

June 23, 2023

Tracy Stone-Manning, Director
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Dear Director Stone-Manning:

The below signed hunting, fishing, and habitat conservation organizations and professional societies write in regard to the Bureau of Land Management's proposed Conservation and Landscape Health Rule (Public Lands Rule). We collectively work to support the interests of millions of Americans who depend on BLM managed public lands for sustaining fish and wildlife habitat and outdoor recreation opportunities. To help the BLM refine the rule and ensure successful implementation, we offer the following recommendations.

Outreach and engagement

We appreciate the agency's public outreach and engagement on the Public Lands Rule to date, and encourage the agency to make every effort to answer questions from the public and multiple use stakeholders on the rule before it is made final. Doing so will result in a better-informed, workable, and resilient product.

Moreover, as the agency finalizes the rule and begins implementation, the BLM must continue to engage and consult with Tribes and Indigenous Peoples 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 rights, protection of Tribal cultural sites, and Tribal consultation in ways that honor the unique historic and current connections of Indigenous Peoples to public lands.

Conservation as a use under FLPMA

The Public Lands Rule captures the Congressionally declared policy that public lands be managed to "protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values" and that the BLM, "where appropriate, . . . preserve and protect certain public lands in their natural condition; . . . provide food and habitat for fish and wildlife and domestic animals; and . . . provide for outdoor recreation and human occupancy and use."¹

Additionally, the agency's definition of conservation and its related proposed regulatory changes directly respond to FLPMA's mandate to manage lands for multiple use and sustained yield.² Congress defined multiple use to include fish and wildlife habitat, watersheds, and other ecological and environmental values.³ Sustained yield mandates that the agency manage these and other uses to "achieve[] and maint[ain] in perpetuity . . . a high-level annual or regular periodic output of the various renewable

¹ 43 U.S.C. § 1701(a)(8).

² 43 U.S.C. §§ 1701(a)(7), 1732(a).

³ 43 U.S.C. § 1702(c).

resources of the public lands consistent with multiple use.”⁴ Through the proposed rule, the BLM is carrying out Congress’ direction to manage public lands for many uses, including conservation.⁵

Intact Landscapes

Intact landscapes with low levels of fragmentation and uncharacteristic disturbance have been shown to provide high quality habitat for numerous fish and wildlife species. These unfragmented lands provide habitat security for big game including mule deer and elk, support wild and native trout fisheries, and include native plant communities important to functioning ecosystems. We support the requirements in 6102.2(a) and (b) for BLM to seek to maintain intact landscapes, and request that BLM add additional language specifying the need to conserve habitat connectivity and wildlife migrations both within and between intact lands and waters. We additionally support BLM’s direction at 6102.1(a)(3) for “maintaining or restoring resilient ecosystems through habitat and ecosystem restoration projects” within intact landscapes. Given increased drought, a century of fire suppression, and the spread of invasive plants, active restoration is needed in many places to maintain intact landscapes and ecological function in addition to preventing incompatible uses through resource allocations.

Ecosystem Resilience

We concur with the BLM’s assertion that multiple use and sustained yield relies on resilient ecosystems. Indeed, without resilient ecosystems, public lands will inevitably be managed for a net loss of the fish, wildlife and natural resources that belong to each and every American. This is especially true with increasing drought, invasive species, and high-intensity wildfire that are putting pressure on native ecosystems and require conservation of intact landscapes and active restoration to ensure ecosystem resilience on the landscape.

We note that resource extraction and ecosystem resilience need not be mutually exclusive, but they require thoughtful, science-based management to achieve this balance. The Federal Land Policy and Management Act defines multiple use broadly, including “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...wildlife and fish.” Ecosystem resilience is inherent in this definition. Without intact, healthy lands and waters, our fish and wildlife populations will suffer, as will hunting and angling.

We specifically support direction at § 6102.5 in the proposed rule for ecosystem resilience management actions to prioritize restoration and protection of priority watersheds, landscapes, and ecosystems; develop mitigation strategies for managing public lands for resilient ecosystems; avoid authorizing uses that would permanently impair ecosystem resilience; partner with State, Tribal, and local agencies in the development of environmental impact statements or environmental assessments; and respect Indigenous knowledge. We further request that terrestrial and aquatic connectivity be added as a component of ecosystem resilience.

Mitigation

Our organizations support the requirement in this proposed rule to apply the full mitigation hierarchy when authorizing actions on BLM managed lands. The mitigation hierarchy is set of guidelines used widely across a variety of industries to guide development in a manner that limits adverse impacts to important, scarce or sensitive resources on BLM-managed lands. The Council on Environmental Quality

⁴ 43 U.S.C. § 1702(h).

⁵ 88 Fed. Reg. 19,598.

(CEQ) has defined mitigation in its regulations at §40 CFR 1508.1. Mitigation for adverse impacts is also required to satisfy BLM's obligation to prevent "unnecessary or undue degradation" (UUD) under FLPMA.⁶ We also support the provision in the proposed rule that allows for impacts that occur on BLM lands to be replaced, or offset, in a similar manner on BLM lands. Together, these two provisions are necessary to allow for the continued authorization of multiple use development on BLM-managed lands, while conserving and restoring valuable land, fish and wildlife and water resources.

To ensure the rule is implemented to its full extent, implementation must occur in accordance with consistent application of the BLM's own laws, regulations, and guidance for mitigation, including IM 2021-046, Mitigation Manual (1794-M), and the Mitigation Handbook (H-1794-1). We recommend that § 6102.5 of the rule incorporate, or at least reference, key elements of the existing BLM Manual and Handbook that set standards and principles for compensatory mitigation—such as standards that seek to achieve a no net loss or net benefit to impacted resources, ensure durability of the conservation action, set performance standards to be achieved, and require ongoing effectiveness monitoring. These are critical components for any regulatory mitigation program and are considered standards of the mitigation industry as they provide fairness and transparency to all involved parties and, importantly, ensure conservation gains are realized to fully offset resource impacts.

Conservation Leasing

Our organizations support the BLM's concept of conservation leases, which could allow for outside funding of restoration or enhancement projects on BLM-managed lands. This is necessary work on many BLM lands that are degraded by factors such as drought, the spread of invasive annual grasses, wildfire, and feral horse herds above appropriate management levels, as well as other permitted multiple uses. Restoration projects often require significant labor and can take many years to fully realize the ecological benefits, and the BLM has historically struggled to achieve long-term restoration of their lands on their own.

Conservation leases, if designed and implemented properly, could provide a new method for funding, staffing, and monitoring restoration and enhancement projects to fully restore public lands for the enjoyment of people, the prosperity of fish and wildlife, and to make the land more resilient to future impacts from drought, wildfire, and invasive plants. They can also serve as a new tool to ensure that impacts to resources on public lands are offset by replacing those same resources still on our public lands. To ensure the concept is fully operational, we recommend the following clarifications and changes:

- The rule should clearly distinguish how conservation leases outside of a mitigation context are for the primary purpose of restoring or enhancing degraded public lands, rather than for protection of existing highly functioning land. We recommend renaming the leases to better reflect this purpose, by referring to leases outside of a mitigation context as "restoration leases" and those for mitigation purposes as "mitigation leases."
- The rule should make clear what lands will be prioritized for conservation leases in order to achieve a clear conservation purpose. We recommend that conservation leases be prioritized in areas where the proposed actions are likely to significantly move a landscape towards meeting land

⁶ 43 U.S.C. § 1732(b) (requiring BLM "[i]n managing the public lands . . . [to] take any action necessary to prevent unnecessary or undue degradation of the lands")

health standards, or in landscapes inventoried as intact lands, per § 6102.2 of the rule. Ultimately, prioritization should be established in a governing land use plan.

- The availability of conservation leases as a management tool should not preclude, or disincentivize, other forms of voluntary conservation and restoration activities that currently occur on BLM-managed lands.
- The proposed rule should clarify that conservation leases would be subject to review and analysis under the National Environmental Policy Act, and that a meaningful public comment process will occur to evaluate impacts to existing authorized uses and resources before the BLM authorizes a conservation lease.
- Properly managed grazing can support land health and resilience and can be a form of conservation. The BLM should recognize and support the role of ongoing, active management through activities such as grazing and forest management and explicitly state that active management and stewardship could help the agency achieve the stated purpose of conservation leases. The rule should explicitly clarify that conservation leases may be issued to support stewardship and active management for the purpose of ensuring ecosystem resilience. And when these activities result in a measurable conservation uplift that would make the lessee eligible to generate and sell mitigation credits.
- We ask the BLM to clarify in the final rule that the agency's proposed definition of "casual use" would include low-impact activities, such as access for hunting or fishing and other forms of recreation. A small but meaningful edit to the BLM's proposed definition would be to change the word "appreciable" to "measurable" as it is more clearly implementable.

Land Health

We support BLM expanding application of the fundamentals of land health as outlined in §6103 to achieve ecosystem resilience under the rule; however, we recommend that BLM clarify in the rule that the fundamentals of rangeland health articulated in 43 CFR § 4180.1(d) apply beyond Federally-listed endangered, threatened, and other Federal special status species to state and tribal species of management concern, including big game and other wide-ranging species. The expansion of the habitat criteria articulated in 43 § 4180.1(d) to cover state and tribal species of management concern, including big game and other wide-ranging species, is critical for the fundamentals of land health to adequately promote resilient ecosystems as desired in the rule.

Existing state-specific land health standards are often outdated and do not reflect the best available science or incorporate the latest high-quality information. To achieve ecosystem resilience, we recommend that BLM update existing state-specific land health standards previously established under subpart 4180 as quickly as possible to incorporate the best available science and high-quality information. Land Health Standards should include quantifiable, easily measurable, ecologically-based performance metrics for measuring land health. To facilitate incorporating this information, Land Health Standards should be tied to specific ecoregion characteristics – such as those identified by EPA in their Level III Ecoregions for North America.⁷ We also support identifying in the rule specific triggers that will require a land health assessment per Section 6103.1-2 to inform decision making for new authorizations. It would be helpful if the rule outlined with some specificity the requirements to complete a land health assessment, and how the assessment will be incorporated into the decision making process.

⁷ https://gaftp.epa.gov/EPADDataCommons/ORD/Ecoregions/pubs/NA_TerrestrialEcoregionsLevel3_Final-2june11_CEC.pdf

The BLM has fallen behind on monitoring land health standards, and only about 70% of the 155,000,000 acres of lands currently leased for domestic grazing have been monitored. Of the 108,000,000 acres that have been monitored, 50% fail to meet existing land health standards.⁸ In order for expansion of the fundamentals of land health to facilitate managing for resilient ecosystems across program areas, BLM needs to dramatically increase efforts to establish, inventory, assess, monitor, and manage to land health standards. We recommend that the BLM implement a prioritization process for establishing and monitoring land health standards tiered to the restoration prioritization areas and restoration plans outlined in §6102.3–1 and § 6102.3–2, and conservation leases authorized per § 6102.4. The rule should also clarify how Watershed Assessment Frameworks guide how Land Health Standards are assessed and evaluated, with appropriate indicators for the level of function remaining based on the higher-level Watershed Assessments.

Conclusion

Thank you for your consideration of our input on the BLM’s Public Land Rule. Our members and their recreational pursuits depend on intact landscapes, healthy rangelands, and resilient ecosystems in supporting fish and wildlife abundance on the landscape. We look forward to seeing revisions to the final rule and working with the BLM to see it implemented.

Sincerely,

American Fly Fishing Trade Association

Angler Action Foundation

Archery Trade Association

Backcountry Hunters & Anglers

Fly Fishers International

International Game Fish Association

Izaak Walton League of America

Minority Outdoor Alliance

National Deer Association

National Wildlife Federation

The Nature Conservancy

North American Falconers Association

North American Grouse Partners

Orion: The Hunter’s Institute

Theodore Roosevelt Conservation Partnership

Trout Unlimited

Wild Salmon Center

⁸ <https://peer.org/wp-content/uploads/2022/03/03-14-2022-Rangeland-Fact-Sheet.pdf>

Wildlife Management Institute

The Wildlife Society

Whitetails Unlimited