UTAH PUBLIC LANDS ALLIANCE

Together We Will Win,
But We Can't Do It Without You

July 3, 2023

U.S. Department of Interior
Director Deb Haaland
Bureau of Land Management
Attention 2004-AE-92
1849 C Street NW Room 5646
Washington, DC 20240

Subject: Opposition to Conservation and Landscape Health Proposed Rule

Dear Secretary Haaland:

UPLA is an organization devoted to keeping access open for our members, who are users of all types. We enjoy accessing and recreating on public lands, and believe BLM managed lands are crucial to the health and well being of our country. Access for many different user groups is crucial. I am writing to provide feedback on the proposed conservation and landscape health proposed BLM rule. We strongly oppose the BLM Conservation and Landscape Health rule, and believe it will be detrimental to public land users across the United States. I think FLPMA, as it stands does a sufficient job in directing management of our public lands and should not be altered with the proposed changes.

Conservation is already rooted heavily in land management, and does not need to have additional complex levels of rules that would benefit wealthy organizations rather than the US Citizen. The rule establishing that "conservation" be defined to include both protection and restoration is especially troubling.

Section 1610.7-2 Designation of Areas of Critical Environmental Concern The emphasis on the role of ACECs as the principal designation for special management attention subverts all the directions contained in FLPMA. There should not be a stated objective of BLM to prioritize designating new ACEC's, which are often used to restrict public access. There are already substantial methods in place such as congressionally designated Wilderness and Wilderness Study Areas which restrict land management uses, and there should not be more prioritization for designations of land that could harm use such as ACEC's. The proposed rule is replete with language reaffirming the need for "science" and "high quality information" to guide decisions of the BLM, but this rule is not supported by any evidence that shows the BLM has neglected identification or establishing rules for managing them. As evidence of this, Utah alone has over 70 ACECs already in existence, what evidence do you have that indicates there are more that should be designated?

The proposed removal of the term that the criteria is of "more than local significance" because it is unnecessarily restrictive is absurd, it is intended to be restrictive.

Section 1610.7 Requirement for annual reports for designated ACECs is overly burdensome to State Directors, and must be stricken from the requirement. Even more troubling, however, would be that if more ACEC's were designated, or Conservation Leases, not having the staff available to review performance is perhaps even worse.

The proposal to eliminate requiring publication in the Federal Register notices is a terrible idea, as many organizations use that information as a consolidated resource for information.

The definitions in Section 6101.4 are very disturbing. The proposed rule would establish a stated objective to promote conservation on public lands, which sounds good on the surface, but when combined with the stated framework of "protection" and "restoration" makes the rule very imbalanced. The challenge in any decision is achieving reasonable balances amongst different interests, and the rule omits stating other uses as being objectives, such as recreation, grazing, or extraction of minerals and gases.

The broad use of the term "intact, native habitats" and "degraded landscapes" are troubling, vague, overly broad, and unclear. Theoretically, if a person ever walked on land and left a footprint, that land could be defined as a "degraded landscape" or one that is no longer intact or native. The definition of an "effect" as the direct, indirect, and cumulative impacts from a public land use is troubling, meaning that any use could be considered an effect or impact.

The term "conservation" would be defined to mean "maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions."

There are many terms used in key recitals in the document, without any definition of what they actually mean or defining them in an overly broad manner. Page 10 states "The proposed rule would define the term "intact landscape" to guide the BLM with implementing direction. The proposed rule (§6102.1) would require the BLM to identify intact landscapes on public lands, manage certain landscapes to protect their intactness, and pursue strategies to protect and connect intact landscapes." Although the rule states that BLM would define the term, there is no definition present.

The rule requires decisions be evaluated based on complex "high-quality science." This requirement alone removes the ability for all but the most well funded organizations to submit their "evidence." Science is a study, and is generally composed of all different views of a subject. By codifying this as a requirement, it eliminates lesser funded organizations and citizens from making substantive comments that may represent a less restrictive approach to conservation. It has long been stated that if the consequences are high enough, you can always find an expert to testify on your behalf. This rule is simply not needed and will again remove the ability for users to participate in substantive comments.

There are many other instances of terms that are not clearly defined in the document, which means the definitions and intent of the rules will have to be defined by the courts and the teams with the best lawyers.

Section 6102.4 Conservation Leasing The proposed conservation leases make it possible for entities to essentially buy off our public lands for their own biased and discriminatory purposes. The BLM should not be selling the land through these leases to the highest bidder restricting all other forms of use on public lands that benefit our nation in various ways. Only the best funded

entities will have a chance to qualify and buy these leases, again removing the majority of users from participating.

The rule states that leases could be issued to "any qualified individual, business, NGO, or Tribal government" without any further requirement or definition as to who is qualified. The fact that state or local governments were not included in the rule is absurd, they should have the best local knowledge in managing their lands.

We are extremely concerned that conservation extremist groups, such as Sierra Club and SUWA, or interests potentially controlled by foreign interests, would have the financial resources to bid on these leases to "restore" the land back to it's natural condition, and to develop their own plan to "mitigate" the conservation activities by restricting access.

Further, we believe that is a reasonable expectation that conservation leases may be controlled by foreign interests, or funded by them. This could have a serious national security implication as it will directly impact both our food and energy supplies.

There is little doubt that "special interests" will be placed in control of managing our public lands, each serving their own narrow interests rather than that of the US Government and the US Citizens.

Section 6102.4(a)(3) would allow conservation leases to be issued either for "restoration or land enhancement" or "mitigation". The cited example of authorizing a renewable energy project, the lessee can agree to make up for wildlife habitat by restoring or enhancing other habitat areas. This is resoundingly similar to the carbon offset practice which has been widely ridiculed as being a joke for it's impacts on improving our environment.

Although the term of the leases is limited to 10 years, there are extensions allowed until the outcome is achieved. Based on prior experience, this would include removing roads and dispersed camping, which is the path to having the area declared as a Wilderness area resulting in even broader access issues.

Although the Rule makes reference to the ability for leased lands to be used for recreation, there is no prohibition of the Lessee to adopt rules that restrict the use, or the fees they might charge for recreating on the land.

In response to BLM's request for comments on Conservation Leases, please see the following:

- Is the term "conservation lease" the best term for this tool? *While it does not really matter what you call it, the common term involves selling our public lands to the highest bidder, maybe some version of that would be more descriptive.*
- What is the appropriate default duration for conservation leases? *There should be no default duration, it should be dependent on the individual plan and achieving measureable results on a periodic basis.*
- Should the rule constrain which lands are available for conservation leasing? For example, should conservation leases be issued only in areas identified as eligible for conservation leasing in an RMP or areas the BLM has identified (either in an RMP or otherwise) as priority areas for ecosystem restoration or wildlife habitat?- *This must be very narrowly defined*

- Should the rule clarify what actions conservation leases may allow? *It should clarify not only what actions are allowed, but also the consequences of not abiding by the MOUs or achieving measureable objectives.*
- Should the rule expressly authorize the use of conservation leases to generate carbon offset credits? *No, absolutely* not.
- Should conservation leases be limited to protecting or restoring specific resources, such as wildlife habitat, public water supply watersheds, or cultural resources?

Also not mentioned was that BLM already has a deficit of staff to complete their current workload. With these added duties it will be impossible to meet these new objectives in addition without either substantially increasing budgets substantially or removing other duties.

Conservation is already used to restrict, regulate and deny access to public lands. By codifying conservation as a use, environmental groups will be given even more power to lock out the public from public lands. Lands are already sufficiently being conserved by various laws and Executive Orders such as the

1. American Indian Religious Freedom Act of 1978 o Archaeological Resources Protection Act of 1979 o Clean Air Act of 1990
2. Clean Water Act of 1987
3. Endangered Species Act of 1973
4. Executive Order (EO) 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
5. EO 13007—Indian Sacred Sites
6. EO 13175—Consultation and Coordination with Indian Tribal Governments
7. Federal Land Policy and Management Act of 1976
8. Federal Land Recreation Enhancement Act of 2004
9. Federal Noxious Weed Act (Public Law 93-629, 1990)
10. Fish and Wildlife Improvement Act of 1978
11. Migratory Bird Treaty Act of 1918
12. National Environmental Policy Act (NEPA) of 1969
13. National Historic Preservation Act of 1966, as amended
14. Wilderness Act of 1964

I do not believe the proposed rule is warranted or necessary. In order to gain better compliance, less complexity is needed in rulemaking, not more.

The adoption of Conservation Leases should be stricken completely from the proposed rule.

Economic effects must be considered and analyzed. BLM needs to more fully analyze the effects that would result from the proposed rule. Recreation is a huge economic driver across BLM managed lands as well as other uses such as grazing and mining. These changes could greatly affect access in general for all users on public lands and that analysis and data needs to be available to the public to submit thoughtful comments. The BLM needs to fully understand and estimate the depth of the effects from the proposed rule, both in understanding the current and future impacts.

- The Congressional Review Act (CRA) requires that major rules be reviewed and approved by Congress. The rule states that it would not have an annual impact on the economy of $100 million or more, and that it would not cause a major increase in costs for consumers… These statements are unfounded by the Economic and Threshold Analysis, Both of these are not "quantifiable" by anything resembling "high quality science", citing only that it cannot be determined because it depends on future lease proposals and decisions. The presumption that bonds covering conservation leases of a minimum $25,000 is absurd.
- There is also no forecast of economic impacts on users, states, local governments, or tribes.
- There is no economic impact of the additional costs incurred by BLM to achieve the objectives of this Rule, including costs of not only implementation but litigation.

BLM has no basis for making the assumption that this Rule is not a "major rule", and must comply with the CRA.

BLM has no authority to levee fees or taxes without Congressional approval, thus the law is unconstitutional.

The Rule will have a disparate impact on those individuals impacts by Americans with Disabilities Because it emphasizes the priority of wilderness and wilderness like areas, even though only 3% of visitors are to wilderness areas, with 97% of visitors to other than wilderness.

Every time motorized routes are closed, people with disabilities that require the use of motorized means to access public lands are barred from those areas forever. In the past, there has been little resource available to people with disabilities because the American with Disabilities Act does not require public land management agencies to consider disproportionate effects on the disabled community, requiring only that there is equality of opportunity. This has resulted in the BLM's historical failure to give any real impact to the effects on the disabled community.

1. The agency should adequately consider that the elderly, handicapped, and disabled need motorized recreational opportunities that are relatively close to town.
2. The agency should adequately consider that BLM land is used extensively by elderly, handicapped, disabled and veterans and motorized closures significantly impact this user group.
3. The agency should adequately consider alternatives that would adequately provide motorized opportunities to replace the closure of opportunities close to town.
4. The agency should adequately consider reasonable alternatives that would adequately provide motorized opportunities that adequately meet the needs of the elderly, disabled and veterans.

The Rule does not consider the impact on Americans with Disabilities in it's proposed rule, yet it will have obvious "effects." Note that the proposed definition of "effects" as the direct, indirect, and cumulative impacts from public land use, thus making it not only impactful to current users, but to future generations as they will have had no exposure to enjoy these lands.

On his first day in office, President Biden issued an "Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" This changed the equation, now requiring focus on equality of outcome rather than the prior equality of opportunity. Allowing closures of public lands through any of the methods outlined in the Rule will further the longstanding discrimination towards American with disabilities and economically disadvantaged individuals. **The entire rule should be eliminated from consideration entirely because it will adversely impact disabled users and underserved communities in their outcome of enjoying public lands.**

It is also likely that this rule will be utilized as a tool for socioeconomic class discrimination. It is already common for conservation easements to be used by wealthy landowners in gateway Western communities to prevent development and turn these communities into enclaves for billionaires. The subject of this as a tool for wealthy or prospective landowners has even reached media in the hit television series "Yellowstone". Conservation leases can be used as a tool to keep the middle classes and working classes away from what eventually become private nature preserves for the wealthy. To spread this toxic outcome across the hundreds of millions of acres of BLM land is completely misguided.

The Federal Government already has enough protections available to protect our available resources, reject this Rule in it's entirety.

I urge you to reject consideration of this rule, and if you believe changes are necessary, recruit Congress to legislate those changes.

Sincerely,

Loren Campbell

Loren Campbell
President
Utah Public Lands Alliance