RDC) writes in support of H.R. 3397, legislation to require the Bureau of Land Management (BLM) to withdraw its recently proposed Conservation and Landscape Rule (88 Fed. Reg. 19583 (proposed April 3, 2023)) (hereafter the "proposed rule").

RDC is a non-profit, statewide trade association within the state of Alaska. RDC is a unique organization comprised of individuals and companies from Alaska's key and historically significant industries: fishing, forestry (timber), mining, oil and gas, and tourism (including recreation). RDC's membership also includes all landowning Alaska Native corporations (ANCs) created pursuant to the Federal Alaska Native Claims Settlement Act of 1971 (ANCSA), local communities, organized labor, as well as industry support firms. RDC's purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economy based on our mission of growing Alaska through the responsible development of our natural resources.

RDC is concerned the proposed rule violates the constitutional separation of powers by unlawfully expanding BLM's land management authority under the Federal Land Policy and Management Act (FLPMA). "Conservation" is not a "use" in the statutory list of land uses identified in FLPMA. BLM simply cannot add new type of land use by regulation without first having legislative authority to do so. This is inconsistent with the authority granted by and the intent of FLPMA when Congress passed it in 1976.

RDC is also concerned that by elevating "conservation" as a "use" under FLPMA and creating so-called conservation leases under FLPMA, unresolvable conflicts will occur and result in *de facto* land withdrawals never intended or authorized by FLPMA. It is difficult to see how such leases would not create incompatibilities with the limited land uses already identified in FLPMA or how BLM could properly balance such a "use" against FLPMA's multiple use and sustained yield mandates that BLM is required to uphold.

RDC is still analyzing the full impacts the proposed rule would have on the unique attributes of Alaska with the intent to submit comments on the proposed rulemaking. However, it was important we raise the important constitutional issues with the Committee. As RDC continues its assessment, there may be additional concerns that should be shared with the Committee. RDC will supplement this letter as needed.

Thank you for your consideration of this matter.

Yours resourcefully,

LEILA KIMBRELL,
Executive Director

Women's Mining Coalition
Reno, Nevada

June 16, 2023

Tracy Stone-Manning, Director
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

Re: Comments on the Conservation and Landscape Health Proposed Rule RIN 1004-AE92, Federal Register Vol. 88, No. 63

Dear Director Stone Manning:

I. Introduction

The Women's Mining Coalition (WMC) has numerous serious concerns about the Department of the Interior's/Bureau of Land Management's (DOI's/BLM's) Conservation and Landscape Health Proposed Rule ("Proposed Rule") that was published on April 3, 2023, in the Federal Register, Vol. 88, No. 63. As discussed in detail below, the Proposed Rule exceeds BLM's legal authority and conflicts with BLM's legal obligations under the Federal Land Policy and Management Act of 1976 (FLPMA). Numerous elements of the Proposed Rule conflict with FLPMA's multiple use directives, including: the creation of conservation leases; the designation of more lands as Areas of Critical Environmental Concerns (ACECs) where multiple use will be restricted, and the preservation of intact landscapes where multiple uses will be prohibited. The Proposed Rule also conflicts with the U.S. Mining Law.

About WMC

WMC is a grassroots organization with over 200 members nationwide. Our mission is to advocate for today's modern domestic mining industry, which is essential to our Nation. WMC members work in all sectors of the mining industry including hardrock and industrial minerals, coal, energy generation, manufacturing, transportation, and service industries. We convene Washington, D.C. Fly-Ins to give our members an opportunity to meet with Members of Congress and their staffs, and with federal land management and regulatory agencies to discuss issues of importance to both the hardrock and coal mining sectors.

WMC members have extensive experience with FLPMA, the U.S. Mining Law, the National Environmental Policy Act (NEPA), and BLM's 43 CFR Subpart 3809 surface management regulations (3809 regulations) governing locatable minerals and mining activities pursuant to the U.S. Mining Law.

We have provided comments on numerous NEPA documents for proposed locatable mineral projects on BLM-administered public lands. Some WMC members also have expertise in preparing third-party NEPA documents.

Lastly, our Advisory Council is made up of industry experts from all facets of the mining industry. Based on this experience, WMC is well qualified to review BLM's Proposed Rule and provide these comments.

WMC members are keenly aware of the nation's dangerous and unsustainable reliance on mineral imports, having been involved with this issue for a number of years. Our overarching concern about BLM's Proposed Rule is that it will reduce domestic mining and thereby exacerbate our dependency on foreign countries for critical and other minerals. As such, BLM's Proposed Rule is diametrically opposed to other policies espoused by this administration which seek to increase domestic production of critical minerals in order to strengthen domestic critical minerals supply chains.

II. The Proposed Rule Should be Withdrawn as Requested by the May 11, 2023 Letter from Sixteen Western Senators

WMC concurs with the May 11, 2023 letter to you from 16 western U.S. Senators outlining the reasons why BLM should immediately withdraw this Proposed Rule. As the senators state, the Proposed Rule "threatens the long-standing approach governing multiple use on our nation's public lands . . . [and] includes a number of problematic initiatives that will result in limited access to energy production, grazing, recreation, and other statutory uses as mandated under FLPMA."

The senators' letter questions whether protection and restoration activities, which define conservation, could "override a mandated use enshrined in statute" and asserts that limiting uses is "contrary to the congressional intent to prioritize multiple use of our taxpayer-owned resources." The senators also warn BLM that it lacks the authority to create conservation leases:

> This new leasing regime opens the door for a new, noncompetitive process designed to lock away parcels of land, with no limits to size, for a period of 10 or more years. It's clear that anti-grazing and anti-development organizations would abuse this tool to attempt to halt ranching and block access to our nation's abundant energy reserves located on public lands.

We agree with the senators' characterization of the Proposed Rule as responding to special interests that seek to put public lands off-limits to development, contrary to Congress' clear directive in FLPMA that BLM must manage the public lands for multiple use:

> . . . BLM's proposed Public Lands Rule is an effort to empower special interests that have long opposed BLM's statutory mandate by prioritizing non-development over the principles of multiple use and sustained yield. Taking large parcels of land out of BLM's well-established multiple use mandate would cause significant harm to many western states and negatively impact the livelihoods of ranchers, energy producers, and many others that depend on access to federal lands. As such, the proposal should be withdrawn immediately.

There is no legal authority for BLM to establish this rule, which is inconsistent with the fundamental purpose of FLPMA's mandate that the agency manage the publicly-owned lands for multiple-use.

III. The Proposed Rule will Increase U.S. Reliance on Foreign Minerals

The USGS tracks the country's reliance on imported minerals in its annual Mineral Commodity Summaries reports. Figure 2 in the 2023 report [1] shows U.S. dependency during 2022 on foreign countries for minerals. Some of the key findings in the 2023 USGS report include the following:

- In 2022, imports made up more than one-half of the U.S. apparent consumption for 51 nonfuel mineral commodities, and the United States was 100% net import reliant for 15 of those.
- Of the 50 mineral commodities identified in the "2022 Final List of Critical Minerals," the U.S. was 100% net import reliant for 12, and an additional 31 critical mineral commodities had a net import reliance greater than 50% of apparent consumption.
- For most critical minerals, the U.S. is heavily reliant on foreign sources for its consumption requirements; exceptions include beryllium, magnesium, and zirconium.

Comparing the 2022 report with the 2021 report shows that the U.S. is becoming increasingly dependent on imported minerals. In 2021, the U.S. was 50 percent reliant on 47 minerals. In 2022, that reliance increased to 51 minerals. So rather than reducing our reliance on foreign minerals, the U.S. is headed in the wrong direction.

At a time when demand for the minerals essential to the energy transition is projected to skyrocket, it makes no sense to propose a draconian rule that would create *de facto* new land withdrawal mechanisms resulting in substantially reduced mining of these minerals from public lands.

This is the wrong time to implement a Proposed Rule that has the potential to dramatically reduce production of critical minerals.

The Proposed Rule is at counter purposes to the critical minerals directive in President Biden's February 2021 Executive Order 14017 "On America's Supply Chains," which directs cabinet officials to develop policies to increase domestic production of critical minerals to reduce the risks associated with the county's dependency on mineral imports. The definition of minerals supply chain in Executive Order 14017 includes "the exploration, mining, concentration, separation, alloying, recycling, and reprocessing of minerals."

The BLM's Proposed Rule is inconsistent with Executive Order 14017 because it will put lands off-limits to mineral exploration and development and consequently thwart President Biden's stated goals to strengthen domestic critical minerals supply chains in order to lessen the Nation's dependency on foreign minerals.

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[1] https://pubs.usgs.gov/periodicals/mcs2023/mcs2023.pdf

The Proposed Rule is also completely at odds with the June 2021 White House report entitled "Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth"[2] ("2021 White House Report") that was prepared in response to Executive Order 14017. This report includes an entire chapter devoted to critical minerals: "Review of Critical Minerals," prepared by the Department of Defense (DOD). The Proposed Rule is incompatible with the following DOD findings in the 2021 White House Report:

- Strategic and critical materials are the building blocks of a thriving economy and a strong national defense. They can be found in nearly every electronic device, from personal computers to home appliances, and they support high value-added manufacturing and high-wage jobs, in sectors such as automotive and aerospace.
- The global supply chain[s for] strategic and critical materials . . . are at serious risk of disruption—from natural disasters or *force majeure* events . . . and are rife with political intervention and distortionary trade practices, including the use of forced labor.
- Contrary to a common belief, this risk is more than a military vulnerability; it impacts the entire U.S. economy and our values.
- [T]he need for strategic and critical materials is likely to intensify . . . [to] enhance or enable . . . many environmentally friendly "green" technologies, such as electric vehicles, wind turbines, and advanced batteries. A recent report by the International Energy Agency (IEA) notes: "A typical electric car requires six times the mineral inputs of a conventional car and an onshore wind plant requires nine times more mineral resources than a gas-fired plant. Since 2010, the average amount of minerals needed for a new unit of power generation has increased by 50 percent as the share of renewables in new investment has risen."[3]
- Economic efficiency took priority over diversity and sustainability of supply . . . [and] U.S. manufacturers increasingly lost visibility into the risk accumulating in their supply chains. Their suppliers of strategic and critical materials, and even the workforce skills necessary to produce and process those materials into value-added goods, became increasingly concentrated offshore . . . [where] disregard for environmental emissions and workforce health and safety could thrive.
- The U.S. Government, collectively, has examined the risk in strategic and critical materials supply chains for decades. Now is the time for decisive, comprehensive action by the Biden-Harris Administration, by the Congress, and by stakeholders from industry and non-governmental organizations to support sustainable production and conservation of strategic and critical materials.

The incongruity between the country's needs for domestic supplies of critical minerals, as stated in Executive Order 14017 and in the DOD's points listed above, and the Proposed Rule is inexplicable. On the one hand, the Biden administration strongly embraces the need to increase production of domestic critical minerals, and on the other hand its DOI is proposing a rule that will impede and even prohibit mineral exploration and development on public lands.

IV. After Nearly 50 Years of Adhering to FLPMA's Multiple Use Directives, BLM is Unlawfully Seeking to Redefine this Multiple Use Law into a Non-Use Law

A. BLM Cannot Change the Definition of Multiple Use to Mean Conservation

Congress' purpose in enacting FLPMA was to direct BLM to manage public lands for multiple use. As defined under FLPMA Section 103, "multiple use" includes, but is not limited to: recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historical values.

FLPMA directs the BLM to (1) inventory public lands and create management plans that implement the multiple-use and sustained-yield mandate, and (2) promulgate regulations necessary to carry out the purposes of the Act. BLM is exceeding the scope of this regulatory authority to promulgate the current Proposed Rule.

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[2] https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf

[3] International Energy Agency, *The Role of Critical Minerals in Clean Energy Transitions* (May 2021), https://iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions

In order to justify the draconian changes being proposed in this rule, BLM is asserting a new and profoundly different interpretation of FLPMA that significantly deviates from more than four decades of managing the public lands for multiple use pursuant to FLPMA:

> FLPMA's declaration of policy and definitions of 'multiple use' and 'sustained yield' reveal that conservation is a use on par with other uses under FLPMA. The procedural, action-forcing mechanisms in this Proposed Rule grow out of that understanding of multiple use and sustained yield.

(FR at 19585, emphasis added). The revelation that multiple use and sustained yield now mean conservation is indeed curious because BLM has implemented FLPMA's multiple use policy directives for managing public lands since 1976 under both Democrat and Republican administrations.

In the Proposed Rule, BLM is now claiming it has experienced a revelation and finally understands the real meaning of FLPMA. Based on this revelation and BLM's assertion that public lands are "increasingly degraded and fragmented due to adverse impacts from climate change and a significant increase in authorized use," BLM is redefining the FLPMA terms "undue and unnecessary degradation," transforming "conservation" to a "use," and then prioritizing that purpose by actually prohibiting any use of the lands in contravention of "multiple-use." This is a radical departure from the way BLM has interpreted and implemented these land use management principles for the past 47 years and constitutes a sweeping change that only Congress could make. BLM's proposed makeover of multiple use and sustained yield to now mean conservation is totally contrary to FLPMA's directives and definitions.

The multiple use and sustained yield directive in FLPMA Section 102(a)(7) states: ". . . it is the policy of the United States that—

> goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple **use** and sustained yield unless otherwise specified by law;

It is clear from Section 102(a)(7) that BLM must manage the public lands according to the principles of multiple use and sustained yield as defined in Section 103(c) and Section 103(h). BLM cannot lawfully deviate from the Section 102(a)(7) directive or modify the Section 103 definitions.

In FLPMA Section 102(a)(8), Congress establishes that certain lands must be managed to protect numerous resources, stating: ". . . it is the policy of the United States that—

> the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and *human occupancy* ***and use***; (Emphasis added).

This directive to "preserve and protect certain public lands in their natural condition" requires that these lands remain available for "human occupancy and use" which includes mineral development. Aside from a mineral withdrawal, there is no authority for BLM to set aside lands and make them inaccessible to mineral exploration and development in conservation leases.

B. BLM Must Adhere to Congress' Definition of Multiple Use and Sustained Yield

Congress defined "multiple use" and "sustained yield" in FLPMA Section 103(c) and 103(h) as follows:

> (c) The term 'multiple use' means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values;

> and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.
>
> (h) The term 'sustained yield' means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

Both statutory definitions provide BLM with discretionary authority to modify the way in which some lands are managed to respond to changing "needs and conditions" but they do not authorize BLM to prohibit or extensively limit use at all by creating a new "use" of conservation to effectively prohibit any actual multiple-use activities. The Proposed Rule asserts the dramatic changes to restrict use (e.g., the increased use of the ACEC designation, the creation of conservation leases, and the preservation of intact landscapes) are necessary to respond to climate change by creating "ecosystem resilience." However, BLM has not defined or explained ecosystem resilience or demonstrated how ecosystem resilience, restricting land uses, or putting lands off-limits to development will mitigate climate change impacts.

Moreover, BLM cannot ignore elements of the multiple use definition that require BLM to "best meet the present and future needs of the American people . . . to conform to changing needs and conditions . . . [and achieve] a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values."

C. BLM Cannot Eliminate the Balance that FLPMA Demands Between Multiple Uses and Environmental Protection

The land use restrictions and prohibitions in the Proposed Rule eliminate the balance that FLPMA demands. They also completely overlook a change in the country's "needs and conditions," which includes the United States policy objective to develop domestic sources of the minerals needed to build the technologies and infrastructure essential to transition away from fossil fuels and towards increased use of renewable energy. Therefore, the Proposed Rule directly conflicts with both FLPMA and the Biden administration's stated goals to reach net-zero carbon emissions by 2050. That goal is unachievable without domestic minerals, many of which need to be mined on the Nation's public lands. The rule would thus exacerbate our dangerous dependence on foreign sources of minerals by putting lands functionally off limits to mineral exploration and development, thereby reducing domestic mineral production.

The Proposed Rule also ignores FLPMA's Section 103(l) unambiguous definition of "principal or major uses":

> (l) The term "principal or major uses" includes, *and is limited to*, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. (emphasis added)

The Proposed Rule does not discuss "principal or major uses" or attempt to reconcile the proposed non-uses (e.g., expansion of the ACEC designation, creation of conservation leases, and preservation of intact landscapes) with the FLPMA Section 103(l) list of principal or major uses. The proposed non-uses are irreconcilable with FLPMA's principal or major uses.

BLM's Proposed Rule seeks to add the non-uses listed above and functionally make them future principal or major uses of public lands. There is nothing in the Proposed Rule that suggests these non-use designations would be used sparingly. To the contrary, the Proposed Rule implies that BLM would implement the non-use designations broadly in order to respond to climate change.

FLPMA does not allow conservation to become a principal or major use of public lands. BLM cannot categorically dismiss the Congressional directive that other land uses, including conservation, are not principal or major uses of public lands, write the principal or major multiple uses out of FLPMA, or add conservation to the definition. The Proposed Rule is therefore unlawfully proposing to transform this multiple use statute into a non-use, conservation law.

D. FLPMA Does Not Focus on Conservation

Finally, it is important to note that in contrast to explicitly defining "multiple use" and "sustained yield," FLPMA does not define conservation or include it in the Section 102(a) land use management directives. In fact, FLPMA uses the word "conservation" in a very limited way. It is never used to establish land management objectives. Rather, it is only used in a restricted way to reference previously designated conservation areas. In fact, there are only six sections in FLPMA that use the word "conservation":

- California Desert Conservation Area: Section 206(c), Section 303(e), Title VI, Section 601(c)(1), (c)(2), (d), (e), (f), (g)(1), (h);
- Conservation system unit or the Steese National Conservation Area: Section 302(d)(1);
- Alaska National Interest Lands Conservation Act: Section 302(d)(4) and (d)(6);
- Land and Water Conservation Fund: Section 318(d)
- Kings Range National Conservation Area: Section 602; and
- Conservation of the Yaquina Head Outstanding Natural Area: Section 603(c).

The limited ways in which FLPMA mentions conservation to describe lands that in 1976 were already designated for special management is additional proof that the law was never intended to authorize making conservation a "principal or major use." Concluding otherwise would require us to assume that Congress enacted a useless or superfluous law.[4]

Forty-seven years after FLPMA's enactment, BLM cannot lawfully establish a novel "interpretation" that creates a sweeping change inconsistent with decades of its implementation of FLPMA and the definitions and directives in the statute itself. Nor can it insert a definition of "conservation" into the Section 103 definitions. Only Congress can add conservation to the Section 102(a) Declaration of Policy or amend the definitions in FLPMA Section 103 to include conservation.

V. FLPMA Does Not Authorize Conservation Leases

At the May 16, 2023, hearing before the House Subcommittee on Energy and Mineral Resources/Committee on Natural Resources,[5] (referenced herein as the May 16th hearing), you stated that FLPMA Section 302(b) gives the Secretary of the Interior many tools, including leases, for managing public lands. Unfortunately, this explanation of leasing as an allowable public land management tool is incomplete and therefore misleading.

A complete reading of FLPMA Section 302 reveals that leases are authorized to promote use and development—not to put lands off-limits to development. FLPMA Section 302(b) is clear that the FLPMA's intended purpose in authorizing leases is to promote development of the public lands:

> (b) In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the *use, occupancy, and development* of the public lands, including, but not limited to, *long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns*. (Emphasis added).

As used in Section 302(b), the words "use, occupancy, and development," and the authorization for "long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns" clearly define the scope of Congress' intent for leases. A court "must give

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[4] *See United States v. Premises Known as Lots 50 & 51, 2050 Brickell Ave.*, 681 F. Supp. 309, 313 (E.D.N.C. 1988); *see also Dept. of Defense, Army Air Force Exchange Service v. Federal Labor Relations Authority*, 212 U.S. App. D.C. 256, 659 F.2d 1140, 1160 (D.C.Cir. 1981), *cert. denied*, 455 U.S. 945, 102 S. Ct. 1443, 71 L. Ed. 2d 658 (1982) (A statute should be read in a "manner which effectuates rather than frustrates the major purpose of the legislative draftsmen."); *South Corp. v. United States*, 690 F.2d 1368, 1374 (Fed. Cir. 1982) (A statutory construction which would impermissibly impute a useless act to Congress must be viewed as unsound and rejected.); *United States v. Ferry Cty.*, 511 F. Supp. 546, 550 (E.D. Wash. 1981)("It is a basic tenet of statutory construction that Congress is not presumed to perform useless acts.").

[5] Examining the President's FY 2024 Budget for the Bureau of Land Management and the Office of Surface Mining, Reclamation and Enforcement, https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=413205

effect to this plain language unless there is good reason to believe Congress intended the language to have some more restrictive meaning." *Shaw v. Delta Air Lines*, 463 U.S. 85, 97, 103 S. Ct. 2890, 2900 (1983).

Under FLPMA, leases are supposed to authorize use and occupancy of public lands for multiple use development and commercial purposes that are consistent with other laws, like the U.S. Mining Law. Here, Congress' omission of conservation from these purposes for which the Secretary can issue easements, permits, leases, licenses, published rules or other instruments is controlling. Conservation leasing is not within these authorized purposes and is inconsistent with the uses Congress did specify for leases.

It is clear that FLPMA Section 302 *does not* authorize leases for the purpose of non-use or non-occupancy as the Proposed Rule contemplates. During the May 16th hearing, you stated that mining, logging, and other uses that involve surface disturbance would be incompatible with a conservation lease. This is a clear acknowledgment of the purpose of the rule—to put public lands off limits to the multiple-uses Congress clearly directed the Secretary to authorize.

Such an effort by the BLM to close or withdraw lands from mineral entry and mining use is clearly inconsistent with FLPMA, which provides for mineral withdrawals by Congress or by the Secretary through a detailed and lengthy process, not a cursory issuance of a conservation lease.

Thus, the proposed conservation leases are intended to create *de facto* withdrawal areas where some multiple uses would be disallowed. FLPMA prohibits BLM from using leases to withdraw land in order to preclude multiple uses. Because there is no statutory authority for conservation leases, BLM must modify the Proposed Rule to eliminate the conservation lease concept.

VI. FLPMA Does Not Authorize Establishing a Policy Preference for Preserving Intact Landscapes

Just as FLPMA does not authorize conservation leases, it also does not authorize BLM to propose a policy to identify intact landscapes or to use the restrictive ACEC designation to prevent multiple uses on such lands to preserve their intactness. The intact landscape concept is inconsistent with the multiple use and sustained yield directive in FLPMA Section 102(a)(7). It is also inconsistent with the scope of the protection and preservation directive in Section 102(a)(8), which directs BLM to protect and preserve certain lands but also requires that these lands remain available for human occupancy and use:

> The Congress declares that it is the policy of the United States that—
>
> (8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and *human occupancy and use*; (emphasis added)

None of the FLPMA Section 102(a) declarations of policy authorize BLM to manage public lands solely for preservation purposes and to exclude multiple uses, (i.e., human occupancy and use) to achieve land preservation.

In the Proposed Rule, BLM offers the following definition of conservation:

> "The Proposed Rule uses the term "conservation" in a broader sense, however, to encompass both protection and restoration actions. Thus, it is not limited to lands allocated to preservation, but applies to all BLM managed public lands and programs." (FR at 19585)

FLPMA does not authorize the broad application of conservation, preservation, and restoration land use management objectives "to all BLM managed public lands." BLM cannot change FLPMA from a multiple use and sustained yield statute to a conservation, preservation, and restoration law. Only Congress could make such a substantial change to FLPMA by enacting an amendment that would essentially upend the original multiple use purpose of this law and transform it into a conservation, preservation, and restoration law.

VII. FLPMA Does Not Authorize BLM to Replace UUD with a Zero-Impact Mandate

The unnecessary or undue (UUD) mandate in FLPMA Section 302(b) is exceptionally effective at protecting the environment because it is a dynamic, activity-specific, and site-specific regulatory mechanism applicable wherever multiple use activities occur on public lands. In implementing the UUD directive, BLM has the necessary authority to custom tailor the interpretation and application of UUD for all types of multiple uses to fit the activities involved and the site-specific environmental and resource conditions at each particular multiple use project.

FLPMA is not a zero-impact, no-use statute. However, the Proposed Rule is seeking to unseat UUD as FLPMA's universal and overarching environmental protection mandate and substitute a new zero-impact standard that would be enforced at many newly designated ACECs, on conservation leases, and on intact landscapes. FLPMA does not authorize BLM to manage public lands with a zero-impact mandate, which differs substantially from UUD.

In contrast to a zero-impact standard, the UUD policy in FLPMA Section 302(b) authorizes necessary degradation of the public lands resulting from multiple uses. A plain language reading of UUD is that it authorizes degradation that is unavoidable in order for the multiple use to occur. In other words, the degradation is necessary or due.

In managing the public lands, BLM must respond to the entirety of Congress' intent in FLPMA and carefully balance both the FLPMA Section 102(a) multiple uses directives and UUD. These statutory directives, which must be read together, compel BLM to authorize multiple uses that comply with the UUD mandate to protect the environment. BLM cannot use the Proposed Rule to administratively insert a zero-impact conservation objective or a land preservation mechanism to prohibit development on ACECs, conservation leases, or on intact landscapes.

BLM's statements during the May 15, 2023, stakeholder meetings and in the Federal Register notice that the Proposed Rule is not intended to reduce or curtail mining or other public land uses are internally contradictory and provide substantial evidence that BLM is struggling to make the Proposed Rule appear to be consistent with FLPMA. Compare, for example, the following statements:

> This provision [conservation leasing] is not intended to provide a mechanism for precluding other uses, such as grazing, mining, and recreation. (FR at 19591)[6]

> Permanent impairment of ecosystem resilience would be difficult or impossible to avoid, for example, on lands on which the BLM has authorized intensive uses, including infrastructure and energy projects or mining, or where BLM has limited discretion to condition or deny the use. (FR at 19592)

> The Proposed Rule recognizes, however that in determining which actions are required to achieve the land health standards and guidelines, the BLM must take into account current land uses, such as mining, energy production and transmission, and transportation, as well as other applicable law. The BLM welcomes comments on how applying the fundamentals of land health beyond lands allocated to grazing will interact with BLM's management of non-renewable resources. (FR at 19586)

In the first statement, BLM says the Proposed Rule is not designed to upset existing land uses. However, the second and third statements admit the Proposed Rule creates conflicts between its conservation objectives and multiple uses. These admissions that the Proposed Rule would create conflicts with authorized multiple uses clearly shows that the Proposed Rule is fatally flawed, unworkable, and inconsistent with Congress' directives in FLPMA dictating how BLM must manage public lands for multiple use.

There is no justification for creating this conflict by proposing this new rule. Rather, BLM should focus on consistently managing public lands for multiple uses that comply with the UUD mandate. Given the effectiveness of UUD as a universally applicable regulatory mechanism, there is no reason to modify it or seek to functionally replace it as BLM is proposing to do in this rule.

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[6] Similar statements were made during the May 15, 2023, virtual public meeting and the May 16, 2023, hearing.

VIII. There is No Gap in FLPMA that Needs to be Filled with the Proposed Rule

During the May 15, 2023 virtual public meeting on the Proposed Rule, BLM officials asserted the rule is necessary to fill a gap in FLPMA, stating that BLM needs additional regulatory tools to manage the public lands in a manner that fully protects the environment. This assertion mischaracterizes the authority BLM already has to use the UUD mandate to effectively regulate public land uses to allow for responsible development of public lands and at the same time require environmental protection.

There is no environmental protection or regulatory gap in FLPMA. The 3809 regulations already define UUD and the mechanisms by which BLM prevents UUD. The 3809 regulations implement FLPMA's UUD mandate in a dynamic and effective way. One aspect of preventing UUD demands compliance with all applicable federal and state environmental and cultural resources protection laws. (See 43 CFR 3809.415(a)).

What is being portrayed as a gap is in reality this administration's apparent dissatisfaction with having to respond to the balancing act that FLPMA demands between authorizing simultaneous multiple uses and mandating environmental protection. There is no question that this balancing act is difficult and creates tension between responsibly using public lands and protecting public lands. But that is precisely FLPMA's purpose and is the foundational premise of this law.

Seeking to upset this balance by creating new anti-use tools that prevent development such as preserving intact landscapes and creating conservation leases cannot be used to modify FLPMA's underlying purpose and dual Congressional directives to responsibly use public lands and to protect them. *See Carden v. Kelly*, 175 F. Supp. 2d 1318, 1325 (D. Wyo. 2001) (FLPMA's purpose was to "aid in the management, disposal, and maintenance of federal public land in the nation[']s best interest.").

FLPMA does not authorize BLM to tip the scales in favor of conservation. However, the Proposed Rule is designed to do just that—to create out of whole cloth new restrictive land management tools and designations to limit multiple use. This is flagrantly at odds with Congress' intent in enacting FLPMA, and the plain text of the statute in Section 102(a)(7) which provides that: it is the policy of the United States that—

> . . . management of [public lands] be on the basis of multiple use and sustained yield unless otherwise specified by law

In enacting FLPMA, Congress did not give BLM the power it is asserting in the Proposed Rule to establish conservation as a "use" to prohibit other uses and to prioritize that "use" above all others. Conservation is not included in the list of multiple-uses Congress set forth in FLPMA Section 102(a). BLM cannot now assert a new sweeping authority to "manage" use of the public lands by creating conflicting authorizations prohibiting use through the proposed "Conservation" rule. *See West Virginia v. EPA*, 142 S. Ct. 2587, 2608 ("'Congress could not have intended to delegate' such a sweeping and consequential authority 'in so cryptic a fashion.'") (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000)).

Changing FLPMA's balance to favor conservation over multiple use—or even to put conservation and multiple use on the same plateau—would require Congressional action to amend FLPMA. BLM cannot achieve this result through rulemaking.

IX. BLM Does Not Need Additional Regulatory Tools to Protect Public Lands

FLPMA Section 302(b) requires BLM to manage the public lands to prevent land uses from creating UUD: "In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands."

Since the enactment of FLPMA, BLM has effectively implemented the UUD mandate through regulatory programs that govern various public land uses. For example, the overarching purpose of BLM's 3809 regulations is to:

> Prevent unnecessary or undue degradation of public lands by operations authorized by the mining laws. Anyone intending to develop mineral resources on the public lands must prevent unnecessary or undue degradation of the land and reclaim disturbed areas. This subpart establishes

> procedures and standards to ensure that operators and mining claimants meet this responsibility; (43 CFR § 3809.1(a))

The 3809 regulations include a definition of UUD that is specific and pertinent to mineral exploration and mining. (*See* 43 CFR § 3809.5 and § 3809.415).

BLM has not identified a problem with implementing the UUD mandate or specified the need for additional tools to impose the UUD mandate. In the context of UUD, the Proposed Rule is seeking to fix a problem where none exists.

BLM is proposing to redefine UUD as "harm to land resources or values that is not needed to accomplish a use's goal or is excessive or disproportionate." This proposed definition is essentially a broad restatement of how BLM has interpreted and implemented the UUD mandate for nearly five decades and administered multiple uses on public lands to ensure compliance with the UUD standard.

It is indeed telling that after nearly 50 years of managing public lands in response to FLPMA's overarching mandate to prevent UUD, that BLM is now seeking to redefine UUD, resulting in a 'fundamental revision of the statute, changing it from [one sort of] scheme of . . . regulation' into an entirely different kind." *West Virginia v. EPA*, 142 S. Ct. 2587, 2596 (quoting *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 231, 114 S. Ct. 2223, 129 L. Ed. 2d 182).

The agency's own actions over the course of nearly five decades are compelling evidence of the proper and successful interpretation and implementation of FLPMA. Efforts with the Proposed Rule to now make radical changes to how UUD is interpreted and implemented are in conflict with BLM's obligations under FLPMA.

X. The Proposed Rule Conflicts with the U.S. Mining Law

The Proposed Rule conflicts with the right to use all lands open to location under the U.S. Mining Law (30 U.S.C. 21a *et seq*.). Although FLPMA amends the Mining Law, it does so in a very limited way as enumerated in Section 302(b):

> Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

FLPMA Section 302(b) clearly establishes Congress' intent that FLPMA would not change the Mining Law except in the following ways, the first three of which are quite limited in their scope:

- FLPMA Section 314 requires claim owners to record their claims;
- FLPMA Section 603 establishes the provisions for mining claims in Wilderness Study Areas;
- FLPMA Section 601(f) requires mining activities to comply with an "undue impairment" standard to protect scenic, scientific, and environmental values of the public lands in the California Desert Conservation Area; and
- All mineral activities must prevent unnecessary or undue degradation (UUD).

FLPMA's UUD mandate was a major change to the Mining Law that inserted a new environmental protection and reclamation requirement for mineral exploration and mining projects. As discussed in Section VII, UUD effectively safeguards the environment at mineral projects. For mineral projects, UUD is defined at 43 CFR § 3809.5 and requires mineral operators to reclaim their exploration and mine sites when the work is completed and to provide BLM with financial assurance to guarantee reclamation.

Section 22 of the Mining Law says:

> Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

The land use restrictions and prohibitions in the proposed regulation directly conflict with the Section 22 Mining Law directive that lands "shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase" because the Proposed Rule would sequester lands away in conservation leases that would no longer be open to this free exploration and purchase.

The Proposed Rule cannot ignore or override Section 22 of the Mining Law, FLPMA's multiple use and sustained yield mandate, or FLPMA's explicit policy to maintain all aspects of the Mining Law except for the four changes specified in FLPMA Section 302(b). FLPMA does not authorize BLM to put lands off-limits to mining by creating widespread ACECs, issuing conservation leases, or preserving intact areas.

BLM can withdraw lands from operation of the Mining Law, but withdrawals must adhere to the FLPMA Section 204 withdrawal procedures:

> (a) On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section.

During BLM's May 15, 2023, virtual meeting on the Proposed Rule BLM officials explained that mining would likely be deemed an incompatible use in these areas. At the May 16th hearing, you said the same thing in response to questions asking whether BLM would manage these lands for multiple uses including mining.

The Proposed Rule explains that conservation leases could be used as compensatory mitigation to off-set unavoidable impacts associated with multiple use projects on public lands. In order to proceed with such projects, project proponents could be required to enter into conservation leases or purchase conservation credits associated with previously established conservation leases designed to function as mitigation banks. Neither the Mining Law nor FLPMA authorize compensatory mitigation for hardrock mineral projects. Therefore, this aspect of the Proposed Rule cannot be applied to mineral exploration and development projects.

The word "mitigation" appears only once in FLPMA at 43 U.S.C. 1785 (e)(2)(D), which Congress added to FLPMA in 1996 for the Fossil Forest Research Natural Area. This suggests that there is no authority for compensatory mitigation in FLPMA for any type of multiple use activity. Project proponents may wish to offer compensatory mitigation to off-set the unavoidable impacts (e.g., impacts that comply with FLPMA's Section 302(b) mandate to prevent unnecessary or undue degradation are necessary and due) but cannot be compelled to offer compensatory mitigation.

XI. BLM Must Prepare an Environmental Impact Statement

In the Federal Register notice for this rule, BLM states that it intends to apply the Department's Categorical Exclusion (CX) provisions and that BLM is not required to prepare a NEPA document, either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), to assess the impacts of this Proposed Rule. At the May 16th hearing, you asserted that BLM is not obligated to prepare an EA or an EIS because the rule is "largely procedural."

This assertion strains credulity for a Proposed Rule that will impact 245 million acres of public lands, which are "an economic driver across the West" according to BLM's press release unveiling the Proposed Rule.[7]

The media has appropriately characterized the Proposed Rule as making significant changes to land use management as is readily evident from the following headlines;

BLM Proposes Sweeping Rule That Could Change Priorities for Public Lands

https://northernag.net/blm-proposes-sweeping-rule-that-could-change-priorities-for-public-lands/

BLM defends sweeping revamp of public lands rule

https://subscriber.politicopro.com/article/eenews/2023/05/16/blm-defends-sweeping-revamp-of-public-lands-rule-00097116

[7] https://www.blm.gov/press-release/interior-department-releases-proposed-plan-guide-balanced-management-public-lands.

Sweeping Biden Rule Could Change The Game For Protecting Public Lands

https://news.yahoo.com/sweeping-biden-rule-could-change-225322163.html

BLM proposes seismic shift in lands management

https://www.eenews.net/articles/blm-proposes-seismic-shift-in-lands-management/

BLM needs to take a cue from these headlines and concede that this far-reaching rule will create "sweeping changes" and a "seismic shift" that will cause significant impacts across the western U.S. A rule that will precipitate sweeping changes, alter priorities for public lands, and cause a seismic shift in land management unquestionably qualifies as a major federal action that requires BLM to prepare an EIS. *See Austin v. Ala*. DOT, No. 2:15-cv-01777-JEO, 2016 U.S. Dist. LEXIS 159113, at *4 (N.D. Ala. Nov. 16, 2016) ("An EIS is required before a federal agency undertakes any 'major' federal action 'significantly affecting the quality of the human environment.'") (quoting 42 U.S.C. § 4332(2)(C)).

The Council on Environmental Quality's (CEQ's) 40 CFR Part 1500 regulations that implement NEPA define a major federal action in Section 1508.1 as follows:

> *Major Federal action* includes actions with effects that may be major and which are potentially subject to Federal control and responsibility . . .
>
> (a) Actions include new and continuing activities; . . . new or revised agency rules, regulations, plans, policies, or procedures;
>
> (b) Federal actions tend to fall within one of the following categories:
>
> i. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* that are formal documents establishing an agency's policies which will result in or substantially alter agency programs.
>
> ii. Adoption of formal plans, such as official documents prepared or approved by federal agencies ***which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based***. (emphasis added).

Because BLM's acknowledged purpose of the rule is to change how public lands are managed and how federal resources are used to prioritize non-use or conservation, it is clear that BLM's Proposed Rule would "guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based." Consequently, BLM must prepare an EIS for what is obviously a "major federal action."

Because the land use restrictions and prohibitions would thwart solar and wind farms and critical minerals mining projects that are necessary for transitioning to renewable energy, the EIS must take a hard look at the No Action alternative and quantify the CO_2 emission reduction that could be achieved without the rule. The EIS alternatives analysis must disclose how the Proposed Rule would interfere with renewable energy projects and potentially increase CO_2 emissions by not being able to develop some critical minerals and renewable energy projects.

XII. The Proposed Rule is Economically Significant and Must be Evaluated Under NEPA, the OMB, the SBREFA, and the CRA

A. Multiple Uses Generated $201 Billion in Economic Output in 2022

BLM's website "Economic Contributions From BLM-Managed Lands"[8] and BLM's report entitled "BLM: A Sound Investment for America 2022,"[9] (included herein as Exhibit 1) show that multiple use activities on BLM-administered lands generated $201 billion in economic output in 2022 and generated 783,000 jobs. Because the Proposed Rule would significantly interfere with multiple uses such as logging, ranching, oil and gas production, mineral exploration and mining, and renewable energy production, BLM must prepare an EIS that analyzes and quantifies the impacts resulting from the reduced economic output from these multiple uses on western public lands states.

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[8] https://www.blm.gov/about/data/socioeconomic-impact-report-2022

[9] https://www.blm.gov/sites/default/files/docs/2022-12/2022-SoundInvestment.pdf

BLM has already developed the baseline data for this analysis in its "Economic Contributions from BLM-Managed Lands" and its Sound Investment for America 2022 report. BLM must complete the job by assessing the socioeconomic consequences of the Proposed Rule, recognizing that BLM's own data show that the multiple uses listed below are significant revenue generators, constituting "an economic driver across the West." [10]

- Recreation—$11.4 billion
- Renewable Energy—$4.4 billion
- Nonenergy Minerals [11]—$48.8 billion
- Oil and Gas—$113.8 billion
- Grazing—$2.6 billion
- Coal—$8.3 billion
- Timber—$1.1 billion
- BLM Expenditures [12]—$5.2 billion
- Payments to States and Counties [13]—$5.2 billion

BLM must comply with the NEPA requirement to prepare an EIS that takes a hard look at the economic and socioeconomic impacts resulting from the reduction in jobs and local and state tax revenues due to the Proposed Rule. *See Wyoming v. USDA*, 661 F.3d 1209, 1251 (10th Cir. 2011) (explaining that under NEPA, an EIS must "analyze not only the direct impacts of a proposed action, but also the indirect and cumulative impacts . . . [t]he types of impacts that must be considered include 'ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health [effects].') (quoting 40 C.F.R. § 1508.8). The EIS must also evaluate alternatives to the rule and ways to avoid, minimize, and mitigate these impacts. 40 C.F.R. § 1502.14(a).

B. BLM's Economic Threshold Analysis is Faulty

BLM's Economic Threshold Analysis for this Proposed Rule asserts that the rule would not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. There is a glaring discrepancy between the Economic Threshold Analysis and the data BLM collected to demonstrate the economic importance of BLM's multiple use programs on western public lands. The enormous difference between $100 million and $201 billion must be explained and resolved before BLM proceeds further with this Proposed Rule.

Assuming the Proposed Rule adversely impacts just one percent of the $201 billion currently realized from multiple uses, that would be a $2 billion impact, which would clearly exceed the $100 million threshold that triggers the requirement to prepare the following federal economic evaluations:

- A cost-benefit analysis by the Office of Management and Budget pursuant to Executive Order 12866;
- An assessment of how the Proposed Rule would impact small businesses and governments as required by the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement and Fairness Act (SBREFA); and
- Congressional review pursuant to the Congressional Review Act.

[10] BLM press release, *op cit*.
[11] Nonenergy minerals refers to locatable, "hardrock" minerals like copper, gold, silver, lithium, rare earths, zinc, molybdenum, lead, vanadium, tungsten, tellurium, etc. Some of these minerals are on the USGS' critical minerals list.
[12] BLM expenditures refers to goods, services, and contract labor purchased by BLM and BLM employees' purchase of goods and services in the local communities where they live
[13] BLM payments refers mainly to Payments in Lieu of Taxes (PILT) to states and counties.

Executive Order 12866 requires agencies to assess the benefits and costs of regulatory actions, and for significant regulatory actions, submit a detailed report of their assessment to the Office of Management and Budget (OMB) for review. A rule may be significant under Executive Order 12866 if it meets any of the following criteria:

- Has an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Creates a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the Proposed Rule will result in substantially more than $100 million in economic impacts, BLM should be precluded from proceeding any further with this Proposed Rule until it prepares a detailed cost benefits analysis and provides the results of this analysis to the OMB.

C. BLM Must Comply with the RFA and SBREFA and Analyze Impacts to Small Businesses

The RFA applies to any rule proposal by a federal agency that is subject to notice and comment under the APA. The RFA requires federal agencies to conduct a full regulatory flexibility analysis or to certify that the Proposed Rule will not "have a significant economic impact on a substantial number of small entities." If an agency determines that a proposed or draft rule will not have a significant economic impact on a substantial number of small entities, it must provide a factual basis for this determination, which must be published in the Federal Register at the time the proposed or final rule is published for public comment.

In the Federal Register notice for the Proposed Rule, BLM certifies that the rule will not have "a significant economic impact on a substantial number of small entities" and consequently does not require an analysis pursuant to the RFA (FR 19594). However, BLM has not provided the necessary factual basis as required by the RFA to support this certification. This mirrors what BLM did in 1997 when it improperly issued its bonding rule for locatable minerals without providing the factual basis required to support their certification that the Proposed Rule would not have a significant impact on small entities.

When small businesses believe a rule or regulation will adversely affect them, and that the agency failed to meet its analysis and disclosure obligations under the RFA, SBREFA provides those small businesses with the opportunity to seek judicial review of the agency's action. The SBA's Chief Counsel for Advocacy can become directly involved in such appeals by filing amicus (friend of the court) briefs in the court proceedings brought by the small business appealing the rule and claiming a violation of the RFA.

BLM has first-hand experience with judicial review under SBREFA. In 1998, the District Court for the District of Columbia (DC District Court) ruled in favor of the Northwest Mining Association (now known as the American Exploration & Mining Association), citing BLM's failure to assess the impact of its 1997 proposed bonding rule on small entities as required under the RFA and SBREFA. In *Northwest Mining Association v Babbitt*, 5 F.Supp2d 9 (D.D.C. 1998), the District Court remanded BLM's bonding rule back to the agency for failure to comply with requirements under the RFA and SBREFA to evaluate the impact of its proposed bonding rule on small miners.

In *Northwest Mining Association v Babbitt*, BLM did not use the SBA's definition of a small miner, which the DC District Court noted was 500 or fewer employees. Just as in 1998, many mining and mineral exploration companies who currently own mining claims on BLM-administered lands and who explore and develop these lands pursuant to the right to do so under Section 22 of the U.S. Mining Law have fewer than 500 employees and qualify as small entities as defined by the SBA. Additionally many ranching, logging, outfitting, renewable energy, and oil and gas companies also meet the SBA's definition of a small entity for their industry sectors.

For the same reasons as the DC District Court found that BLM failed to comply with its obligations under the RFA when it finalized its proposed 1997 bonding rule and remanded the rule to BLM for consideration of the rule's impact on small entities, BLM must now comply with the RFA and assess the impact of the proposed

Conservation and Land Health rule on small entities or provide the required factual basis to support a certification the Proposed Rule will not "have a significant economic impact on a substantial number of small entities." Proceeding without the proper RFA analysis or the factual basis to support a no significant impact determination, as BLM is currently proposing to do, is unlawful and will render the Proposed Rule void.

BLM must not ignore the SBA's Office of Advocacy (Advocacy) June 13 2023 comment letter on the Proposed Rule to DOI Secretary Deb Haaland (included herein as Exhibit 2). Some of the key points in Advocacy's letter are summarized below:

- BLM's Proposed Rule may be contrary to FLPMA's statutory land management principles;
- BLM's Proposed Rule does not adequately consider the impacts to small businesses as required by the RFA;
- The Proposed Rule has unintended consequences that are contrary to BLM's goals and FLPMA's land management requirements;
- The certification in the Federal Register asserting the Proposed Rule will not significantly impact small entities does not describe the factual basis to support this analysis, as required under the Section 605(b) of the RFA; and
- BLM should consider alternatives to the Proposed Rule that better align with FLPMA's statutory provisions.

D. The Congressional Review Act Precludes BLM from Re-Proposing Landscape-Scale Planning

The Congressional Review Act ("CRA") assists Congress in discharging its responsibilities for overseeing federal regulatory agencies. It provides that "[b]efore a rule can take effect, the Federal agency promulgating such rule shall submit" a report that includes "a concise general statement relating to the rule" and a "proposed effective date." *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 556 (9th Cir. 2019) (quoting 5 U.S.C.S. § 801).

The Proposed Rule bears many similarities to the Planning Rule 2.0 for landscape-scale planning, which Congress repealed in 2017 through the CRA. In fact, references to "landscape-scale planning" are infused throughout the Proposed Rule and attempts to repackage landscape-level planning as a tool to address climate change. This new justification for landscape-scale planning cannot be used to resurrect a concept that Congress has already rejected. Congress' rejection of BLM's Planning Rule 2.0 pursuant to the CRA means BLM is prohibited from reproposing a substantially similar rule.

XIII. Conclusions

For the numerous reasons explained above, the Proposed Rule will be harmful to our country. It will lead to greater dependency on foreign minerals at a time when the President and Congress have established policies to increase domestic mineral production in order to reduce our reliance on mineral imports—especially from China. As discussed in Section III, the U.S. continues to become more and more dependent on other countries for the minerals we need for the energy transition, national defense, and every aspect of modern society. The country's mineral reliance grew in 2022 to 51 minerals compared to the 47 minerals on which we were 50 percent or more import reliant in 2021. As the DOD recently noted, "Contrary to a common belief, this risk [relying on foreign minerals] is more than a military vulnerability; it impacts the entire U.S. economy and our values."

The Proposed Rule is unlawful because Congress has not authorized BLM to subordinate the multiple use directives in FLPMA by putting conservation on the same level as all other multiple uses, and establishing policy preferences that functionally make conservation the highest and best use of the land. BLM cannot make this substantial change without Congressional action to amend FLPMA to authorize the agency's proposed change. Unless and until Congress says otherwise, BLM must manage the public lands pursuant to FLPMA's multiple use mandates.

BLM cannot proceed with the Proposed Rule because it is an unlawful attempt to use the rulemaking process to change FLPMA. WMC concurs with the 16 western senators who sent a letter to you on May 11, 2023, requesting that the Proposed Rule be immediately withdrawn. Similarly, WMC supports the provision in Section 4005 of Senator Barrasso's Spur Permitting of Underdeveloped Resources (SPUR) Act, S. 1456, which directs the Secretary to withdraw the Proposed Rule and prohibits finalizing and implementing this rule. Additionally, WMC notes the many reasons in the U.S. Small Business Administration's Office of Advocacy's June 13,

2023, letter (Exhibit 2) to Secretary Haaland outlining why BLM needs to jettison the Proposed Rule and consider an alternative that complies with the land management statutory directives in FLPMA.

The UUD mandate in FLPMA already gives BLM the authority it needs to manage public lands to achieve the appropriate balance between multiple use and environmental protection. After nearly fifty years of implementing this mandate, there is no justification for BLM's proposed "seismic shift" in its land management principles. With roughly two-thirds of the nation's lands already off limits to mineral exploration and development,[14] the Secretary does not need the new tools in the Proposed Rule (e.g., the increased use of ACECs, creating conservation leases, and preserving intact landscapes) to limit or prohibit mineral activities and other multiple uses.

Finally, the Proposed Rule will inevitably lead to permitting delays for all types of multiple use projects on public lands. Although WMC is primarily concerned about permitting delays affecting mineral exploration and development projects, we note that permitting delays will also affect the infrastructure projects needed for the energy transition, including but not limited to high-voltage transmission lines, and solar, wind, and geothermal renewable energy projects. This is yet another important reason why this is the wrong rule at the wrong time.

Although WMC appreciates this opportunity to provide these comments, we respectfully request that BLM withdraw this Proposed Rule.

Sincerely yours,

Emily Hendrickson,
WMC President

Debra W. Struhsacker,
WMC Co-Founder and Board Member

Attachments:

Exhibit 1—The BLM: A Sound Investment for America 2022

Exhibit 2—SBA Office of Advocacy June 13, 2023, comment letter on the Proposed Rule to DOI Secretary Deb Haaland

The attachments are available for viewing along with the letter at:

https://docs.house.gov/meetings/II/II00/20230615/116036/HHRG-118-II00-20230615-SD022.pdf

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[14] John D. Leshy, *America's Public Lands—A Look Back and Ahead*, 67th Annual Rocky Mountain Mineral Law Institute, July 19, 2021.

Statement for the Record

Solar Energy Industries Association

June 22, 2023

The Solar Energy Industries Association ("SEIA") is the national trade association of the U.S. solar and storage industry. Our members promote the environmentally responsible development of distributed and utility-scale solar energy and storage. We are committed to working with federal agencies, environmental and conservation organizations, Tribal governments, state agencies, and other stakeholders to achieve this goal.

SEIA and our members strongly support leasing for compensatory mitigation- and restoration-related conservation projects on Bureau of Land Management ("BLM")-managed lands. However, we have concerns with some aspects of the proposed rule, which contains provisions that could potentially impede the rapid deployment of renewable energy needed to decarbonize the grid and address the climate crisis. While BLM granted a 15-day extension of the comment period, we remain concerned that some of these provisions, while unintentional, may not be revised in a final rule. Our industry intends to work constructively with BLM to ensure that a final rule is workable for both conservation interests and the renewables industries.

Rocky Mountain Elk Foundation
Missoula, MT

June 15, 2023

U.S. Department of the Interior, Director
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

Re: Bureau of Land Management Proposed Rule: Conservation and Landscape Health, 43 CFR Parts 1600 and 6100

Dear Director:

The mission of the Rocky Mountain Elk Foundation (RMEF) is to ensure the future of elk, other wildlife, their habitat and our hunting heritage. We represent more than 225,000 members nationwide, many of whom live and/or recreate in western states. Since its inception in 1984, RMEF has conserved or enhanced more than 8.6 million acres of North America's most vital habitat for elk and other wildlife. In partnership with the Bureau of Land Management (BLM), RMEF has conserved or enhanced more than 2.3 million acres across BLM-administered lands and opened or improved public access to over 370,000 acres since 1987. Together, the combined value of RMEF-BLM cooperative efforts totals more than $210 million.

The BLM proposes new regulations that aim to 'advance the BLM's mission to manage the public lands for multiple use and sustained yield by prioritizing the health and resilience of ecosystems across those lands.' The BLM proposes to implement this through protecting intact landscapes, restoring degraded habitat, and by making wise management decisions based on science and data.

RMEF's comments below represent a focus on actions in the proposed rule that may benefit or hinder our mission and/or represent our broad stakeholders. The following key topics in our comments resonate with our mission and membership:

- Incorporating appropriate public engagement opportunities
- Ensuring public access to public lands for hunting and other recreation
- Enhancing habitat for elk, mule deer, turkeys, and other wildlife
- Conserving critical migration routes (connectivity)
- Bringing a stronger focus to much needed active land management
- Using sound science in all conservation and management activities

RMEF expresses concern about several processes averted during the proposed rulemaking:

- Given the significant implications of the rule, there is concern about the lack of stakeholder input or advanced notification. An Advanced Notice of Proposed Rulemaking or a Request for Information would have provided a meaningful public engagement opportunity.
- Several components of the proposed rule should be required to go through a full NEPA process; the proposed overarching categorical exclusion is not sufficient. As is, multiple decisions (including conservation leases) would not go through any NEPA assessment (environmental assessment, environmental impact statement, or otherwise) and would provide no opportunity for public engagement. The proposed rule provides unlimited authority to make impactful conservation decisions through review and approval by an authorized officer.
- BLM Resource Management Plans (RMP) serve as the backbone to guide management of BLM-administered lands, yet few of the proposed rule components would flow through the RMP process. To maintain transparency and ensure quality public engagement, each action in the proposed rule should be incorporated, formally, into RMPs.

Specific to the rule content, RMEF generally supports the six broad objectives (Sec. 6101.2) of the proposed rule but has concerns with the lack of detail in the proposed rule. RMEF offers the following comments:

General Comments

- The proposed rule would fundamentally change the BLM's multiple use mandate under the Federal Land Policy and Management Act (FLPMA) by adding 'conservation' as a recognized use and newly defined, specifically for this rule. RMEF asks for clarification on how this definition conflicts with previous versions of the definition of 'conservation' used in BLM manuals or handbooks.
- In adding 'conservation' as one of the multiple uses in FLPMA, RMEF requests additional administrative review to clarify whether additions/changes can be made to FLPMA without the necessary input from Congress, state and county governments, private industry, recreationists, and other impacted stakeholders.
- RMEF requests clarity on who within BLM constitutes an 'authorized officer' who, through this rule, is granted authority to make impactful decisions. For example, these individuals would have authority to prioritize protection of intact landscapes (Sec. 6102.19b), identify priority landscapes for restoration (Sec 6102.3–1), or approve terms and conditions of conservation leases (Sec. 6102.4).
- The section on protection of intact landscapes (6102.1) also lacks clarity. As with most practices outlined in the proposed rule, protection of intact landscapes should follow priorities set in RMPs and utilize existing tools through the National Conservation System.

Landscape Health

- RMEF recognizes the need to assess land health conditions across all BLM-managed lands and supports the direction for land restoration activities to improve wildlife habitat and to help public lands recover from wildfire, invasive species. and other threats.
- RMEF supports the proposed adaptive management strategy (Sec. 6101.2) to guide BLM land management through evaluation, treatment, and monitoring.
- RMEF supports continued recognition of important big game migration corridors and encourages BLM to use existing progress and programs (through SO3362) to implement objectives in this rule concerning habitat connectivity.
- Managed livestock grazing can improve the health of rangelands and forest meadows if the system is designed with habitat values for elk and other wildlife in mind. An effective range management program between the agency and permittees is essential to maintaining the economic base and lifestyle that have helped keep private lands across elk country as working ranches. RMEF encourages continued use of grazing management systems and techniques compatible with maintaining desired levels of elk and other wildlife.
- Throughout the proposed rule, BLM recognizes the need for various 'conservation' practices, including land protection. As an avid supporter of active land management, RMEF has concerns that land protection (preservation), as defined in the proposed rule, would treat lands as a functional wilderness, impeding critical land management and restoration activities needed across BLM-administered land.
- The use of conservation throughout the proposed rule includes a focus on 'restoration.' As defined, this action means 'assisting the recovery of an ecosystem that has been degraded, damaged or destroyed.' What is lacking is any focus on active land management to *maintain* lands that are currently meeting land health standards. The proposed rule defines 'land enhancement,' with reference to its potential use in conservation leases. However, the proposed rule lacks specific guidance on the importance of 'land enhancement' in preventing degradation and supporting ecosystem resilience and should be a key component of ACECs, conservation leases, and other tools.
- BLM proposes to use the fundamentals of land health (in Sec. 6103.1–6103.2) from the existing fundamentals of rangeland health (at 43 CFR 4180.1 (2005)) for all resource management. This was previously applied to public-lands grazing programs. RMEF requests development of updated and expanded

landscape health fundamentals that are based on more recent science and are applicable across more diverse landscapes (not just rangelands). Applying outdated land health fundamentals developed for a single landscape type and program (grazing), is not appropriate. As part of the 2005 land health update, fundamentals of rangeland health should be expanded to include species beyond those federally listed, including species of state biological and social importance.

Conservation Leases

BLM proposes to use conservation leases as a new tool to ensure 'ecosystem resilience through protecting, managing, or restoring natural environments, cultural or historic resources, and ecological communities, including species and their habitats.'

- RMEF has significant concerns about the lack of detail on how conservation leases would be prioritized and implemented through this rule. BLM is requesting public comment on several critical components of the conservation lease proposal, highlighting the need to answer many unknowns prior to any final rule being signed. Key details should be fleshed out by the BLM and reopened for public comment, including:
  - the appropriate default lease duration
  - acreage limits for conservation leases
  - constraints on which lands are available for conservation leasing
  - clarification on what actions conservation leases may allow
  - eligibility of a lease holder
  - requirement for conservation lease priorities to be set within RMPs with public engagement
- The authorities granted under conservation leases (and associated definition of 'conservation') creates confusion among other tools available for 'protection and restoration' including the National Conservation System, ACECs, leases authorized for mitigation, and other tools. As written, conservation leases appear to encompass authorities under several existing tools. Protection (and preservation) and restoration are authorities already established through the National Conservation System, ACECs, etc. Given this redundancy, 'conservation leases' should be focused on land enhancement or restoration with a primary goal of maintaining or restoring prioritized landscapes.
- A key concern in this proposed rule is the lack of clarity in whether/how public access to BLM-managed land could be limited under conservation leases. The proposed rule states that a conservation lease, alone, is not intended to preclude access to public lands; 'although the purposes of a lease may require that limitations to public access be put in place in a given instance (Sec. 6102.4(a)(4) and 6102.4(a)(5)).' This ambiguous language opens up significant uncertainty about public land access, particularly given that conservation leases would be approved solely through an authorized officer. Public use for hunting, fishing, and other recreation should clearly be defined as a 'casual use' and not subject to authorization on lands covered by a conservation lease (6102.4(a)(5). Again, this highlights the need to integrate this proposed program into a local public engagement process. The preferred route would be to identify areas eligible for conservation leases through the RMP process and assess the potential effects of each lease through NEPA, as is completed with other BLM leases/permits. This would allow for proper analysis of the effects the proposed actions may have on the environment, and the related social and economic effects.

RMEF appreciates this opportunity to comment on the BLM Proposed Rule: Conservation and Landscape Health, 43 CFR Parts 1600 and 6100, and looks forward to seeing future clarifications and details.

Sincerely,

BLAKE L. HENNING,
Chief Conservation Officer

American Forest Resource Council
Portland, Oregon

June 23, 2023

U.S. Department of the Interior, Director
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

Re: Conservation and Landscape Health; RIN 1004-AE92; OMB Control Number 1004-0NEW

Dear Director Tracy Stone-Manning:

The American Forest Resource Council (AFRC) submits the following comments on the Department of the Interior's proposal to create new regulations entitled, "Conservation and Landscape Health," which seeks to prioritize the health and resilience of ecosystems on Bureau of Land Management (BLM) lands. 88 Fed. Reg. 19,583 (Apr. 3, 2023).

AFRC is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. We represent over 70 forest product businesses and forest landowners throughout the West. Many of our members have their operations in communities adjacent to BLM managed land that this new rule will impact, and the management of these lands ultimately dictates not only the viability of their businesses, but also the economic health of the communities themselves. Rural communities, such as those affected by this rule, are particularly sensitive to the forest products sector because more than 50% of all manufacturing jobs within these communities are in wood manufacturing.

AFRC and its members strongly believe in—and practice—conservation and the responsible use of natural resources that benefit current and future generations. Conservation is a principal of modern, science-based forest and natural resources management and a foundational value of our members—which include the very people who help steward America's public lands and forests throughout the West.

AFRC believes that a sustainable supply of timber is important to, and an outcome of, healthy and resilient forest land. Further, working lands and conservation are not mutually exclusive. On the contrary, we believe that misguided management paradigms, based on flawed and outdated concepts such as "forest protection" (but protection from what and from whom?), inadvertently inhibit the attainment of forest health and resilience. This flawed paradigm is most obvious in western states where high-intensity wildfire, insect infestations, and disease are responsible for more damage and destruction of federal lands than any other agent. This is partly evidenced by the "25-Monitoring Report on Monitoring Consultation under the Northwest Forest Plan," which concluded that wildfire remains the leading cause for older forest losses on federal lands, accounting for about 70 percent of all losses since 1993.[1] This report was published based on data collected prior to the disastrous 2020 Labor Day wildfires that impacted over 110,000 acres of BLM managed land in western Oregon.

We are fortunate to have a bedrock law in the Federal Land Policy and Management Act of 1976 (FLPMA) that requires management based on the principles of multiple use and sustained yield "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values."[2] We are also fortunate to have existing regulations that require the BLM to solicit public input on potential uses of public land during the land management planning process. Based on these preexisting, clear guiding directions for a multitude of resources, we are confused by the intent of this proposed rule. We also believe that much of the substance of the rule is misguided or flawed. As explained below, we believe that this proposed rule was inappropriately developed with no stakeholder input or advanced notice and that the effects

[1] Davis, Raymond J. et al. 2022. Northwest Forest Plan—the first 25 years (1994-2018): status and trends of late-successional and old-growth forests. Gen. Tech. Rep. PNW-GTR-1004. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 82 p., *available at*, https://www.fs.usda.gov/pnw/pubs/pnw_gtr1004.pdf.

[2] 43 U.S.C. § 1701(a)(8).

of this rule warrant preparation of an Environmental Impact Statement (EIS) due to the significant effects on the human environment.

Below is a summary of the AFRC's comments:

- The proposed rule needs to clarify that multiple use does not apply to the management of O&C Act timberlands.
- The proposed rule was inappropriately developed without stakeholder input or advanced notification.
- The proposed rule undermines public participation in the planning process.
- The proposed rule violates FLPMA's multiple use mandate and misuses the term conservation.
- The BLM does not have statutory authority to create a conservation leasing program.
- The proposed rule does not clarify how the government will receive fair market value for conservation use.
- The concept of "carbon offset credits" is misguided and should not be permitted through "conservation leases."
- The proposed rule's changes to the designation and protection of Areas of Critical Environmental Concern violate FLPMA.
- The Economic and Threshold Analysis is flawed; the proposed rule will likely have a significant material effect on several facets of the economy.
- The effects of this rule warrant the preparation of an EIS.
- The proposed rule was pushed forward in a manner inconsistent with FLPMA's state and local government coordination requirements.

COMMENTS

I. The proposed rule needs to clarify that multiple use does not apply to the management of O&C Act timberlands.

The proposed rule does not discuss the interplay between FLPMA's multiple use sustained yield obligations and the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (O&C Act), 43 U.S.C. § 2601, *et seq*. O&C lands are former railroad grant lands revested in the United States in 1916.[3] In 1937, Congress enacted the O&C Act, which requires the subject lands to be devoted to "permanent forest production," specifically mandating "the timber thereon shall be sold, cut, and removed in conformity with the princip[le] of sustained yield . . .."[4,5] Under the O&C Act, 50 percent of timber sale receipts are provided to the 18 counties in which the O&C lands are located, providing a substantial source of government revenues for these localities.[6]

Congress recognized that sustained-yield forestry would result in "providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facil[i]ties." It also recognized the mandatory nature of sustained-yield forestry on the lands when enacting legislation in 1948 to reopen the O&C lands to exploration location, entry, and disposition under the general mining laws.[7] U.S. District Court Judge Leon recently provided that the "BLM must ensure that the timber produced on O&C land is sold, cut, and removed in conformity with the principle of sustained yield. These are mandatory directives from Congress."[8] Moreover, the Ninth Circuit has recognized the O&C Act "as establishing timber production as the dominant use."[9]

Although FLPMA generally governs BLM's management of federal lands under a multiple-use sustained-yield model, **its savings clause provides that in the event of any conflict between its requirements and the O&C Act, the latter**

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[3] *See Oregon & Cal. R.R. Co. v. United States*, 238 U.S. 393 (1915); Chamberlain-Ferris Act of June 9, 1916, 39 Stat. 218; February 26, 1919 (40 Stat. 1179).

[4] 43 U.S.C. § 2601.

[5] 43 C.F.R. § 5040.1 (BLM regulations recognizing its authority to divide O&C lands into sustained-yield forest units).

[6] 43 U.S.C. § 2605.

[7] Act of Apr. 8, 1948, 80th Cong., 2d sess., ch. 179, Pub. L. No. 80-477, 62 Stat. 162.

[8] *Am. Forest Res. Council v. Nedd*, No. 15-cv-01419 (RJL), 2021 WL 6692032, (D.D.C. Nov. 19, 2021), *appeal docketed*, No. 20-5008 (consolidated with Nos. 20-5009, 20-5010, 20-5011, 22-5019, 22-5020, 22-5021) (D.C. Cir. Jan. 24, 2020).

[9] *Headwaters, Inc. v. BLM, Medford Dist.*, 914 F.2d 1174, 1183 (9th Cir. 1990); *but see Murphy Co. v. Biden*, 65 F.4th 1122 (9th Cir. 2023) (petition for rehearing en banc filed on June 7, 2023).

takes precedence.[10] Because the O&C Act mandates dominant use management of O&C timberlands for sustained-yield timber harvest, other uses are allowed only when subordinated to sustained-yield timber production.[11]

For the reasons stated above, the proposed rule, and its inclusion of conservation use, cannot be applied to O&C timberlands. Therefore, the final rule must clarify that it will not apply to the BLM's management of O&C timberlands.

II. The proposed rule was inappropriately developed without stakeholder input or advanced notification.

As an initial matter, AFRC is disappointed with the lack of stakeholder involvement before issuing the proposed rule, as well as the agency's engagement during the comment period. Despite the significant implications of the proposed rule to all multiple use and conservation communities, including the proposed rule's new conservation leasing program, the BLM did not appropriately engage stakeholders through an advanced notice of proposed rulemaking (ANPR) or Request for Information, which is a critical stage of participation to help shape the proposed rule. The BLM has also used a Notice of Intent to accompany the development of its analysis under the National Environmental Policy Act (NEPA) to help gather public input prior to proposing regulatory reform.[12]

Moreover, the BLM's truncated comment period of merely 75-days and perfunctory virtual public meetings is insufficient to meaningfully engage the public regarding the agency's rulemaking. With respect to the proposed rule's conservation leasing program, it is apparent that the BLM has more outstanding questions than answers on how the rule should be finalized:

> Is the term "conservation lease" the best term for this tool?; What is the appropriate default duration for conservation leases?; Should the rule constrain which lands are available for conservation leasing? For example, should conservation leases be issued only in areas identified as eligible for conservation leasing in an RMP or areas the BLM has identified (either in an RMP or otherwise) as priority areas for ecosystem restoration or wildlife habitat?; Should the rule clarify what actions conservation leases may allow?; Should the rule expressly authorize the use of conservation leases to generate carbon offset credits?; Should conservation leases be limited to protecting or restoring specific resources, such as wildlife habitat, public water supply watersheds, or cultural resources?

Clearly, the agency would benefit from continued stakeholder engagement before finalizing a rule that will have major impacts on public land management into the future.

For that reason, AFRC, along with a coalition, submitted a request that the BLM withdraw the proposed rule to reset the conversation and ensure that appropriate stakeholders are at the table to find durable solutions to some of the agency's challenges around multiple-use management.

III. The proposed rule undermines public participation in the planning process.

Section 202(f) of FLPMA states that the Secretary "shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands."[13] Accordingly, the BLM's existing regulations pertinent to land use planning require an opportunity for meaningful public participation in the preparation of resource management plans and other planning activities.[14] Additional regulations provide guidance and management direction regarding Resource Management Planning specific to issue identification. The "identification of issues" regulation states that "at the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to

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[10] 43 U.S.C. § 1701 Savings Provisions Note (West 2010).

[11] *Am. Forest Res. Council v. Nedd*, No. 15-cv-01419 (RJL), 2021 WL 6692032, (D.D.C. Nov. 19, 2021), *appeal docketed*, No. 20-5008 (consolidated with Nos. 20-5009, 20-5010, 20-5011, 22-5019, 22-5020, 22-5021) (D.C. Cir. Jan. 24, 2020).

[12] *See, e.g.*, Bureau of Land Management, Interior, *Notice of Intent To Conduct a Review of the Federal Coal Leasing Program and To Seek Public Comment*, 86 Fed. Reg. 46,873 (Aug. 20, 2021).

[13] 43 U.S.C. § 1712(f).

[14] 43 C.F.R. § 1610.2.

suggest concerns, needs, and ***resource use***, development and protection opportunities for consideration in the preparation of the resource management plan."[15]

Moreover, FLPMA does not specify or list potential uses on public lands; rather it directs the BLM to manage for multiple uses, with special consideration for the Nation's need for domestic sources of minerals, food, timber, and fiber.[16] As the U.S. Supreme Court recognized, multiple use management "is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put[.]"[17]

Prior to this proposed rule, the BLM had not identified any specific uses in its regulations. Instead, the BLM's regulations were developed to direct agency managers to solicit input from members of the public and local stakeholders when developing and prioritizing potential uses during the planning process.[18] The proposed rule would largely take the public out of the resource use identification process by, for the first time since the passage of FLPMA in 1976, predetermining what the single priority use would be.

The existing regulations support and encourage an inclusive, citizen-based approach to public land management. Whereas the proposed rule presents a top-down, authoritative approach to public land management. It is unclear what "problem" the BLM is trying to solve by attempting to cut the public out of important components of the planning process by adopting this approach. Surely if the BLM believed that the public supports a single use for public land management guided exclusively by conservation principles, then development of this proposed rule would be unnecessary as the current practice of soliciting public input during the planning process would yield the same results. The fact that the BLM is inclined to codify a single use indicates a fear that open public participation may not yield the results that the current Administration desires. We believe this shift away from active public participation will ultimately result in flawed land management decisions and a public that is detached from its public lands.

IV. The proposed rule violates FLPMA's multiple use mandate and misuses the term conservation.

As outlined above, neither FLPMA nor existing regulations identify specific uses for BLM land. The proposed rule constructs a narrative based on the notion that 1) FLPMA does identify specific uses, 2) those uses are prioritized in FLPMA, and 3) conservation is among those existing uses. The Executive Summary asserts that the proposed rule "clarifies that conservation is a use on par with other uses of the public lands under FLPMA's multiple-use and sustained-yield framework." This Summary also asserts that "the proposed rule does not prioritize conservation above other uses; it puts conservation on an equal footing with other uses, consistent with the plain language of FLPMA." However, such "plain language" simply does not exist in FLPMA.

Section 103(c) of FLPMA defines "multiple use" as "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment."[19] Neither this section nor any other section in FLPMA identifies or prioritizes specific uses. Instead, uses are developed through public engagement during the planning process, as noted previously. Furthermore, there are no existing BLM regulations that emphasize any single use—the proposed rule, if adopted, would represent the first and only time that the BLM adopts a single use through the regulatory process.

Ultimately, the proposed rule does not propose to clarify any component of FLPMA, since those components do not exist. Nor is it proposing to put conservation on "equal footing" with other uses, since no other uses are codified into law or adopted in regulation. The proposed rule's clarification that "conservation" qualifies as a "use" under FLPMA is a significant change to the current management scheme. The BLM can only manage lands for the multiple uses defined in FLPMA, unless the land has been specifically dedicated for certain management. The proposed rule's inclusion of conservation as a use permits the BLM to manage land for conservation purposes, without a special land use designation. The proposed rule

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[15] 43 C.F.R. § 1610.4-1 (emphasis added).
[16] 43 U.S.C. 1701(12).
[17] *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004).
[18] 43 C.F.R. § 1610.4-1.
[19] 43 U.S.C. § 1702(c).

constrains the multiple-use mandate in FLPMA by defining and listing a single, priority use: conservation. Therefore, the adoption of the proposed rule would violate the requirement to manage public lands under the principles of multiple use under Section 302(a) of FLPMA.

Throughout the proposed rule, the BLM makes additional proclamations that are simply unsupported by existing law or regulation. In one instance, the BLM claims that the proposed rule "identifies and requires practices to ensure that the BLM manages the public lands to allow multiple uses while retaining and building resilience to achieve sustained yield of renewable resources." Nowhere in the proposed rule does the BLM even reference uses other than "conservation," let alone identify and require practices that would ensure their inclusion in future BLM management plans. In fact, Section III.B. of the proposed rule acknowledges that the BLM has only three ways to manage for conservation use: (1) protection of intact, native habitats, (2) restoration of degraded habitats, and (3) informed decision making, primarily in plans, programs, and permits.[20] If the proposed rule were adopted, the BLM managers would not only be shackled to adhering to a single use, but also to parsing their land base into distinct categories and applying narrowly defined treatments to each.

It is questionable whether the BLM even has the legal and statutory authority to designate "conservation" as a use. It is Congress who has provided the BLM with its multiple use and sustained yield authority, and any new authorities or new uses would require an Act of Congress. As the U.S. Supreme Court recently stated: "Agencies have only those powers given to them by Congress, and 'enabling legislation' is generally not an 'open book to which the agency [may] add pages and change the plot line.'" *W. Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587, 2609 (2022). Before FLPMA was enacted, each use was authorized under other laws like the Mineral Leasing Act of 1920, the Mining Law of 1872, and the Taylor Grazing Act of 1934. And after FLPMA was enacted, each time a "use" was added to the multiple-use management scheme under FLPMA, Congress authorized parameters and directed the BLM to address that use.

Furthermore, conservation itself cannot be appropriately characterized as a "use." According to the plain reading of the term, "conservation" is a purpose or an objective for how another use is applied. For example, the Cambridge English Dictionary defines the term "conservation" as "carefully using valuable natural substances that exist in limited amounts in order to make certain that they will be available for as long a time as possible." The Cambridge Dictionary provides the following sentence as an example of how the term "conservation" should be used: "the main objectives are the conservation of materials and energy in support of the sustainable development program."[21] In this example, the use is some type of development and conservation is the objective that informs the manner in which that development will be conducted. Other dictionaries similarly define conservation. The Oxford Languages Dictionary[22] defines conservation as "prevention of wasteful use of a resource," and the Webster's Third New International Dictionary[23] defines it as "the planned management of a natural resource to prevent exploitation, destruction, or neglect." Based on its plain language, conservation is applied to describe another resource "use," but the term conservation is not defined as a use.

Technical dictionaries are also helpful when interpreting the term "conservation." The Society of American Foresters Dictionary of Forestry defines conservation as "the management of a renewable natural resource with the objective of sustaining its productivity in perpetuity while providing for human use compatible with sustainability of the resource."[24] The "use" in this definition is the natural resource being managed for, and the term "conservation" refers to the objective of using that natural resource in a particular way.

Despite the BLM's position to the contrary, conservation in the context of land management cannot be applied by itself. For example, conservation of any given acre of land can only be achieved if there is a specific use being applied to that acre. If that acre is being used for cattle grazing, conservation could be achieved by limiting the intensity of that grazing to ensure productivity. If that acre is being used for timber harvesting, conservation could be achieved by moderation of the intensity of the harvest and replanting to ensure long-term forest health and productivity.

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[20] 88 Fed. Reg. at 19,585.

[21] Cambridge English Dictionary, available at https://dictionary.cambridge.org/us/dictionary/english/conservation.

[22] Oxford Languages Dictionary, available at https://www.oed.com/view/Entry/39564?redirectedFrom=conservation#eid.

[23] Webster's Third New International Dictionary, p. 483 (2002).

[24] Deal, Robert, Society of American Foresters Dictionary of Forestry, p. 36 (2nd ed. 2018).

Land conservation is attainable under each of these scenarios because that land was being *used*; however, the "use" could not be defined as "conservation." Conservation absent any other use is not conservation at all, it is preservation. If BLM's intent in the proposed rule is *non-use* of public land, then the word "conservation" should be replaced by the word "preservation" and defined accordingly.

V. The BLM does not have the authority to create a conservation leasing program.

Section 6102.4 creates a Conservation Leasing Program, which will allow conservation leases for either "restoration or land enhancement" or "mitigation."[25] The proposed rule claims that its authority to create a conservation leasing program arises under section 302(b) of FLPMA, 43 U.S.C. § 1732(b). According to the proposed rule, the Tenth Circuit in *Greater Yellowstone Coal. v. Tidwell*, 572 F.3d 1115, 1127 (10th Cir. 2009) (*Greater Yellowstone*), has recognized that section 43 U.S.C. § 1732(b) is considerably broader than the authority granted in subject-specific provisions. As stated above, it is questionable whether the BLM has authority to create a leasing program for conservation as a use.

The BLM's reliance on *Greater Yellowstone* is misguided and misleading. In that case, the court primarily discussed the interplay between special use permits granted under 43 U.S.C. § 1737(b) and BLM permitting in general under 43 U.S.C. § 1732(b). At issue was a memorandum of understanding (MOU) between the BLM and the State of Wyoming. The court held that the BLM did not violate the agency's permitting regulations under 43 U.S.C. § 1732(b) by authorizing the State to use BLM lands through a cooperative agreement, the MOU, under 43 U.S.C. § 1737(b). The court merely stated that the applicability of 43 U.S.C. § 1732(b) is broader than that of 43 U.S.C. § 1737(b), which is logical because 43 U.S.C. § 1737(b) is only meant to apply to special uses. *See Greater Yellowstone*, 572 F.3d 1115, 1127-28. The decision in *Greater Yellowstone* simply cannot be validly interpreted as a case that supports the position that the BLM has broad authority under 43 U.S.C. § 1732(b) to promulgate an entirely new public land use and leasing program through rulemaking without an Act of Congress.

More pertinent and illustrative is another Tenth Circuit decision in *Public Lands Council v. Babbitt*, holding that a 1995 regulation—that allowed a permit for a 10-year duration to use public lands for conservation use to the exclusion of livestock grazing—was not authorized by any statute and, therefore, was invalid. The court found that the conservation use was not authorized under the Taylor Grazing Act, FLPMA, or the Public Rangelands Improvement Act, and that the primary purpose of the permits had to be a use: livestock grazing. *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1308 (10th Cir. 1999). The court found that the Secretary of the Interior lacked the statutory authority to issue grazing permits intended exclusively for conservation use. Further, upon appeal to the Supreme Court, the Secretary did not seek review of that portion of the Tenth Circuit's decision. *See Public Lands Council v. Babbitt*, 529 U.S. 728, 747 (2000). And while the proposed rule, here, claims that the conservation leases are "not intended to provide a mechanism for precluding other uses, such as grazing, mining, and recreation," it is hard to imagine how that will not be the end result.

Even if a conservation leasing program is somehow lawful, the BLM's proposed rule has several issues. The proposed rule states conservation leases "would not override valid existing rights or preclude other, subsequent authorizations *so long as* those subsequent authorizations are compatible with conservation use." First, the BLM has failed to define what is a "compatible" use under the conservation leasing program. There is no assurance that forest management, like treatments to improve forest health and resiliency, can be considered a conservation tool and, ultimately, a "compatible use" within the meaning of the proposed rule. Second, the use of the term "so long as" indicates the BLM's clear intent to negate all other uses, in conflict with FLPMA's multiple-use, sustained yield mandate.

Overall, the proposed rule's conservation leasing program could put legally valid and ecologically necessary forest management projects at risk. This would be a perverse outcome that directly conflicts with the Biden Administration's focus and prioritization of the nation's forest health and wildfire crisis. Further, the use of a conservation lease for "restoration" or "mitigation" will remove operable lands from BLM's timber sale program. The BLM needs to carefully consider how the conservation leasing program can be done "without permanent impairment of the

[25] 88 Fed. Reg. at 19,591.

productivity of the land and the quality of the environment with consideration being given to the relative values of the resources . . . .”[26]

VI. The proposed rule does not clarify how the government will receive fair market value for conservation use.

Section 102(a)(9) of FLPMA requires that the United States receives fair market value of the use of the public lands and their resources unless otherwise provided for by statute. The proposed rule seeks input on fair market value assessment, but only in the context of conservation leases. The proposed rule lacks direction on how such values would be assessed for actions or inactions associated with conservation use outside of leases; nor does it direct how, if assessed, such value would be received by the government.

Fair market value for tangible uses such as timber or grazing rights can be determined using a competitive open market system. How the BLM is to assess the value of the “protection” of 100 “intact” acres of BLM land through inaction is unclear. Moreover, if the BLM was able to assess fair market value for those 100 acres set aside from any other uses, from whom would they receive that value? The proposed rule’s discussion of fair market value generates more questions than answers, and the BLM must provide greater clarity before finalizing the rule. The lack of information raises questions about government accountability, transparency, and proper oversight of any leasing program and the determination of fair market value for public assets that are collectively owned by the American people.

VII. The concept of carbon offset credits is misguided and should not be permitted through conservation leases.

The proposed rule’s section 6102.4 discusses FLPMA authorizations to regulate the use, occupancy, or development of public lands through leases, and outlines the concept of conservation leases under these authorizations. Specifically, the proposed rule asks for public comment on whether the rule should expressly authorize the use of conservation leases to generate carbon offset credits.[27]

The BLM is asking the wrong question in the proposed rule. The question should not be whether to authorize the use of conservation leases to generate carbon offset credits. The question *should be* whether the concept of carbon offset credits is an effective strategy to slow the effects of climate change through increased net carbon sequestration and decreased net carbon emissions. The effectiveness of delaying or halting the potential harvest of timber, or the use of other renewable resources, to enable polluters the ability to continue to emit greenhouse gases through carbon offset credits is highly controversial and uncertain—scientifically, economically, environmentally, and socially—and we urge the BLM to take a hard look at the many facets of this practice to determine if its expansion to BLM land is in the public’s best interest.

The Intergovernmental Panel on Climate Change’s (IPCC) 2022 6th Assessment reaffirmed the carbon mitigation benefits of sustainable forest management, the benefits of substituting wood for more carbon intensive building products, and the potential negative consequences of policies that reduce sustainable timber harvests as the demand for wood products shifts to other countries (known as “leakage”) with less stringent environmental protections:

> carbon storage in wood products and the potential for substitution effects can be increased by additional harvest, but with the risk of decreasing carbon storage in forest biomass when not done sustainably (Smith et al. 2019b). *Conversely, reduced harvest may lead to gains in carbon storage in forest ecosystems locally, but these gains may be offset through international trade of forest products causing increased harvesting pressure or even degradation elsewhere* (Pendrill et al. 2019b; Kastner et al. 2011; Kallio and Solberg 2018).[28] (emphasis added).

We urge the BLM to follow the guidance of the IPCC and consider the effects of sustainable forest management, substitution, and leakage when determining the effectiveness of carbon offset credits.

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[26] 43 U.S.C. § 1702(c).

[27] 88 Fed. Reg. at 19,591.

[28] IPCC, *Climate Change 2022: Impacts, Adaptation, and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, Cambridge, UK and New York, NY, USA, 3056 pp. (2022).

A. Sustainable forest management is a more effective tool to sequester carbon.

Active forest management is more effective in capturing and storing atmospheric carbon in forest and wood product carbon pools than a policy of hands-off management that precludes periodic harvests and the use of wood products. This notion is supported by analysis of the most recent U.S. Forest Service Inventory and Analysis (FIA) program's report that summarize differences in growth (and hence sequestration) between owner types reflecting these different management strategies.[29,30] This is also consistent with the findings and recommendations of international scientific bodies, including the IPCC. In fact, the IPCC's 4th Assessment recognized the carbon mitigation benefits of forests and wood products:

> "Mitigation options by the forestry sector include extending carbon retention in harvested wood products, product substitution, and producing biomass for bio-energy. This carbon is removed from the atmosphere and is available to meet society's needs for timber, fiber, and energy."

> "In the long term, a sustainable forest management strategy aimed at maintaining or increasing forest carbon stocks, while producing an annual sustained yield of timber, fiber or energy from the forest, will generate the largest sustained mitigation benefit."

Other research supports the notion that, if the role of forests in combatting climate change is to reduce global greenhouse gasses through maximizing the sequestration of carbon from atmospheric CO_2, then increasing the acreage of young, fast growing small trees is the most prudent management approach. A 2016 study in the Pacific Northwest concluded that, although large trees accumulated carbon at a faster rate than small trees on an individual basis, their contribution to carbon accumulation rates was smaller on an area basis, and their importance relative to small trees declined in older stands compared to younger stands. It also noted that although large trees are important carbon stocks, they play a minor role in additional carbon accumulation.[31]

These conclusions support the practice of regular harvests at an age where tree growth begins to slow, storage of that tree carbon in long-lasting wood products, and proactive reforestation. A failure to do so would hamper that acre's ability to maximize carbon sequestration through the replacement of slow growing large trees with fast growing small trees and the storage of those large trees in long-lasting wood products. Not storing that carbon in wood products also poses the risk of losing the carbon in standing trees from high intensity wildfire, which is becoming increasingly prevalent on public lands in western states. A 2022 study estimated that wildfires in California in 2020 emitted 127 million metric tons of carbon into the atmosphere, making the greenhouse gas (GHG) emissions from wildfires the second most important source in the state, after transportation.[32] For context, the U.S. Forest Service recently disclosed that the agency only "commercially harvests one tenth of one percent of acres within the National Forest System each year. Harvests designed to improve stand health and resilience by reducing forest density or removing trees damaged by insect or disease make up 86 percent of those acres. The remainder are final regeneration harvests that are designed to be followed by reforestation."[33] There is extraordinary opportunity to increase the practice of sustainable forest management on federal lands as an effective tool to sequester carbon.

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[29] Oswalt, Sonja N., et al., Forest Resources of the United States, 2017: a technical document supporting the Forest Service 2020 RPA Assessment. Gen. Tech. Rep. WO-97. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office, p. 223 (2019), available at https://doi.org/10.2737/WO-GTR-97.

[30] Palmer, Marine et al., Washington's forest resources, 2007-2016: 10-year Forest Inventory and Analysis report, Gen. Tech. Rep. PNWGTR-976. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station, p.79 (2019).

[31] Gray, A. N., et al., *Carbon stocks and accumulation rates in Pacific Northwest forests: role of stand age, plant community, and productivity*, Ecosphere 7(1):e01224. 10.1002/ecs2.1224 (2016).

[32] Jerrett, Michael, et al., Up in smoke: California's greenhouse gas reductions could be wiped out by 2020 wildfires. Environmental Pollution, Volume 310, 2022, 119888,ISSN 0269-7491, available at, https://doi.org/10.1016/j.envpol.2022.119888.

[33] 88 Fed. Reg. 24,497 (April 21, 2023).

Harvesting trees and transferring the stored carbon to wood products allows a land manager to "stack" the sequestration potential of that land. For example, assume an objective to maximize carbon sequestration on 100 acres over a 150-year period starting at year zero. Without active management and timber harvest, those trees would grow to 150 years and represent the only carbon sequestered on those 100 acres at the end of the 150-year cycle (assuming they don't burn in a wildfire). Alternatively, the trees could be harvested on a 50-year rotation and stored in wood products. After 150 years, there would be carbon stored in an existing 50-year-old stand, plus carbon stored in wood products from an additional two 50-year-old stands previously harvested. The figure below illustrates the concept of stacking.[34]

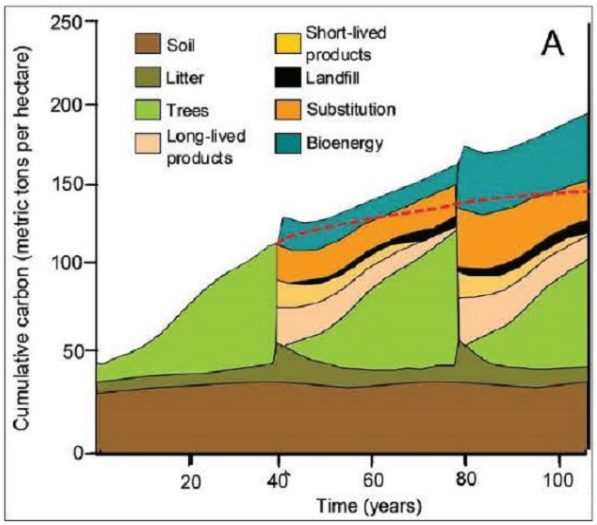

Figure 8.7—Carbon balance from a hypothetical forest management project in which the forest is harvested roughly every 40 years from land that started with low forest carbon stocks. This figure accounts for forest regrowth and carbon stored in wood products in use and landfills as well as the prevented release of fossil fuel carbon (also counted as stored carbon) via product substitution and biomass energy. It illustrates how forests can continue to accrue carbon over time with forest management. Figure is from McKinley et al. (2011) and adapted from IPCC (2007).

A 2013 study from the Journal of Sustainable Forestry summarized these concepts well:

> More CO_2 can be sequestered synergistically in the products or wood energy and landscape together than in the unharvested landscape. Harvesting sustainably at an optimum stand age will sequester more carbon in the combined products, wood energy, and forest than harvesting sustainably at other ages.[35]

To further illustrate, Figure 5 shows the volume growth of a Douglas-fir forest across five different "site" growing ground scenarios.[36] Basal area is a measurement of the "volume" of tree stems across a given acre. Basal area correlates to carbon sequestration as it describes how much tree volume exists.

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[34] McKinley, Duncan C., et al., *A synthesis of current knowledge on forests and carbon storage in the United States*, Ecological Applications, 21(6), pp. 1902-1924 (2011).

[35] Oliver, Chadwick Dearing, et al., *Carbon, Fossil Fuel, and Biodiversity Mitigation With Wood and Forests*, Journal of Sustainable Forestry, 33:3, 248-275 (2014), DOI: 10.1080/10549811.2013.839386.

[36] McArdle, R. E., et al., *The yield of Douglas-fir in the Pacific Northwest*, Technical Bulletin No. 201, Department of Agriculture, Forest Service (1961).

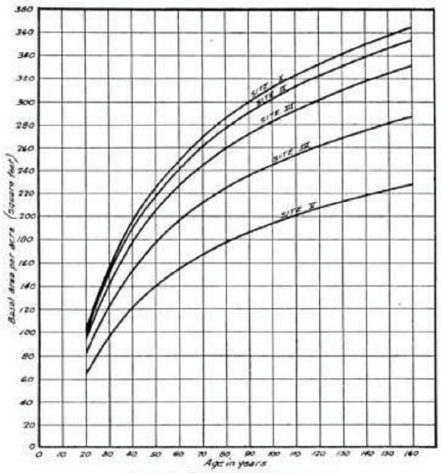

FIGURE 5.—Total basal area per acre

Consider the curve for "Site III." At 50 years, that acre has accumulated about 205 square feet (sq. ft) of basal area. At 150 years, that acre has accumulated about 325 sq. ft of basal area. If the trees on that acre were left to grow for 150 years, 325 sq. ft of basal area and associated carbon would be sequestered by the end of the cycle. If those trees were cut and replanted every 50 years in a 150-year period, 615 sq. ft worth of basal area and associated carbon would be sequestered (205 sq. ft x 3=615 sq. ft) by year 150. With this scenario, a land manager could capture nearly twice as much tree growth, and sequester nearly twice as much carbon, on a 50-year harvest cycle than by leaving those trees to grow for 150 years.

Since basal area is only a measure of tree volume above ground, it does not account for tree volume below ground in the form of roots. Root growth is also a form of carbon sequestration. The concept we applied to above-ground growth could be replicated to below-ground growth. Consider the scenario where an acre of Douglas-fir is left to grow for 150 years. At the end of the cycle, there would be one network of roots below the ground. When trees are harvested the roots are left underground. So, in the scenario where trees are harvested every 50 years over the 150-year cycle, there will be three root networks underground at the end of the cycle instead of one. That additional below-ground growth further contributes to the overall sequestration capacity of any given acre of land.

B. Leakage.

Leakage occurs when emissions that are prevented in one locale are simply transferred to another region. Deferred harvests on BLM lands through the leasing of carbon offset credits will result in reduced timber supply in the region where those leases are sold. If certain mills must reduce lumber production due to a lack of available timber, this lumber production and the related emissions will merely shift to another state or country to meet domestic demand with additional transportation-related emissions.

A 2019 study calculated that there is nearly 82 percent leakage in California from the implementation of its carbon cap-and-trade program.[37] That means that 82 percent of the projects do not confer global greenhouse gas benefits because the emissions occur elsewhere. Productivity per acre in the Pacific Northwest, where the BLM manages over 2.5 million acres of forest land, is about 74 percent higher than the U.S. average and therefore for every acre removed from harvest in the Pacific Northwest, an average of 3.85 acres with average U.S. productivity are required

[37] Haya, Barbara and William Stewart, *POLICY BRIEF: The California Air Resources Board's U.S. Forest offset protocol underestimates leakage* (July 12, 2019).

elsewhere to fill the void.[38] If the wood supply comes from more boreal regions (e.g., Russia and Canada), we can expect the impact to be even larger.

C. Substitution.

Substitution occurs when a different product is used in place of the wood product that is withheld from the market by harvest deferral. In the case of softwood lumber, this substitution may occur with concrete, steel, or other composite materials that have much higher emissions associated with their production—leading to a net increase in carbon emissions due to the harvest deferral. A 2018 study yielded results that showed a significant reduction in greenhouse gas emissions for structures using wood as a building material as opposed to concrete or steel.[39] A 2021 study clearly showed the potential of carbon emission reductions that could be achieved in mass timber construction compared to the construction of traditional concrete mid- to high-rise buildings.[40]

Published displacement and substitution factors are available to quantify the efficiency of using a wood-based product to reduce greenhouse gas emissions to the atmosphere compared to a non-wood alternative product. A 2020 meta-analysis quantified the range of greenhouse gas benefits of wood substitution and provided a clear climate rationale for increasing wood substitution in place of other products, provided that forests are sustainably managed and that wood residues are used responsibly.[41] A 2021 study published in The Journal of Sustainable Forestry used recently published life cycle assessment data for analysis that compares the carbon consequences of a 'no-harvest' alternative for Pacific Northwest forests to a range of alternative uses.[42] They found that accounting for only the harvested wood products (e.g., no substitution or solid waste disposal site storage) generates 1.2 times greater benefits than no harvest alternatives. When substitution is considered, the carbon benefit increases 1.6 to 5.9 times better than no harvest alternatives, depending on end uses. These climate mitigation benefits are real, measurable, and predictable. The BLM must consider and analyze these factors when assessing the effectiveness of carbon offset credit leases.

The National Council for Air and Stream Improvement (NCASI) recently conducted an analysis of the effect of deferred harvests on carbon storage, carbon sequestration rates, carbon emissions, and costs in a review document entitled "NCASI Review of Carbon Implications of Proforestation."[43] Below is a summary of its findings:

> The analysis was based on recent forest inventory data on private, planted Douglas-fir forests in Oregon and Washington. One of the scenarios included a 10% reduction in overall harvest volumes compared to a current baseline, resulting in extending the average harvest age by 12 years. Emissions from substitute products were estimated using published displacement factors, which express the emissions from a non-wood product per unit of emissions from the use of a comparable wood product. Positive values indicate that using a non-wood substitute causes more GHG emissions than using a wood product. Reported average factors for construction lumber substitutes range from 0.54 (Smyth et al. 2017) to 1.2 (Leskinen et al. 2018) to 2.1 (Sathre and O'Connor 2010). The deferred harvest scenario resulted in about a 4.5% reduction in annual net sequestration rates after considering substitution effects (using the most conservative displacement factor).

The NCASI analysis compared net carbon sequestration over 100 years for four forest management alternatives: proforestation (continuous forest growth, no timber harvest—essentially what a BLM carbon offset credit lease would resemble), a 10%

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[38] Oswalt, Sonja N. et al., *Forest Resources of the United States, 2017: a technical document supporting the Forest Service 2020 RPA Assessment*, Gen. Tech. Rep. WO-97. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office, p. 223 (2019), available at, https://doi.org/10.2737/WO-GTR-97.

[39] Laurent, A. B., et al., *Comparative Lifecycle Carbon Footprint of a Non-Residential Steel and Wooden Building Structures. Curr Trends Forest Res*, CTFR-128 (2018).

[40] Puettmann, M. et al., *Comparative LCAs of Conventional and Mass Timber Buildings in Regions with Potential for Mass Timber Penetration*. Sustainability 2021, 13, 13987 (2021).

[41] Sathre, R. and J. O'Connor, *Meta-analysis of greenhouse gas displacement factors of wood product substitution*, Environmental Science & Policy 13(2): 104-114 (2010).

[42] Lippke, B., et al., The Plant a Trillion Trees Campaign to Reduce Global Warming—Fleshing Out the Concept, Journal of Sustainable Forestry 40(1): 1-31 (2021).

[43] NCASI, Review of Carbon Implications of Proforestation (2020), available at, https://www.ncasi.org/wp-content/uploads/2020/12/Review_Carbon_Implications_Proforestation_Dec2020.pdf.

reduction in harvest through extended rotations, the current baseline of forest management practices on private, planted forests, and a 10% increase in harvest levels through more active forest management. Table 2 and Figure 8 from the NCASI review clearly show that alternatives that reduce timber harvests result in a net reduction in the carbon sequestered in private, planted Douglas-fir forests in the Northwest.

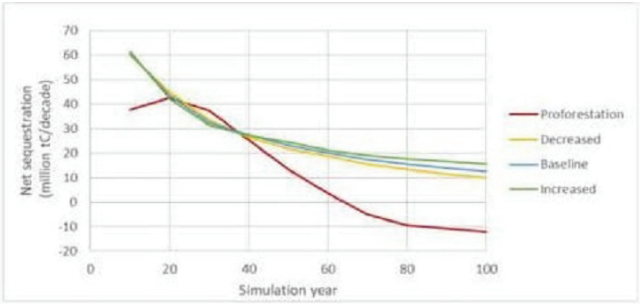

Figure 8. *Net Sequestration for the Four Scenarios (in million tC per decade).*

Table 2. *Summary of 100-Year Average Annual Sequestration, Emissions, and Net Sequestration by Scenario. (all values in million MT CO_2e/yr)*

	Baseline	Increased	Decreased	Proforestation
Annual sequestration (growth)	31.3	32.2	30.4	22.7
Annual emissions from dead wood	1.8	1.8	1.8	2.84
Annual emissions from HWP	20.7	22.7	18.6	0.0
Annual emissions from substitution	0.0	-1.6	1.6	15.8
Annual net sequestration	8.9	9.2	8.5	4.1

We urge the BLM to strongly consider this compendium of scientific literature and empirical data before concluding that generating carbon offset credits is an effective way to reduce net GHG emissions.

VIII. The proposed rule's changes to the designation and protection of Areas of Critical Environmental Concern violate FLPMA.

Section 202 (c)(3) of FLPMA directs the BLM to give priority to the designation and protection of areas of critical environmental concern (ACEC). Section 1610.7-2 of the proposed rule codifies this prioritization, specifically during the land use planning process, but also outside of the land use planning process. Subsection (c)(3) requires managers to actively solicit ACEC "nominations" from the public when developing new plans or revising existing plans. This subsection also acknowledges that nominations can be submitted and considered outside of the land use planning process, effectively creating an open solicitation period for ACEC nominations. Upon receiving such nominations, the proposed rule allows for "interim management" to be applied until the BLM assesses whether those nominations are consistent with current RMPs. There is no language in the proposed rule that requires this "interim management" to be consistent with current RMPs; in fact, it suggests that it may not be because the BLM would impose it while they "assess whether the nomination is consistent with current Plans." This open nomination period and interim management option has the potential to significantly disrupt ongoing management activities, particularly by those stakeholders who oppose such activities.

Furthermore, we believe that the authorization to permit ACEC nominations and establish "interim management" that may be inconsistent with existing Plans violates Section 202 of FLPMA. FLPMA does not grant the authority to establish ACECs outside of land use planning. Section 202(a) states that "[t]he Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands."[44] Section 202(c) permits the

[44] 43 U.S.C. § 1712(a).

prioritization of ACECs "[i]n the development and revision of land use plans."[45] However, there is no authorization that allows the BLM to accept "nominations" for ACECs at any time and to establish "interim management" that may disrupt ongoing activities that are consistent with existing RMPs.

The proposed rule also seeks to eliminate public notification of nominated ACECs by removing the existing requirement in current regulation 1610.7-2(b) that the BLM publish a Federal Register notice relating to proposed ACECs and allow for 60 days of public comment. The proposed rule indicates that the 60-day notification process is redundant with "other Federal Register publication requirements that apply to land use planning." What the proposed rule fails to acknowledge is that ACEC nominations that occur outside of the land use planning process would not be publicly vetted through other Federal Register publication requirements that apply to land use planning. The removal of the 60-day public notification period would enable a back door for ACEC nominations to be adopted free of public review and participation.

The combination of 1) permitting ACEC nominations outside of the land use planning process; 2) elimination of the 60-day public comment period; and 3) the establishment of "interim management" that may be inconsistent with existing RMP direction, would effectively provide an avenue for any person to disrupt ongoing management activities consistent with current Plan direction without public participation. Such actions go far beyond FLPMA's direction to prioritize the designation of ACECs and violate Section 202 of the Act.

IX. The Economic and Threshold Analysis is flawed; the proposed rule will likely have a significant material effect on several facets of the economy.

The BLM determined that the proposed rule did not meet a threshold established by Executive Order 12866, which requires the Office of Management and Budget review if a proposed regulation would "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." We believe that the single use nature of the proposed rule and the uncertainty surrounding the management directives associated with that single use will adversely affect certain sectors of the economy, the productivity of those economies, competition, and jobs in a material way. The Threshold Analysis does not consider these effects and, therefore, concludes incorrectly that the proposed rule is not economically significant.

The Threshold Analysis asserts that the proposed rule requirements are consistent with the BLM's mandate to manage the public lands for multiple use and sustained yield, avoid unnecessary and undue degradation, and do not appreciably restrict the decision-space compared to a baseline without the proposed rule. As already discussed, the proposed rule would establish a new approach of single use management on BLM land, potentially on millions of acres of public land. Public input on uses for local management units would be confined to the conservation framework, and BLM land managers' decision space would be significantly restricted. The BLM's assertion to the contrary in its Threshold Analysis reflects a flawed understanding of the proposed rule, FLPMA, and existing regulations; and its conclusion that the proposed rule is not economically significant reflects a flawed understanding of the natural resource economy.

The forest products industry represents the economic and social fabric of many rural communities in western states. The BLM's timber programs in Montana, Idaho, and Oregon generate over $800 million in total economic output and support 3,579 jobs.[46] Montana, where the BLM manages 1.3 million acres of forest land, is home to a forest products industry that is one of the largest components of manufacturing in the state and employs over 7,200 people, earning $320 million annually.[47] The economic activity associated with this direct employment generated additional economic opportunities by relying on other industries for raw and intermediate inputs and services, thus indirectly bolstering employment and wages in additional sectors. Public lands supplied 57 percent of the harvest in 2018. Between 2014 and 2018, one large mill, one plywood plant, and numerous small mills in Montana

[45] 43 U.S.C. § 1712(c).

[46] BLM, *A Sound Investment for America*, (2022), available at, Socioeconomic Data/Bureau of Land Management (blm.gov).

[47] Morgan, Todd A., *Montana's Forest Industry Employment and Income Trends, Declining Harvest Volumes and Increasing Productivity*, Bureau of Business and Economic Research, University of Montana. Forest Industry Technical Report No. 8 (2018).

closed permanently. Timber processing capacity dropped from 635 MMBF in 2014 to 489 MMBF in 2018.

The BLM manages 770,000 acres of forest land in Idaho. More than 12,700 workers were directly employed by Idaho's forest industry during 2019, with 9,350 in primary and secondary wood products and paper manufacturing, 2,200 in forestry and logging, and 1,100 in forestry support activities. Together, these workers earned about $1.03 billion during 2019.[48]

In Oregon, where the BLM manages over 2.5 million acres of forest land, the forestry sector generates over $18 billion in output, over 71,000 jobs, and over $8 billion in state gross domestic product. For every one million board feet of timber harvested on BLM lands in western Oregon, 13 local non-federal jobs are created or maintained, and an estimated $647,000 of non-federal employment income is introduced into local economies.[49] The total economic contribution from the BLM's timber harvest is greater than employment income alone. In 2019, BLM timber sales contributed approximately $625 million to Oregon's economy.

Technical reports from both 2010[50,51] and 2012[52] completed for the Forest Service determined, among other things, that:

- The forest products sector helps sustain the social, economic, and ecological benefits of forestry in the United States.
- Product revenues sustain economic benefits that include jobs and income.
- Ecological and social benefits can be supported by timber revenue to landowners that help keep land in forests and by forest treatments that can help maintain ecological functions.
- Wood products fulfill fundamental needs per capita and have remained competitive with alternate means of meeting those needs.
- U.S. lumber production and demand are expected to increase through 2040.

Impacts to the economies in these states caused by reductions to federal timber supply are well documented. In March 2019, Swanson Group, which has been a family operated company since 1951, was forced to permanently close its sawmill in Glendale, Oregon. According to a Random Lengths report, Swanson said the closure was necessitated by log supply constraints forced on the company by federal timber policy.[53] In 2016, after over 90 years in business, Rough & Ready permanently closed its sawmill in Cave Junction, Oregon, representing the last sawmill in Josephine County. In 1975, the county boasted 22 sawmills. By 2003, that number dropped to six. Today, there are zero. In an interview with the newspaper The Oregonian, the family-owned mill's co-owner cited a lack of federal timber supply for the closure despite the fact that 80 percent of the forest land surrounding the mill is federally managed. The closure resulted in the loss of 85 jobs in a town with a population of less than 2,000.[54]

The management paradigm outlined in the proposed rule would result in highly uncertain outputs from BLM managed land. Those outputs comprise the raw material that forms the foundation of the rural economies in Oregon, Idaho, and Montana that we outline above. This uncertainty is a function of the single use nature of the proposed rule and the directives to attain this use outlined in the proposed rule.

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[48] Simmons, Eric A., et al., *Timber Basket of the Interior west: Idaho's Forest Products Industry and Timber Harvest*, Forest Industry Research Program, University of Montana (2019), available at, http://www.bber.umt.edu/pubs/forest/fidacs/ID2019%20Tables.pdf.

[49] USDI, BLM, PRMP/FEIS for the RMPs for Western Oregon; Volume 2. Table 3-181, pp. 778 (2016).

[50] Hayes, Steven W., et al., *Montana's forest products industry and timber harvest, 2018*. Resour. Bull. RMRS-RB-35. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. 54 p. (2021), available at, https://doi.org/10.2737/RMRS-RB-35.

[51] Ince, P.J.; et al., *U.S. forest products module: a technical document supporting the Forest Service 2010 RPA assessment*. Res. Pap. FPL-RP-662. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory. 61 p. (2011).

[52] Skog, Kenneth E., et al., *Status and Trends for the U.S. Forest Products Sector: A Technical Document Supporting the Forest Service 2010 RPA Assessment*. General Technical Report FPL-GTR-207. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory. 35 p. (2012).

[53] Timber Industry News, Swanson Group to permanently close its Glendale sawmill (March 14, 2019), available at, https://www.timberindustrynews.com/swanson-group-permanently-close-glendale-sawmill/.

[54] Oregon Live, Closure of Rough & Ready mill in Josephine County highlights logging stalemate in Congress (April 19, 2013), available at https://www.oregonlive.com/environment/2013/04/closure_of_rough_ready_in_mill.html.

Since FLPMA was enacted, the BLM managed its lands based on the principle of multiple use with local public input used to identify and prioritize those uses. If finalized, this rule would lead the BLM down an entirely new path where outputs and benefits from BLM land would be entirely a function of how "conservation" is interpreted and applied by each BLM managing unit. This uncertainty is exacerbated by directives for "protection of intact landscapes" and "restoration" described in sections 6102.1, 6102.2, and 6102.3. These sections essentially divide BLM lands into two categories: those that are intact and those that are not. The management, or lack thereof, of these lands would be driven exclusively by either the protection and maintenance of intactness or the need to apply restoration to achieve intactness.

Under this paradigm, an acre of BLM forest land, for example, may be identified as "not intact" and in need of intermediate timber harvest to "restore" its intactness or identified as "intact" but in need of intermediate timber harvest to "protect" its state. The timber outputs from those treatments would be a function of the level of restoration or protection warranted, and therefore unknown. Another acre may be identified as "intact" and not in need of any active management. Timber outputs from that acre would be zero.

If this proposed rule is finalized, the impact to the level of timber outputs from BLM managed forest land would be highly uncertain due to the impetus for management being solely based on intactness. Only after BLM managers assess whether their managed land is intact or not intact could they estimate the level of timber supply available to local economies as an output from either restoration or protection treatments. And that estimate would be unpredictable as conditions change with fluctuating environmental stressors. Notable decreases from the current output levels or erratic and unpredictable outputs would alter the regional flow of timber supplies, disrupt local milling infrastructure, and cause domestic timber supply shortages (some of these impacts are further discussed in our section regarding leakage).

The BLM's conclusion that the proposed rule would not cause uncertainty and disruptions to the flow of timber products off BLM lands surrounding these rural communities that would amount to material adverse effects is baseless. This conclusion ignores the empirical data cited above that clearly links economic outputs and employment to timber product outputs from local sources. It also ignores the evidence that reductions in federal timber supply cause strains on competition that force mills to reach far beyond their historic purchasing circle, impacting neighboring regions.

X. The effects of the proposed rule warrant the preparation of an Environmental Assessment or Environmental Impact Statement.

The proposed rule fails to comply with NEPA. NEPA requires federal agencies to prepare an Environmental Impact Statement (EIS) for all "major Federal actions" that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(C). NEPA's requirement "is a deliberate command" that applies to all major federal actions, subject to limited exceptions.[55]

The proposed rule indicates that the BLM intends to apply the Department Categorical Exclusion (CX) at 43 C.F.R. § 46.210(i) to comply with NEPA. However, the BLM cannot rely on a CX if "extraordinary circumstances in section 46.215 apply."[56] Because the proposed rule has "highly controversial environmental effects," has "highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks," and violates FLPMA, the O&C Act, and potentially other federal laws, the BLM was required to prepare an Environmental Assessment (EA) or EIS.[57]

As outlined above, we believe that the outcomes stemming from this single use mandate are highly uncertain and present a high likelihood of negative repercussions to natural resource-based economies and the livelihoods of the rural communities that depend on them.

CEQ's NEPA implementation regulations indicate that EISs may be prepared for programmatic Federal actions, such as the adoption of new agency programs.[58] The sweeping nature of this proposed rule and the scope of its implementation across 245 million acres of BLM managed land warrant its classification as a new agency program. Shifting the agency's current multiple use mandate toward a single use

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[55] *Cape Hatteras Access Preservation All. v. U.S. Dep't of Interior*, 344 F. Supp. 2d 108, 134 (D.D.C. 2004) (citation omitted).

[56] 43 C.F.R. § 46.210.

[57] *See* 43 C.F.R. § 46.215.

[58] 40 C.F.R. § 1502.4(b).

directive of "conservation" across such a large expanse of land and the creation of conservation leases signifies a "new program."

Under NEPA, the BLM was required to address the proposed rule's significant environmental impacts and consider reasonable alternatives in an EIS or, at a minimum, an EA.[59] The BLM, however, has done neither. The BLM's failure to take a "hard look" at the environmental impacts of the proposed rule is arbitrary and capricious, an abuse of discretion, and contrary to the procedural requirements of NEPA and the Administrative Procedures Act.[60]

In sum, the proposed rule is as a major federal action, as defined by existing regulations, and extraordinary circumstances present preclude the BLM from relying on a CX and, therefore, warrant the preparation of an EA or EIS.[61]

XI. The proposed rule has been pushed forward in a manner inconsistent with FLPMA's state and local government coordination requirements.

Section 202(c)(9) of FLPMA requires the Secretary of the Interior to coordinate "the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments."[62] In coordinating, the BLM must consider the "policies of approved State and tribal land resource management programs."[63] The requirement to "coordinate" requires that the BLM treat the land use planning and management activities of State and local governments on par with its own and harmonize the BLM's land use inventory, planning, and management activities with the activities of State and local governments "to the extent consistent with the laws governing the administration of the public lands." This coordination requirement is broad and applies to regulations, directives, policies and guidance documents that impact land and resource planning and management.

In order to properly coordinate with State and local governments, the Secretary must: "to the extent [the Secretary] finds practical, keep apprised of State, local, and tribal land use plans," "assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands," "assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans," and "provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands."

AFRC has several members that are county governments. It is clear that the BLM did not coordinate with these local governments in the development of the proposed rule and, therefore, violated FLPMA.

XII. Conclusion.

In conclusion, AFRC is hopeful that management of all BLM land directed by FLPMA will remain guided by active public participation based on the principles of multiple use. We are deeply concerned that adoption of this proposed rule as it is currently structured will undermine both public participation and multiple use, traditions and values that the American public expects.

We urge the BLM to withdraw the proposed rule, or, at a minimum, engage in a more inclusive and transparent process that would start with an advanced notice of proposed rulemaking that clearly outlines what "problem" the BLM is seeking to solve, what outcome the BLM is hoping to achieve, and what information the government is lacking and seeking to obtain from the public, issue experts, and interested stakeholder groups. In no case should the proposed rule move forward without addressing the specific policy and legal concerns and objections outlined above.

Sincerely,

TRAVIS JOSEPH,
President/CEO

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[59] 42 U.S.C. § 4332(2)(C).
[60] 5 U.S.C. § 706(2); 42 U.S.C. § 4332(2)(C).
[61] 40 C.F.R. § 1508.1(q).
[62] 43 U.S.C. § 1712(c)(9).
[63] 43 U.S.C. § 1712(c)(9).

The CHAIRMAN. Again, thank you to the witnesses for being here today.

Members of the Committee may have some additional questions for our witnesses, and we will ask that they respond to these in writing. Under Committee Rule 3, members of the Committee must submit questions to the Committee Clerk by 5 p.m. on Wednesday, June 21, 2023. The hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Committee on Natural Resources stands adjourned.

[Whereupon, at 1:31 p.m., the Committee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Submissions for the Record by Rep. Fulcher

June 14, 2023

Hon. Deb Haaland, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Re: Bureau of Land Management Proposed Rule, Conservation and Landscape Health

Dear Secretary Haaland:

On April 3, 2023, the Bureau of Land Management ("BLM") released a proposed rule for "Conservation and Landscape Health" (the "Proposed Rule"). This Proposed Rule, if adopted, could fundamentally alter the future management of BLM lands to the detriment of recreation, livestock grazing, mineral extraction, renewable energy production, and other common uses on BLM lands. In 1976, Congress declared in the Federal Land Policy and Management Act ("FLPMA") that the BLM must manage its lands "on the basis of multiple use and sustained yield."[1] Yet this Proposed Rule seeks to define "conservation" as a "use" within FLPMA's multiple use framework.[2] This reframing of the term "multiple use" would contravene FLPMA and violate Federal case law in *Public Land Council v. Babbitt*, where the 10th Circuit Court of Appeals found that the BLM lacks the statutory authority to prioritize conservation use to the exclusion of other uses.[3] The Proposed Rule could push BLM lands into a protection-oriented management regime more akin to the National Park Service than an agency statutorily obligated to promote multiple use and sustained yield.

We oppose the Proposed Rule and urge the BLM to start over, withdraw its proposal, and instead focus its efforts on working closely with states, local governments, and stakeholders on rulemaking that will truly enhance active management and actual conservation of BLM lands within the framework of multiple use and sustained yield.

National Environmental Policy Act

We anticipate the Proposed Rule would have a significant impact on the environment, thus warranting analysis through an environmental impact statement under the National Environmental Policy Act ("NEPA"). However, the BLM has declared that the Proposed Rule's "environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis"[4] and thus the Proposed Rule will be categorically excluded from NEPA analysis. Federal case law requires the BLM to "adequately explain its decision" "[w]hen an agency decides to proceed with an

[1] 43 U.S.C. 1701(a)(7).
[2] 88 Fed. Reg. 19583.
[3] *See Public Lands Council v. Babbitt*, 167 F. 3d 1287 (10th. Cir. 1999), where the 10th Circuit held that the BLM could not issue a grazing lease for the purpose of conservation.
[4] 88 Fed. Reg. 19583, at 19596.

action in the absence of an EA or EIS".[5] BLM's rationale for using a categorical exclusion does not adequately explain its position.

The decision to categorically exclude from NEPA the Proposed Rule, which has such far-reaching implications, is a peculiar choice for the BLM when other major BLM rulemaking efforts are being analyzed under NEPA. For example, the BLM's ongoing rulemaking for its revised grazing regulations includes a full environmental impact statement—with states and counties able to participate in the cooperating agency process and provide input and cooperation. The environmental impact statement for the BLM grazing regulations will be subject to the Council on Environmental Quality NEPA requirement that an environmental impact statement include a discussion of "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned."[6] This requirement will give states and counties the opportunity to identify conflicts between the BLM's proposed grazing rule and their respective state and county resource management plans. Unfortunately, no such opportunity will exist for the Proposed Rule since the BLM is not preparing an environmental impact statement.

The BLM's Proposed Rule could impact the environment in many ways. One salient example is vegetation treatments, which the BLM currently uses to improve rangelands for both wildlife and livestock while reducing the risk of catastrophic wildfires. The Proposed Rule could, depending on implementation, seriously inhibit the BLM's ability to conduct vegetation treatments on BLM land due to the Proposed Rule's focus on protecting "intact landscapes." Thus, the Proposed Rule could have a tremendously negative impact on native plant species, watersheds, and air quality if adopted. The potential for severe environmental consequences of the Proposed Rule clearly warrants analysis through an environmental impact statement. States, local governments, and stakeholders deserve the opportunity to have their voices heard through the cooperating agency process included in the development of an environmental impact statement.

Existing Conservation on BLM Lands

Tens of millions of acres of BLM lands across the western Unites States are already protected under strict Federal designations such as national monuments, wilderness areas, wilderness study areas, areas of critical environmental concern, etc. That acreage is in addition to millions of acres of other protected, non-BLM public lands such as national parks, U.S. Forest Service wilderness areas, and U.S. Forest Service inventoried roadless areas. Of the remaining BLM lands still open to multiple use, there is still a very high bar set before any kind of surface disturbing activities can be authorized, and many barriers to development in existing BLM resource management plans. In short, the Proposed Rule seems to be a solution in search of a problem when so much BLM land in the western United States is already under strict Federal protection.

The Proposed Rule seems to misinterpret the very notion of conservation. Conservation is not a hands-off "use" that excludes more active uses. Conservation is an essential element of the regular activities, best management practices, and proper stewardship that occur on BLM land every day. Conservation, by its plain meaning, encompasses the stabilization of eroding stream banks, predator control to protect threatened and endangered species, removing encroaching pinyon and juniper trees to restore healthy sagebrush rangelands, reclamation work on former mining sites, adaptive grazing systems to better conserve native plants, improved fencing to protect riparian areas, controlled burns to reduce fuel loads, installation of wells and pipelines to provide water to native wildlife, wildfire suppression, enhancements to recreational infrastructure that reduce the impacts of visitation, and so much more. The way to enhance conservation on BLM lands is to promote the multiple use of those lands and encourage the principles of conservation in all of those uses. A new BLM rule designed to exclude productive and sustainable uses on BLM land will only contravene the principles of conservation.

[5] *Sierra Club v. Bosworth*, 510 F.3d 1016, 1026 (9th Cir. 2007).
[6] 40 C.F.R. Section 1502.16(a)(5)

Specific Provisions

1610.7-2—Areas of Critical Environmental Concern [7]

Areas of Critical Environmental Concern ("ACECs") are special land designations created by Congress under FLPMA that allow the BLM to determine what special management attention is needed to protect important historical, cultural, and scenic values. While the BLM must prepare and maintain inventoried lands that may qualify as ACECs, the designation of those ACECs can only occur when the BLM adopts or amends the relevant resource management plan ("RMP"). Congress specifically prohibited the BLM from changing management of lands that may qualify for ACEC designation until the official designation of the ACEC in a BLM RMP.[8] FLPMA states that "[t]he preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands." [9] Prior to ACEC designation, states, counties, and the public have various opportunities to weigh in on whether the potential ACECs should be designated or receive any change in management.

The BLM's Proposed Rule would flip the principle on its head, in direct violation of FLPMA. The Proposed Rule states that if ACEC nominations are received outside of the land use planning process, "**interim management may be** evaluated, considered, and **implemented** to protect relevant and important values until the BLM completes a planning process to determine whether to designate the area as an ACEC" (emphasis added).[10] In short, the Proposed Rule would allow the BLM to start managing potential ACECs in their inventories as ACECs without going through the planning process and without any input from states, local government, or the public. This "interim management" would constitute a clear violation of FLPMA if it resulted in a "change of the management or use of public lands" prior to formal designation.[11]

Historically, ACEC designations have been used judiciously by the BLM in western states, with full consideration given to the concerns of states, local governments, and stakeholders. Existing ACECs are spread throughout western states and are limited to relatively small areas. If the Proposed Rule is adopted, we anticipate a tremendous expansion of lands managed with ACEC-level protections after being nominated by members of the public and placed under "interim management" outside of the formal ACEC designations process.

6102.1—Protection of Intact Landscapes [12]

The Proposed Rule introduces a new concept to BLM land management—the protection of "Intact Landscapes." Intact landscapes would be defined as:

> ". . .*an unfragmented ecosystem that is free of local conditions that could permanently or significantly disrupt, impair, or degrade the landscape's structure or ecosystem resilience, and that is large enough to maintain native biological diversity, including viable populations of wide-ranging species. Intact landscapes have high conservation value, provide critical ecosystem functions, and support ecosystem resilience*." [13]

The Proposed Rule would then require the BLM to identify intact landscapes on public lands, and manage these lands to protect them "from activities that would permanently or significantly disrupt, impair, or degrade the structure or functionality of intact landscapes." [14] While the specific activities that would harm these intact landscapes are not identified in the Proposed Rule, we are concerned that different forms of multiple use such as conifer removal projects, livestock grazing, renewable energy development, mining, oil and gas exploration, road improvements, dispersed camping, and many other activities could be deemed to "disrupt, impair, or degrade" in different situations. Management of intact landscapes under the Proposed Rule will likely threaten many of the activities currently occurring on BLM lands.

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[7] 88 Fed. Reg. 19596.
[8] 43 U.S.C. 1711(a).
[9] *Id.*
[10] 88 Fed. Reg. 19596.
[11] *Supra*, note 7.
[12] 88 Fed. Reg. 19599.
[13] 88 Fed. Reg. 19598.
[14] 88 Fed. Reg. 19599.

For example, enormous swaths of BLM land in the United States could fall under the vague category of "intact landscapes." Approximately 244 million acres of surface estate in the western United States falls under the BLM's domain, with resilient ecosystems that include viable populations of wide-ranging species and biological diversity. Western BLM lands cover vast, unbroken stretches of ground, contiguous with other parcels of public land. The majority of that land could, arguably, provide high conservation value, critical ecosystem functions, and support ecosystem resilience. In fact, it is conceivable that almost all of the West's BLM land could qualify as "intact landscapes" under the BLM's vague and overly-broad definition. If the Proposed Rule is implemented, much of the West's remaining multiple use land could be subject to new management restrictions for intact landscapes—a significant departure from FLPMA's intent.

The healthy condition of BLM land in much of the western United States gives credit to the ranchers, hunters, recreationists, and others who use BLM lands responsibly and sustainably, often working to leave the landscape in better condition for future users. In some parts of the West, mining, oil, and gas companies have invested significant sums to reclaim and restore lands to previous ecosystem functionality and biodiversity. Healthy populations of native wildlife on BLM land give credit to state wildlife managers and their partners. And it also gives credit to the Federal, state, and local partners who have worked over the decades to improve watersheds and rangeland health through active management. The Proposed Rule's proposed restrictions on "intact landscapes" could ultimately punish westerners for being good stewards of the land.

Fear of this unintended punishment accompanies the Proposed Rule in many similar states. The types of active management most needed to restore or improve landscape health could be disallowed in the pursuit of the BLM's new protections for "intact landscapes."

6102.4—Conservation Leases [15]

Under the Proposed Rule, the BLM will be able to grant a "conservation lease" to individuals, environmental advocacy groups, businesses, non-governmental organizations, or Tribal governments.[16] States and local governments appear to be excluded. Conservation leases will be issued to ensure "ecosystem resilience" and to protect, manage, and restore natural environments, cultural or historic resources, or ecological communities.[17] There do not appear to be any size limitations on lands placed under a conservation lease, which can last for up to 10 years.[18] Other than valid existing rights, the BLM will not authorize any other uses on the leased lands that are inconsistent with the purpose of the conservation lease.[19] Only "casual use" by the public of the leased lands will be allowed without specific BLM authorization.[20] Potential costs for conservation leases are not included in the Proposed Rule.

Allowing environmental organizations, businesses, or members of the public to lease public lands for the exclusion of other uses runs completely contrary to the principles of multiple use and sustained yield. Public lands are intended to be just that—open to the public, not available for environmental organizations to rent to the exclusion of others. If the BLM "shall not authorize **any** other uses of the leased lands that are **inconsistent** with the authorized conservation use," (emphasis added)[21] the States are very concerned that activities such as vegetation management, livestock grazing, hunting, dispersed camping, road improvements, or other activities could be considered "inconsistent" and disallowed from leased lands. Allowance of conservation leases could allow wilderness advocacy organizations to lease large swaths of BLM land and essentially impose *de facto* wilderness on public lands without congressional approval. States and counties are not only excluded from holding conservation leases, but do not appear to have any role in the BLM approval process for a conservation lease. Nor is there any indication that the BLM would need to analyze the potential impacts of a proposed lease under NEPA.

While there could be some value in a program for states or local governments to hold conservation leases on BLM lands (for example, it could be beneficial if a state agency could hold a conservation lease on a BLM site where it was conducting a vegetation project in order to meet the objectives of the project) the Proposed Rule

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[15] 88 Fed. Reg. 19600.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

does not appear to allow for any kind of state or local government involvement in conservation leasing.

The BLM's mandate is to accommodate a variety of uses for the public's benefit. This balance, though often difficult to achieve, works well across much of the BLM lands in the western United States, where activities such as motorized recreation, livestock grazing, hunting, and mountain biking, often occur on the same parcel of land without conflict, and where energy or mineral development can occur with little if any impact on the surrounding landscape. The BLM must find ways to work with states, counties, and local partners to better achieve this balance rather than allowing outside organizations to dictate what occurs on public land.

Subpart 6103—Tools for Achieving Ecosystem Resilience[22]

The Proposed Rule requires the BLM to use standards and guidelines for land health in their land use plans.[23] While the Proposed Rule appears to allow some local flexibility for the development of specific standards, the Proposed Rule states that the BLM must manage "all lands and program areas to achieve land health."[24] This provision could have negative ramifications for a number of uses, such as solar energy, wind farms, geothermal development, mines, oil and gas wells, or transmission lines. While the State and BLM share the goal of maintaining healthy lands, the BLM's multiple use mandate must allow for intensive surface disturbing activities in some locations, activities that will likely conflict with a mandate to achieve land health on "all lands." Some uses of BLM land, such as transmission lines, renewable energy projects, and mining of critical minerals, are essential for America to expand emerging technologies and ensure energy security. Such uses may become extremely difficult, if not impossible, to site on BLM lands under an "all lands" approach to land health standards. The BLM must consider a more flexible approach to land health standards that allows for a broader array of uses, including some with surface-disturbing impacts.

Conclusion

The continuation of multiple use and sustained yield mandates for BLM lands is essential for our states. Western states will struggle to grow and thrive without the flexibility and balance Congress requires in BLM land management. We urge the BLM to set aside the Proposed Rule in favor of a new, collaborative process with states, local governments, and stakeholders coming to the table.

Sincerely,

Governor Spencer Cox
State of Utah

Governor Brad Little
State of Idaho

Governor Greg Gianforte
State of Montana

Governor Joe Lombardo
State of Nevada

Governor Kristi Noem
State of South Dakota

Governor Mark Gordon
State of Wyoming

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[22] 88 Fed. Reg. 19603.
[23] *Id.*
[24] *Id.*

Submissions for the Record by Rep. Curtis

June 20, 2023

Hon. Bruce Westerman, Chairman
Hon. Raul Grijalva, Ranking Member
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman and Ranking Member Grijalva:

On behalf of the Motorcycle Industry Council [1] (MIC), Specialty Vehicle Institute of America [2] (SVIA), and Recreational Off-Highway Vehicle Association [3] (ROHVA)—together referenced as the Associations, I write in support of H.R. 3397, To require the Director of the Bureau of Land Management to withdraw a rule of the Bureau of Land Management relating to conservation and landscape health.

As you are aware the BLM's proposed rule titled, "Conservation and Landscape Health," proposes changes that are too broad in nature and sweeping in scope to realistically be implemented, or even understood in totality. It is impossible to understand how a brand-new conservation leasing program will work when at the same time, a newly defined "conservation" is being elevated to a use on equal footing with other uses. We also believe that some of the proposed changes to the management of BLM lands are foundational changes not envisioned by Federal Land Policy and Management Act (FLPMA) and are convinced that the proposals taken in total warrant Congressional action to implement as a whole.

As a result, we urge the Committee to report H.R. 3397, and for the full House of Representatives to quickly take up and pass the legislation.

Please see the attached comments the Associations prepared for submission to the BLM which outline our concerns with the proposed rule in more detail.

Thank you for your consideration.

Sincerely,

Senior Vice President Government Relations
Motorcycle Industry Council
Recreational Off-Highway Vehicle Association
Specialty Vehicle Institute of America

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[1] The Motorcycle Industry Council (MIC) is a not-for-profit, national trade association representing several hundred manufacturers, distributors, dealers and retailers of motorcycles, scooters, motorcycle parts, accessories and related goods, and allied trades.

[2] The Specialty Vehicle Institute of America (SVIA) is the national not-for-profit trade association representing manufacturers, dealers, and distributors of all-terrain vehicles (ATVs) in the United States. SVIA's primary goal is to promote safe and responsible use of ATVs.

[3] The Recreational Off-Highway Vehicle Association (ROHVA) is a national, not-for-profit trade association formed to promote the safe and responsible use of recreational off-highway vehicles (ROVs—sometimes referred to as side-by-sides or UTVs) manufactured or distributed in North America. ROHVA is also accredited by the American National Standards Institute (ANSI) to serve as the Standards Developing Organization for ROVs. More information on the standard can be found at https://rohva.org/ansi-standard/.