U.S. Department of the Interior
Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attention: 1004-AF03

We are former Senior Executives, field management employees, and national program leaders of the Bureau of Land Management in Department of the Interior, each with decades of experience in both land use planning and decision making for land use authorizations. We have spent years on the Executive Leadership Team, State Management Teams, district management teams, field office management teams, and senior staff teams for the Bureau of Land Management, serving under multiple administrations. In short, we are well-versed in the planning and decision-making processes for federal lands and resources with hundreds of years of collective experience.

We are submitting comment on the proposal "to rescind the Conservation and Landscape Health *Rule* adopted on May 9, 2024, via 89 FR 40308 with an effective date of June 10, 2024, and codified in amendments to 43 CFR part 1600 and the newly created 43 CFR part 6100" published in the Federal Register Volume 90, Issue 174.

On September 11, 2025, the Bureau of Land Management (BLM) published the Federal Register Notice (Notice) proposing to rescind the Public Lands Rule, formally titled the Conservation and Landscape Health Rule. The proposed recission affects the BLM's published Rule of May 9, 2024 codified as amendments to 43 CFR part 1600 and in 43 CFR part 6100. As described in the Notice, the 2024 Rule established a "policy for the BLM to build and maintain the resilience of ecosystems on public lands in three primary ways: (1) protecting the most intact, functioning landscapes; (2) restoring degraded habitat and ecosystems; and (3) using science and data as the foundation for management decisions across all plans and programs."

The Bureau of Land Management (BLM) completed a 14-month public rulemaking process with the finalization of the *Conservation and Landscape Health Rule* (*Public Lands Rule*) on June 10, 2024. The *Public Lands Rule* implemented conservation requirements of multiple use and sustained yield under the Federal Land Policy and Management Act of 1976 (FLPMA). In its design, the *Public Lands Rule* establishes policy and process framework to prevent permanent impairment, unnecessary degradation, or undue degradation of public lands. To accomplish this purpose the *Public Lands Rule* responds directly to legal requirements to protect clean air and water, and to sustain plant communities, fish, and wildlife, by 1) protecting the most intact, functioning landscapes, 2) restoring degraded habitat and ecosystems, and 3) using science and data across all plans and programs. Among other related legal requirements, the *Public Lands Rule* addresses certain specific legal requirements in the 1976 law:

> *Section 102(a)(8) of FLPMA* states that it is the policy of the United States that "the public lands be managed in a manner that <u>will protect the quality of</u> 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)

Deliberate congressional changes made in the definition of "multiple use" between the Multiple Use and Sustained Yield Act of 1960 and the passage of FLPMA in 1976 emphasized present and future generations, enumerated conservation values as uses, and added "quality of the environment" to the non-impairment standard: "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; that some land will be used 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 non-renewable 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, each with the other, without impairment of the productivity of the land and the quality of the environment, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output." (emphasis on changes in the FLPMA definition from the 1960 Multiple Use and Sustained Yield Act definition)

Section 103(a) of FLPMA defines "*areas of critical environmental concern*" (ACECs) as areas that require "*special management attention….to protect and prevent irreparable damage to important historic, cultural or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.*" Policy for ACECs is described in Section 202(c) where the law states that "In the development and revision of land use plans, the Secretary shall….give priority to the designation and protection of areas of critical environmental concern". The legislative history for the Senate bill underlying FLPMA reflects congressional concerns in the 92nd Congress that the law be implemented "using all practicable means and measures" to protect environmental quality. Regulations designed to meet that initial congressional intent for ACECs were adopted in 1979. But then in February 1981 those regulations were suspended, never to be replaced despite a court ruling against the suspension. While there are some examples of ACEC management responsive to FLPMA standards, subsequent BLM regulations, amendments and manuals addressing ACECs have not provided a national framework for delivering consistent "priority" or "special management attention."

Public participation in creating the *Public Lands Rule* was robust and impactful. The Notice acknowledges that BLM's public process generated 216,403 public comments, but then omits mention that comment content was overwhelmingly positive. In fact, at the time, BLM described the overall body

of comments, noting a "vast majority of which supported the effort." Most reporting at the time concluded that about 92 percent of the comments had supported the proposed *Rule*. The public comment process on the Draft *Rule*, between May and July of 2023, included both virtual and in-person public meetings. The process also included an comment period extension to allow additional opportunities for participation. Participation was quite broad, including comments from a wide array of stakeholders, including individuals, Tribes, state and local governments, industry groups, and advocacy organizations. As is standard practice, BLM reviewed the entire body of comments received and provided detailed consideration to 152,673 comments (per the Notice). Common comment themes included the importance of prioritizing conservation alongside other multiple uses and a desire to see more focus on the needs of both current and future generations. Analysis of substantive comments -- typically those suggesting specific changes, questioning information, or presenting new information -- did contribute to adjustments made between the draft *Rule* and the final proposed *Rule*. In particular, BLM highlighted how public participation shaped the frameworks for restoration and mitigation leasing, the application of the fundamentals of land health, and the protection of Areas of Critical Environmental Concern (ACECs).

In short, the existing *Public Lands Rule* both reflects a thorough public participation process and advances the BLM's multiple use and sustained yield mission. The *Public Lands Rule* implements FLPMA by establishing policy and process responsive to conservation requirements in the law. In character, the *Public Lands Rule* is an implementation framework for conservation requirements in FLPMA just as other existing frameworks frame implementation for the other public land uses enumerated in the definition of "multiple use". Also important, *Public Lands Rule* focuses specifically on those enumerated land uses in the "multiple use" definition that the law says the agency "will protect." By doing so, the *Public Lands Rule* makes protection of those values accountable. The *Public Lands Rule* should be retained in full and implemented by the agency.

Yet the Notice now asserts in a BLM-proposed recission that the *Public Lands Rule* "is unnecessary and violates existing statutory requirements" and "undermines the BLM's management of the public lands under applicable law, including the direction in the Federal Land Policy and Management Act (FLPMA) to manage public land under principles of multiple use and sustained yield…" These latest assertions from the same agency that conducted the *Public Lands Rule* process are clearly inaccurate and unsupportable.

Errors in the Notice proposing to rescind the Conservation and Landscape Health *Rule*

The Notice includes surprising errors in fundamental applications of public land law.

1. **National Rulemaking cannot be designed upon some predetermined "appropriate balance":** The Notice expresses, as rationale for the proposed recission, that certain aspects of the *Public Lands Rule* "upset the appropriate balance that the BLM must strike when managing public land under principles of multiple use and sustained yield." This statement at least implies a fundamental misunderstanding of public land management under FLPMA. No universally applicable "appropriate balance" exists, and certainly none that should be assumed as a basis for rulemaking. American public lands encompass an impressive variety of settings, each

with its own local, specific, and unique characteristics, both as an ecological system and as a socio-economic environment.

In FLPMA, Congress recognized this diversity of relevant conditions, directing that balance among the various elements of multiple use should be derived through land use planning (Section 202) and "public involvement". In Section 103 of FLPMA, Congress defined public involvement as "participation by affected citizens in rule making, decision making, and planning with respect to public lands, including public meetings or hearings held at locations near the affected lands…." BLM authorization decision processes also follow this model basing decisions on specific facts at hand and including public participation. The *Public Lands Rule* carefully tracks these principles underlying multiple use and sustained yield, deferring site specific decisions to land use plans and authorization processes. The Notice, however, seems to both yearn for "appropriate balance" and elsewhere acknowledge that rulemaking correctly "tend(s) not to compel specific BLM action".

2. **"Productivity" of any combination of land uses is not the standard for multiple use decision making:** The Notice suggests that "appropriate implementation of FLPMA's mandate" requires that uses be "productive," presumably in some commercial or consumptive sense. The basis for this assertion is unknown and its intended relevance in the Notice is unclear. While some land uses are commercial and/or non-renewable, others are not. Commercial productivity as a primary standard for public lands is contrary to congressional direction to consider "the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output."

3. **Conservation values are included in the FLPMA definition of multiple use:** The Notice deliberately treats any land use that might be classified as "conservation" as "non-use", asserting without evidence "Conservation is not a "use" under the statute." It is unclear in the Notice how this assertion could be reconciled with the FLPMA definition of "multiple use". The *Public Lands Rule* correctly recognizes that the conservation elements enumerated in Congress's FLPMA definition of multiple use are land uses. In other words, managing for the quality of recreation, watershed outputs, wildlife habitat, fish habitat, scenic value, or to protect cultural and historic values are legitimate land uses under the congressional definition, just as range, timber, minerals, and rights-of-way are.

4. **Leases are not withdrawals:** The Notice incorrectly suggests that a lease is "effectively the same action under a different guise" as a withdrawal. They are not equivalent. The authority and requirements for withdrawal of public lands are covered by a separate section of FLPMA, Section 204(b). While the Notice correctly cites withdrawal procedural requirements under 43 U.S.C. 1714, withdrawal requirements are not relevant to leases, regardless of whether the land management purpose of a lease is for restoration, mitigation, oil and gas production, coal production, livestock grazing, or any other purpose. Generally:

a. Under FLPMA, a lease is an authorization that conveys a bundle of interests for a fixed period of time appropriate to its purpose. Leases include limitations in the conveyance, as terms and conditions, to protect public interests. In the context of a land management restoration or mitigation purpose, both the term of the lease in years and the content of the conditions applied as stipulations would have to be appropriate to the intended land management purpose. This design, in both the determination of the length of the authorized term and the requirements imposed as stipulations, is parallel in character for all public land leases issued for various purposes. A lease conveys a right to occupy a fixed area of land subject to the lease's specific terms, which can include revocation, and
b. In contrast to leases, withdrawals are defined in FLPMA to mean "withholding an area of federal land from, settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program…." While withdrawals for conservation purposes could be contemplated, to protect a municipal watershed for example, withdrawals are not proposed or authorized under the *Public Lands Rule*.

5. **Under FLPMA, Areas of Critical Environmental Concern (ACECs) are not Wilderness Areas or National Parks:** The Notice suggests that ACECs are a "set aside" of land, without clear statutory authority, equivalent to a congressionally designated Wilderness Area or National Park. ACECs both have the "clear congressional authorization" called for in West Virginia v. EPA, 597 U.S. 697 (2022; case cited in the Notice; see also "West Virginia v. Environmental Protection Agency." Oyez, www.oyez.org/cases/2021/20-1530.) and are clearly not equivalent to a Wilderness Area or a National Park. Congress directed BLM to develop land use plans that "give priority to the designation and protection of areas of critical environmental concern" (Section 202(c)3.). Congress also defined the types of concerns to be addressed as ACECs and specified their need for "special management attention." (Section 103(a)). Like other planning-based land use allocations and designations, ACECs are subject to review and revision on a land use planning cycle, reviews that would likely focus on the status of the environmental concern(s) involved.
    a. By contrast, in FLPMA, Congress required the agency to inventory and study wilderness quality lands and then report back to the Congress and the President (Section 603) pending a congressional decision. In defining wilderness in FLPMA, Congress also deferred to "section 2(c) of the Wilderness Act." The statutory authorities for ACECs and wilderness are quite different.
    b. Similarly, all National Parks are congressionally authorized, and many parks have a specific act of Congress that addresses details of local management.

    ACECs were specifically designed by Congress to be a land use planning designation that would deliver "priority" and "special management attention." As planning designations, ACEC designations are far more flexible than congressionally designated wilderness or parks. ACEC

management is focused on consistency with the special management objectives designed, with public participation, to address a site-specific set of environmental concerns.

6. **The *Public Lands Rule* treatment of ACECs is lawful, necessary, and closely aligned in scope to its congressionally defined purpose:** The Notice asserts, "The 2024 Rule also unlawfully and unnecessarily expanded the scope of the BLM's regulations governing the designation and management of areas of critical environmental concern (ACECs)." As noted above, congressional intent for ACECs is detailed and clear.

   In fact, the *Public Lands Rule* paid scrupulous attention to 1976 congressional direction and closely paralleled BLM's 1979 regulations applying to ACECs (issued shortly after FLPMA was passed) in several ways: 1) emphasizing "special management to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish or wildlife resources; and natural processes, 2) treatment of ACEC identification, evaluation, and designation as a land use planning function, and 3) emphasizing public and stakeholder involvement in the nomination, evaluation, and designation of ACECs. It is unclear why the Notice suggests measures for managing critical environmental concerns that are so closely tied to both FLPMA's legal requirements and features also present in the initial regulatory framework are unlawful.

7. **Re-interpretation of former public comments in rulemaking requires more disclosure than the Notice provides:** The Notice expresses intent for BLM to take "a closer look at (certain) public comments (believing) they may raise important questions about whether the economic impacts of the 2024 Rule were materially underestimated." Setting aside the problems associated with embarking on a "closer look" with a predesigned conclusion, the Notice provides no information about how some set of (selected?) comments would be fundamentally re-interpreted. Under the Administrative Procedures Act, if the proposed revision of content analysis is material to a change in regulatory content, a new notice-and-comment period will be required when the substantive content of the revised analysis is available. While the agency has discretion in how it responds to public input, the law requires BLM to ensure the public has a fair opportunity to comment on the reasoning and evidence that will ultimately support a final *Rule*. Lack of disclosure of reasoning with evidence in the current Notice makes that impossible.

Conservation Leasing

The Notice asserts that allowing BLM Field Managers to place restoration or mitigation projects under a third-party lease -- with appropriate terms and conditions, and the appropriate public process that would be required -- "is contrary to the BLM's mandate and statutory authority…. (and should be limited to) ….more appropriate implementation of FLPMA's mandate…. through (BLM's) own affirmative land management work and in partnership with other entities, including other government agencies…" In general, this concern seems to stem from hypothetical scenarios when "restoration and mitigation leases for which the Rule provides may preclude other uses of the public lands, running contrary to the notion of multiple use." This concern was raised in the public comments on the Draft *Rule* and the BLM

responded by clarifying, in the final *Rule*, that leases would be for restoration and mitigation purposes and would not conflict with existing authorized uses.

Third party leases (and permits) are clearly within BLM authority and mission under FLPMA. Leasing for public purposes on public lands has a century-long history and restoration and mitigation leases are simply an application of existing general leasing authority under Title III of FLPMA. Section 302(b) states that the BLM shall "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….(enumerated uses)." Under this authority, any instrument, including a lease, can be appropriate, if it accomplishes land management purpose consistent with the principles of multiple use and sustained yield as defined in FLPMA, and is consistent with a land use plan (FLPMA, Section 302). Both restoration and mitigation are common and necessary land management activities under FLPMA and the leasing framework established in the *Public Lands Rule* is functionally similar to frameworks that exist for other forms of public land leasing.

Mitigation is generally designed based on a proposed action or project to offset impacts from an authorized land use. It is an essential component of land management allowing BLM to meet its statutory responsibility to manage public lands for present and future generations. Mitigation measures are developed to avoid, minimize or compensate for the identified impacts of proposed land uses. In most instances, mitigation measures are developed through National Environmental Policy Act analyses, with an associated public process, and in response to a specific proposed action in a specific place (often and application for a new land use authorization). Because multiple use and sustained yield management includes requirements for protection of conservation values, in the absence of adequate mitigation, some land uses and authorizations would not be approved without mitigation. Mitigation standards generally aim to achieve no net loss or a net-benefit for impacted resources. In some instances, compensatory mitigation to offset residual, unavoidable impacts is warranted to "(1) comply with law, regulation and policy, (2) achieve objectives in a resource management plan (RMP), or (3) conserve important, scarce or sensitive resources." (BLM Mitigation policy; https://www.blm.gov/how-we-manage/mitigation-policy)

Both mitigation and restoration are inherently local because plant and animal communities, and cultural features, differ in their composition, position, and utilization of the terrain. Plant, fish, and wildlife mitigation and restoration always rely to some degree on natural processes but often require physical or biological interventions to assure the restoration or mitigation purpose is accomplished. The Notice correctly acknowledges that BLM does some restoration work, within the limits of its capacity, on its own and in partnership with others. But the need for restoration is substantial. BLM data indicates that either soil and site stability, hydrologic function, or biotic integrity problems existed on over 40 percent of the 148,384,766 rangeland acres inventoried in 2024. Nonnative invasive plants were an issue on 59.4 percent. Stream condition and function continue to be a concern on 20-to-30 percent of BLM-managed streams. Because these statistics represent a sample of certain indicators for 148 of 246 million acres of public land, there are also additional species- and habitat-specific issues to

be addressed that are not represented in these statistics. Clearly, the scale of the land acreage needing restoration work is staggeringly large, explaining the Public Land *Rule*'s emphasis on prioritization.

The goal of a restoration or mitigation lease is not, as the Notice suggests, "to preclude other, productive uses, such as grazing, mining, and energy development…" It is to accomplish restoration or mitigation. Removing the leasing portion of the *Public Lands Rule* would unnecessarily limit tools to accomplish needed restoration and mitigation. While the authority would still exist under FLPMA, a consistent, predictable national process would not. By way of example, would elimination of conservation leases arbitrarily limit who could hold the lease on tortoise fencing designed to recover desert tortoise populations? At a minimum, recission of the conservation leasing option would introduce uncertainty that reduces what is accomplished for "will-protect" values, such as water quality and habitat for fish and wildlife.

The *Public Lands Rule* has established a valuable management tool that, in certain cases, would be the most appropriate option to implement mitigation for aggregate impacts in an identified area, to reliably commit off-site mitigation in a location where a species or natural community is present, or to steer and regulate conservation activities themselves conducted by a lessee.

In summary, leasing under the *Public Lands Rule* clarifies a consistent predictable process for third party leases, when and where it makes sense, to accomplish restoration and mitigation land management goals. It simply applies an existing authority for restoration or mitigation purposes. Leases under the *Public Lands Rule* would not always be the best solution, but they provide a formal vehicle when and where appropriate. And they can facilitate approval of actions that otherwise could not be adequately mitigated. National Environmental Policy Act processes, with public participation, have long been used to reliably develop mitigation requirements, thereby resolving, or compensating for, adverse effects on values BLM is legally required to protect.

Decision authority for many proposed actions, including some forms of leasing, is delegated to BLM Field Managers. Delegation practices create efficiencies that allow a small agency to perform a big and complex mission. If, as the Notice suggests, an administration is unwilling to trust local public processes informing the "discretion in individual authorizing officers", options exist to manage risk. For example, BLM has periodically required reviews of some authorizations, plans, or projects at levels above the Field Office Manager, District Manager, or even the State Directors. In fact, formal delegations, and a delegation manual, exist for this purpose. Closer management of initial applications of leasing authority, rather than recission, would be wiser because it avoids the direct impact to public land project proponents seeking land use authorizations that require compensatory mitigation. Retaining the *Public Lands Rule* processes for conservation leasing facilitates both restoration action and mitigation to address unresolved environmental impacts.

Areas of Critical Environmental Concern

In the absence of a national framework for delivering consistent "priority" or "special management attention," the BLM's management history for roughly 1,000 ACECs identified since FLPMA passed is accurately described as uneven and inconsistent. Significant differences exist in application of the

"priority" and "special management attention" standards among the agency's State Offices. Despite decades of experience, no national record exists indicating clear progress in addressing the "critical" environmental values identified as "important" in BLM land use plans completed since 1976. It remains an unanswered question whether BLM has consistently provided "priority' or "special management attention" in the absence of an adequate national framework.

The *Public Lands Rule* has restored a national framework for delivering consistent "priority" and "special management attention" to ACECs. Regulatory and policy guidance based on statutory standards has been consolidated into a systematic approach for both designation and management of ACECs. The *Public Lands Rule* creates clear links between the "resources, values, systems, processes, or hazards" identified in FLPMA and the legal standards to "protect and prevent irreparable damage," "give priority," and provide "special management attention." The *Public Lands Rule* has established a mechanism that should, over time, address inconsistencies among land use plans in the assessment and treatment of ACEC proposals in the planning process. The *Public Lands Rule* also clarifies durability of ACEC designations, once made, tying reviews directly to the values protected or managed.

The Notice asserts that nomination of ACECs outside a normal planning cycle "distorts the normal ACEC process. These temporary management areas not yet designated as ACECs interfere with productive use of the land without engaging in the planning process. Thus, the 2024 Rule denies opportunities for public participation to determine whether the ACEC designation is even warranted..." This interpretation is unreasonable. Given that planning cycles for major revision of a land use plans have run 20 years and longer, a clearly defined mechanism for addressing "critical environmental concerns" identified in the interim is rational. A provision of the *Public Lands Rule* does provide a practical, structured process for nominations received when no major plan revision is anticipated. Such a process "gives priority" to "critical environmental concerns" whenever they are identified.

Under 43 CFR § 1610.7-2(i), a State Director-level determination would be required when a nomination is received. The determination would cover: 1) whether specific ACEC criteria are met, and 2) whether to start a land use planning process (most likely an amendment to an existing plan), or to defer consideration into a future planning process. If the State Director elects to defer planning and determines temporary management measures are sufficient to prevent irreparable damage to the values in question for the interim, public notice is required. If a conflict, such as the one posited in the Notice, arose, any State Director determination could be revisited and the ACEC planning determination could be made in a plan amendment process, even as part of another authorization review. In summary, the *Public Lands Rule* has created a structured predictable process, with public participation, to arrive at ACEC decisions even when a nomination falls outside a normal planning cycle.

The Notice requests comment on whether to return to a prior regulatory regime. It makes no sense to return to the 1979 *Rule* or to subsequent approaches that, after decades, have not been able to consistently meet the 1976 congressional standards. As the Notice suggests, "ACEC designations (and nominations) can create conflicts with the use of BLM-managed land for recreation, grazing, development, and extractive uses." But the answer is not to ignore critical environmental concerns. The answer remains, as Congress directed, an open and public planning process that discloses what is known

and then works through the issues. The *Public Lands Rule* provides public processes both "to protect resources" and sort out any ACEC nominations that are "without merit." The tests for the adequacy of an ACEC regulatory framework are factual and legal: 1) assessment of the nearly 40+-year history of ACEC management and 2) the FLPMA legal standards of "protect and prevent irreparable damage," "give priority," and "special management attention." Returning to prior regulatory regimes known to have flaws and fall short under those two criteria is ill advised, especially when the *Public Lands Rule* is well designed to address known flaws and meet legal standards.

Land Health Standards

The Notice proposes to repeal 43 CFR subpart 6103 "because (the) action-forcing mechanism is the lynchpin of the land health provisions…(and it) displac(es) its usual processes to meet a deadline….(and it) interferes with the Bureau's ability to reach the decision that best balances management of the public lands for multiple use and sustained yield."

BLM land health standards have been in place since completion of the 1995 grazing regulations. Developed with public input, standards have always specified conditions for ecological health responsive to FLPMA Section 102(a)(8) standards such as proper watershed function, water quality, and habitat quality. Standards have also traditionally required measuring very similar attributes: watershed function, water quality, nutrient cycling and energy flow, habitat for native plant and animal populations, and presence of riparian vegetation and ground cover. Because the standards derive directly from values FLPMA states BLM "will protect" on public lands (Section 102(a)(8)), information about their condition is essential to multiple use and sustained yield management.

The effort, under the *Public Lands Rule*, to update land health standards and improve consistency in evaluation of ecological characteristics is expected to be complete in June 2027. The Notice's argument that BLM should not maintain a current land health framework because the agency must not be forced to act to meet legally required standards in FLPMA makes no sense. Similarly, it makes no legal sense to argue BLM shouldn't worry about understanding and tracking land health because other undefined processes are more important to public land management. Under the mission defined in FLPMA, BLM cannot prefer decision making unconstrained by land health information. Rulemaking is intended to advance implementation of FLPMA, not subvert maintaining an "inventory of the public lands…." (FLPMA Section 202(c)(4)).

Agency Capacity

The Notice's discussion of agency capacity to implement the *Public Lands Rule* is a confused muddle. When seeking to denigrate opportunities for leasing to accomplish conservation purposes, the Notice stated BLM "has sufficient tools to manage the public lands without inviting third parties to seek land use authorizations for those types of activities traditionally performed by the Bureau." When seeking to denigrate land health regulations, the concern is BLM capacity "to act on a fixed or rapid timetable, interfering with previously authorized use of the public lands….displacing its usual processes to meet a deadline." In the next paragraph, the Notice states, "The BLM should, and already does, consider and account for the full range of issues and values when engaged in the planning

process and for the impacts of the permitting and other implementation-level management decisions that it makes." So, BLM has sufficient tools, but doesn't have capacity to act on a fixed or rapid timetable, and would have to displace usual processes to do what it already does? Adding to the confusion over agency capacity is the growing scale of restoration needs on public land and the recent cuts to agency staffing and budgets.

The Notice proposes to solve problems of adequate/inadequate, too much/too little capacity by repealing 43 CFR subpart 6100, the section of the regulations that acknowledges "BLM's management of public lands on the basis of multiple use and sustained yield relies on healthy landscapes and resilient ecosystems." This section includes provisions that address essential FLPMA implementation principles such as how to "prevent permanent impairment or unnecessary or undue degradation of public lands" and essential functions like "protection and restoration actions, as well as tools such as watershed condition assessments, land health evaluations, inventory, assessment, and monitoring."

As the Notice suggests, many BLM actions and issues can be controversial, and do sometimes "(invite) third-party challenge to BLM planning and permitting decisions…" However, the *Public Lands Rule* creates structured and predictable processes and proposes to base decisions on more and better data, thus reducing the likelihood of litigation.

As the Notice implies, implementation capacity has always been a significant issue for BLM, a small agency with a big and complex mission. But capacity questions do not alter the congressional policies, standards, and expectations set for public lands in FLPMA. Capacity problems are not a permission structure to ignore conservation requirements in the law to favor "productive uses." It is not permission to select which parts of the congressional definition of "multiple use" you like and ignore the rest. In fact, Congress directed that the agency "will protect" the enumerated conservation values in Section 102(a)8, differentiating them from resources where the agency is to consider "the Nation's need for domestic sources of minerals…." Congress said to "give priority" to "critical environmental concerns" not to treat them as secondary to "productive" uses.

As a public land management framework, multiple use and sustained yield on the BLM-managed public lands is funded by BLM appropriations at levels that are significantly lower, at per-acre rates, than any other land management agency. These differences ignore basic similarities in such costs as providing information, infrastructure, and services to sustain conservation outcomes related to similar uses. But rulemaking cannot, and should not attempt to, address these problems. Rulemaking should be responsive to applicable law. To the extent the agency must prioritize, "will-protect" resource values must be high on any list. Procedural efficiencies that extend capacity such as formal, technical mentoring and monitoring networks, national training opportunities that expand capacity, and creative partnerships should be pursued. There may also be opportunities to extend capacity by increasing efficiency in how the types of work directly related to conservation are structured:

- Seek implementation ideas from career BLM staff,
- Take steps to address the inadequate distribution of conservation expertise due to recent staffing cuts,

- Structure manuals or Instruction Memoranda to encourage interoffice and interagency cooperation and partnerships, or
- Involve outside groups in manual development, data collection, and implementation of restoration actions.

Acceptable efficiency and effectiveness measures to partially offset lack of staffing and funding are those that do not compromise policy direction provided in law. Basically, BLM should focus doing what makes sense to accomplish the FLPMA conservation job, just like the agency would for other aspects of its multiple use and sustained yield mission.

Summary of the Comments Above

There are significant legal and technical problems with the Notice. Removing the option to issue restoration and mitigation leases unnecessarily limits a legally available tool to accomplish necessary protections of values FLPMA says the BLM "will-protect". The ACEC requirements in the *Public Lands Rule* address shortcomings evident after 40+ years of ACEC management and are far more responsive to the FLPMA legal standards of "protect and prevent irreparable damage," "give priority," and "special management attention" than any prior regulatory regime. And, while capacity questions at BLM are legitimate, Rulemaking should be responsive to applicable law and must prioritize the resources and values Congress has said the agency "will-protect". In sum, the *Public Lands Rule* supports the BLM's multiple use and sustained yield mission and thus should be retained and fully implemented.

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