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Dr. Eric Werwa
Deputy Assistant Secretary
Policy and Environmental Management
United States Department of the Interior
1849 C Street N.W.
Washington, D.C., 20240

Re: Federal Register Document Number 2021-28548, Request for Information to Inform Interagency Efforts to Develop the American Conservation and Stewardship Atlas, 87 Fed Reg. 235 (Jan. 4, 2022)

Dr. Werwa:

On behalf of the State of Montana, thank you for the opportunity to offer comment on the development of the *American Conservation and Stewardship Atlas* ("Atlas").

The Department of the Interior's (DOI) noticed request for information (Notice), as well as the "30 By 30" initiative itself, is long on philosophy and short on detail. Both the DOI and President Biden lack the jurisdiction and funding requisite to implement stated efforts. For these reasons, and as explained more fully herein, Montana declines to participate in the DOI's "interagency" efforts.

1) The actions contemplated by the DOI lack requisite authority.

The DOI acts beyond its authority if it believes that it can define "conservation" and then adjudge what state and private lands fulfill that standard. Attempts to color this effort as "interagency" through the solicitation of stakeholder comment do not create a congressionally authorized foundation upon which the DOI can act.

The DOI's Notice cites Section 216(a) of President Biden's Executive Order 14008 (E.O. 14008) as the basis for its present effort. However, President Biden acted beyond his authority in issuing said order. Tackling the Climate Crisis at Home and Abroad, Exec. Order No. 14008, § 216(a)(i) and (ii) (Jan. 27, 2021); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) ("In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be the lawmaker.") Similarly, there appears to be no underlying congressional mandate supporting the endeavor. "Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided." *Nat'l Fed'n of Indep. Bus. v. Dep't of Labor, et al.* 142 S. Ct. 661, 665 (Jan. 13, 2022).

While President Biden's order directs the DOI to solicit input "in identifying strategies that will encourage broad participation in the goal of conserving 30 percent of our lands and waters by 2030," "propose guidelines for determining whether lands and water qualify for conservation," and "establish mechanisms to measure progress toward the 30-percent goal," the more critical issues are 1) whether Congress granted authority to the DOI to assume those duties, and 2) whether President Biden had the authority to issue the relevant substance of E.O. 14008. Montana can find no authority for either the DOI's efforts or the executive order and, for that reason, declines to participate.

2) **Even if the DOI had authority to undertake the actions set forth in E.O. 14008, those actions are inefficient and will cause significant harm to Montana and its private landowners.**

The DOI would have Montana think that the Atlas is nothing more than an exercise in information gathering. However innocuously the DOI portrays this Atlas, the effort is wasted and could create significant harm to both Montana and its private landowners.

Land ownership, land composition, and land management are property attributes that are continually changing. As such, by the time the initial Atlas is complete, it will already be outdated. Even with unlimited resources, Atlas accuracy would require constant vigilance in updating, a service the federal government has already proven incapable of providing.

For example, the United States Geological Survey (USGS) maintains a Protected Areas Database (PAD) which, upon cursory review by Montana agencies, contains land status and designation inaccuracies. Momentarily ignoring the obvious question of whether the USGS PAD already serves the same purpose as an Atlas, committing resources to another project that can be neither accurate nor efficient is, indeed, wasteful.

Even if the DOI could ensure timely and accurate updates, the information and designations contained in the Atlas could be detrimental to private landowners. Attributing undefined characteristics like "conservation" or "wildlife habitats and corridors" to private lands influences property values, may lead to promulgation of land restrictions, and raises a number of property "taking" concerns pursuant to U.S. Constitution amend. V. To add those characterizations to, or manipulate values of, state lands likely exceeds federal authority and implicates U.S. Const. amend. X.

Montana has done its job insofar as conserving natural areas and resources. Successful conservation requires a deep understanding of the land and of the people, and the State of Montana works collaboratively with land trusts, environmental groups, industry stakeholders, and private landowners to ensure the protection of its wildlife and open space. It accomplishes these goals while balancing the needs and rights of every citizen. Montana asks that the DOI allow this work to continue, unencumbered by federal attempts to "help."

3) Issuing ambiguous questions for comment does not constitute the public notice required for federal action.

The DOI and other federal agencies seem to have recently adopted the practice of proposing vague action accompanied by inquiries, presumably to spur public comment that puts “meat on the bones” of the equivocal action proposed. This practice inappropriately shifts the burden to stakeholders and opens the door to illogical outgrowths of the initial proposal.

The Atlas is an extreme example of this approach, as it does not even provide stakeholders a skeletal concept. What constitutes “conservation?” Is the referenced 30 percent goal in relation to *all* lands and waters in the United States, or only those under the management of the federal government? What is a “safe outdoor opportunity?” What is a “nature-deprived” community? What is a “stewardship action?” What is a “permanent protection?”


Even if the DOI had clear authority to pursue the Atlas it considers now, it is the DOI’s job to put forward a proposal for comment...not initiate stakeholder fishing expeditions. The notice sets forth no clear concepts, creating a scenario in which stakeholders are unable to comment on a precise, common proposal. This practice will result in an Atlas that not everyone has had the opportunity to engage and comment upon.

4) It is unclear how the DOI plans to fund the Atlas or any other associated efforts.

The DOI’s decision to pursue an Atlas, and its associated efforts, is premature for many reasons, not the least of which being that the DOI currently has no annual appropriation to fund the endeavor.

Even if the DOI had requisite funding, inflation in the Rocky Mountain West is at an all-time high of 9 percent. At a time when inflation is at a 40-year high and soaring, it is irresponsible to commit funds to advance inefficient and wasteful efforts, especially when the identified goals are already successfully met by the states and other stakeholders.

Sincerely,



Greg Gianforte
Governor
State of Montana



Director Amanda Kaster
Montana Department of Natural Resources
and Conservation



Director Hank Worsch
Montana Department of Fish, Wildlife and
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Director Christopher Dorrington
Montana Department of Environmental
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