

**Statement of
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**House Committee on Natural Resources
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

June 15, 2023

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.