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U.S. Department of the Interior
Director (630), Bureau of Land Management
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Attn: 1004-AE-92

Submitted via Federal eRulemaking Portal at [regulations.gov](https://www.regulations.gov), [Docket BLM-2023-0001](#)

July 5, 2023

Re: Comments on BLM Proposed Conservation and Landscape Health Rule

Dear Director Stone-Manning:

On behalf of organizations and their millions of members and supporters, please accept these comments in support of the Bureau of Land Management's (BLM's) Proposed Conservation and Landscape Health Rule, also referred to as the proposed public lands rule.^[1] If strengthened and finalized, the public lands rule presents a generational opportunity to improve the agency's management of our shared public lands and resources to satisfy long-standing directives from Congress and address the climate, economic, nature and biodiversity loss, and environmental justice challenges we are facing. The rule would do so by placing conservation on equal footing

with other consumptive multiple uses and establishing a guiding principle that BLM manage for resilient public lands through protection of intact, native habitats, restoration of degraded habitats, and informed decision-making.[2] Such regulatory direction would ensure the agency can “meet the present and future needs of the American people” and protect an array of public lands resources and values, as Congress directed nearly 50 years ago in the Federal Land Policy & Management Act (FLPMA).[3]

The proposed public lands rule represents a critical step in achieving the Biden Administration’s America the Beautiful commitment to conserve, connect, and restore 30 percent of U.S. lands and waters by 2030.[4] The rule also holds potential to serve as a necessary component of a comprehensive climate plan for public lands that guarantees we conserve lands for climate, ecological, and community resilience; meet emissions goals by phasing out drilling and responsibly ramping up renewable energy, while supporting communities in making an economic transition; protect carbon sinks, especially old growth and mature forests; and center community and Native American Tribal input in public lands decision-making

The proposed public lands rule is entirely consistent with – and necessary to achieve – longstanding congressional mandates. **Indeed, conservation has been a central (if underutilized) part of BLM’s mandate since Congress enacted FLPMA in 1976.** As part of its multiple use and sustained yield mission, FLPMA directs BLM to manage public lands in a way that “protect[s] the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archaeological values” and “where appropriate, [to] preserve and protect certain public lands in their natural condition.”[5] Among other conservation obligations, Congress specifically obligates BLM to “give priority to the designation and protection of areas of critical environmental concern” (ACECs) and to “take any action necessary to prevent unnecessary or undue degradation” when managing the public lands.[6] To effectuate these goals, FLPMA directs BLM to “establish comprehensive rules and regulations after considering the views of the public”[7] – which is precisely what BLM is doing with this proposed rule.

The proposal is also supported by a well-established and growing body of science documenting the need to protect and connect intact landscapes and manage for resilient ecosystems. Protected areas – such as ACECs with clear conservation management direction – are necessary to sustain biological diversity and natural ecological processes.[8] In the face of climate change and human-caused stressors, however, protected areas must represent the full range of native ecosystem types and successional stages; be sufficiently large and well-distributed to maintain viable populations of native species; be sufficiently connected to allow movement of species

between areas; and be managed so that large-scale ecological processes such as fires, floods, and disease outbreaks are allowed to occur.^[9] In short, ecosystem resilience requires landscapes to be relatively intact, diverse, and connected.^[10]

While the proposed public lands rule includes much needed direction on a range of conservation uses and tools, we recommend the final rule be strengthened in various ways, as outlined below. In addition, at the same time the rule is finalized, BLM should provide clear direction on *how* it will be implemented. It is not sufficient to wait to implement the rule until each field office revises its resource management plan – a process that is likely to take several decades. Many elements of the proposed rule – including but not necessarily limited to identification and protection of intact landscapes, a watershed condition classification and assessment process, consideration of potential ACECs, prevention of unnecessary or undue degradation, application of the mitigation hierarchy, and land health assessments, evaluations, and determinations – should be implemented more immediately and at any time BLM takes a discretionary action. And certain elements can and should be implemented in a cohesive fashion through nationwide or regional efforts that include public input and may result in plan amendments. In general, actions implementing the final rule should be subject to future public process and environmental review under the National Environmental Policy Act (NEPA) and other applicable laws, as well as consultation with Native American Tribes.

Advancing Conservation and Ecosystem Resilience

Despite FLPMA's clear mandate to do so, BLM has never properly balanced the various uses of public lands, often prioritizing mining, oil and gas development, grazing, motorized recreation, and other consumptive or impactful uses over its mandate to protect natural and cultural resources. The proposed public lands rule sets out a much-needed framework for placing conservation – including protection and restoration activities designed to achieve **ecosystem resilience** – on an equal footing with consumptive uses. The proposal identifies a number of tools for achieving conservation and land health, including but not limited to identifying and protecting **intact landscapes** (6102.1 & 6102.2); promoting and planning for **restoration** (6102.3); developing and applying **land health standards** to achieve functioning watersheds, healthy ecological processes, water quality standards, and wildlife habitat (6301.1); adopting **watershed condition classifications** (6102.5(a) & 6103.2(a)); applying the **mitigation hierarchy** (6102.5-1); and using **high-quality information**, including Indigenous Knowledge (6101.4).

We support these conservation-oriented tools (as well as others discussed in more detail below). However, BLM should consider ways to simplify and clarify the regulatory text and provide additional direction on when and how the various and sometimes overlapping tools will be implemented at the programmatic, plan, and project levels. For instance, the final rule should explain how tools like watershed condition classifications and land health standards relate to BLM's existing and proposed assessment, inventory, and monitoring processes and tools, and to the proposed rule's processes for restoration planning and prioritization.

The agency should also make the following adjustments and additions to the final rule to address key components of achieving land health and ecosystem resilience:

- Ensure the definitions of **intact landscape** and **resilient ecosystems** and associated regulatory direction reflect that ecosystems are more resilient when they are both intact and **connected** to other ecosystems, thereby creating a network of landscapes that is more resilient to natural and human-caused disturbances than individual, isolated landscapes. The definition of resilient ecosystems should also include **species composition and distribution** as fundamental attributes (along with structure, processes, and function).
- Consistent with [Instruction Memorandum 2023-005](#) and CEQ's March 2023 [Guidance on Ecological Connectivity and Wildlife Corridors](#), include identification and protection of **habitat connectivity areas** to support or facilitate species movements and other ecological processes across terrestrial and aquatic ecosystems. The final rule should also incorporate habitat connectivity into land health fundamentals and encourage, where feasible, cooperative management agreements with state and Tribal wildlife and transportation agencies to ensure shared management for connectivity.
- The protection of **intact landscapes** cannot wait for land use plan revisions. Where no recent inventory of intact landscapes has been completed, require that, prior to approving any ground-disturbing activity or mineral leasing, BLM conducts a **comprehensive inventory** of intact landscapes, including lands with wilderness characteristics, that could be affected by the proposed action and ensure that the activity or lease will not degrade any such lands.
- Strengthen language on **climate resilience**, including the need to **mitigate greenhouse gas emissions** through application of the mitigation hierarchy and requirement to prevent unnecessary or undue degradation. Consistent with [CEQ's Interim NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change](#) and with achieving land health and ecosystem resilience, the final rule should also clarify the need for all BLM programs, plans,

and project-level decisions to calculate, track, and disclose lifecycle emissions from proposed actions. Similarly, the final rule should require consideration of alternatives that would avoid, minimize, and mitigate greenhouse gas emissions. These are critical elements of a **climate plan for public lands**.

- Recognize the importance of conserving the **wilderness resource** as a key component of achieving land health and ecosystem resilience – and complying with FLPMA’s mandate to maintain an inventory of public lands resources and values.[\[11\]](#) The final rule should require complete and current inventories of **lands with wilderness characteristics** (LWC), determinations of how to manage those lands, and protective management requirements for LWC. It should also clarify BLM’s long-standing authority under section 202 of FLPMA to establish new **Wilderness Study Areas** (WSAs) through land management planning.[\[12\]](#)
- To ensure that management actions support the protection and restoration of watershed health, ecological function, and resilience of America’s public lands, retain and strengthen direction on **watershed condition classifications**. The final rule should require regularly updated classification of watersheds, identification of priority watersheds, and the development of watershed restoration action plans. Further, the rule should **prohibit activities that would lead to long-term degradation** of watershed condition, including actions that would result in a properly functioning watershed becoming an at-risk or impaired watershed.
- Clarify and affirm that conserving and recovering **threatened and endangered species** is prioritized over – not merely on par with – other multiple uses, consistent with BLM’s obligation under the Endangered Species Act.
- In accordance with Executive Order 14072, protect and restore **older and mature forests** on BLM lands as a key component of achieving land health and ecosystem and climate resilience. The final rule should address the need to establish old growth emphasis areas and manage them to protect and restore old growth conditions, including through ACEC designation. BLM’s rule should also prohibit cutting of legacy trees over 150 years old, including outside old growth emphasis areas, and with exceptions for emergencies or Tribal cultural uses.

Prioritizing Areas of Critical Environmental Concern

FLPMA requires the BLM to “give priority to the designation and protection” of ACECs and to “promptly develop” associated regulations and plans[\[13\]](#) – congressional mandates with which BLM has long failed to comply. We are pleased to see BLM propose much-needed regulatory

direction to ensure compliance with FLPMA and agree that ACECs are a significant land use designation to protect important natural, cultural, and scenic resources, intact landscapes, habitat connectivity, and resilient ecosystems.

We support the proposed requirements for identification and management of ACECs and for the removal of an existing ACEC designation. However, the final rule must be strengthened to clarify how BLM will *prioritize* the identification, designation, and protection of ACECs, including priority management. Specifically, the final rule should:

- Create a **presumption of designation** that requires the agency to designate potential ACECs that meet the relevance and importance criteria and require special management to maintain and conserve those values.
- Retain and strengthen the **eligibility criteria**, including adding habitat connectivity and biodiversity to the importance criteria.
- Establish a **non-degradation standard** as part of priority management for ACECs, requiring the authorized officer to manage the area to conserve, protect, and enhance its resources, systems, or processes and prescribing strict limitations on uses that may affect the values the ACEC was established to protect. This would include prohibiting renewable and non-renewable energy development, recommending mineral withdrawal, prohibiting road and motorized route construction, and limiting off-road vehicle use to designated routes, except as needed for the administration of the area or to respond to an emergency.
- Require that **ACEC nominations** received outside the planning process be evaluated within 120 days of receipt and, if found to meet the relevance and importance criteria, **temporary management** must occur.
- Retain and strengthen **ACEC removal requirements**, including clarifying that State Director authority to remove an ACEC designation is non-delegable and requiring a finding that removal is in the public interest.
- Particularly given the backlog of resource management plan revisions, direct BLM to complete an **inventory and evaluation of potential ACECs** prior to undertaking any ground-disturbing activities or mineral leasing. This should include an assessment of whether existing management prescriptions are sufficiently protecting identified relevant and important values.

Preventing Unnecessary or Undue Degradation

FLPMA imposes a broad, substantive duty on BLM “to prevent unnecessary or undue degradation” (UUD) when taking any or all discretionary actions.^[14] Nevertheless, outside of the hardrock mining context, BLM lacks regulatory direction, and local land managers are left applying the standard on an ad hoc and case-by-case basis that often falls short of FLPMA’s mandate.^[15] The proposed public lands rule rightly seeks to remedy this uncertainty by defining UUD and extending the definition to apply broadly as part of managing for ecosystem resilience.^[16] BLM should strengthen this much-needed regulatory direction in two ways.

First, the final rule should clarify that, in addition to prevention of UUD being an important tool to manage for ecosystem resilience, including through restoration, BLM has an affirmative obligation under FLPMA to prevent UUD whenever it takes a discretionary action, in any setting. This includes application of the regulatory definition and corresponding analysis, which should be conducted as part of the agency’s land use planning and site-specific decision-making processes, and in compliance with NEPA. BLM should also look holistically at whether it is satisfying its obligation to prevent UUD during programmatic efforts like land health assessments and other broadly applicable programs and plans.

Second, the final rule should include a more robust definition of UUD that: (a) defines degradation to include adverse direct, indirect, and cumulative effects to the enumerated land resources and values listed in section 1701(a)(8) of FLPMA; (b) directs BLM to assess UUD based on an objective degradation standard rather than a proposed use’s goals; and (c) provides a substantive, uniform, and defensible standard to ensure programs, plans, and projects do not cause avoidable or excessive degradation. The final rule preamble should provide examples applying the definition and its terms to various program areas to ensure the functionality of the UUD definition.

Conservation Leasing

We support the concept of conservation leasing as a new tool to ensure opportunities for durable compensatory mitigation and to allow the public and Tribes to directly support durable protection and restoration efforts of natural environments, cultural or historic resources, and ecological communities. Title III of FLPMA provides BLM with a broad grant of authority to establish conservation leases.^[17] The final rule should clarify that proposed conservation leases be subject to site-specific NEPA and consistent with the relevant resource management plan, any

local, regional, or national restoration priorities or plans, land health standards, and other best management practices.

Tribal Consultation & Co-Stewardship

BLM should consult with Native American Tribes to further develop the regulatory language and ensure it fully advances opportunities for co-stewardship, incorporation of Indigenous Knowledge, respect for Tribal sovereignty and treaty and other reserved rights, protection of Tribal cultural sites, and carrying out Tribal consultation in ways that honor the unique historic and current connections of Native American Tribes and Indigenous peoples to public lands.

Thank you for the opportunity to comment on this generational opportunity to place conservation on equal footing with other multiple uses. Please strengthen and finalize the public lands rule in a timely fashion.

Sincerely,

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