



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

June 14, 2023

Subject: 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.

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.

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 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,

⁴ 88 Fed. Reg. 19583, at 19596.

⁵ *Sierra Club v. Bosworth*, 510 F.3d 1016, 1026 (9th Cir. 2007).

⁶ 40 C.F.R. Section 1502.16(a)(5)

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 United 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.

Specific Provisions

1610.7-2 – Areas of Critical Environmental Concern⁷

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

⁷ 88 Fed. Reg. 19596.

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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 Landscapes¹²

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

⁸ 43 U.S.C. 1711(a).

⁹ *Id.*

¹⁰ 88 Fed. Reg. 19596.

¹¹ *Supra*, note 7.

¹² 88 Fed. Reg. 19599.

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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.

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.”

¹³ 88 Fed. Reg. 19598.

¹⁴ 88 Fed. Reg. 19599.

6102.4—Conservation Leases¹⁵

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

¹⁵ 88 Fed. Reg. 19600.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

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the objectives of the project) the Proposed Rule 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 Resilience²²

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.

²² 88 Fed. Reg. 19603.

²³ *Id.*

²⁴ *Id.*

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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