

Proposed Rule: Conservation and Landscape Health  
BLM-2023-0001-0001  
FR 2023-06210  
Comments for your consideration

I would first like to thank and commend the efforts of the BLM to address these concerns in a new Public Rule. I would also encourage BLM to go bolder and more comprehensive in their approach, starting with the NEEDS statement. It appears that BLM is nibbling about the edges instead of giving this idea a bold, full analysis.

A small band-aid will not solve our current challenges. What you have proposed here may prompt some actions, but unfortunately it may cause more confusion and result in increased tension between user groups, making it even harder to come to the type of successful collaboration we need to address the issues that loom as challenges to successfully managing these lands in public trust, for ours and future generations.

Before I dive into a section by section set of comments on the proposed document I would like to post the following questions:

- 1) **What are the current pressures that are challenging the health and management of public lands?**
- 2) **Although I like where you are trying to go with this proposed rule, to encourage more restoration and involve local communities in those efforts, do you really think this approach is enough to move the needle for conservation?**
- 3) **How will your proposal fit into a broader, landscape scale approach to conservation?**

I would like to introduce myself and state my background, so you understand a bit more on my perspective and comments. I am a retired Department of the Interior employee. I worked 12 years for the USFWS Partners for Fish and Wildlife Program, completing many habitat restoration projects on private lands in conjunction with diverse partnerships. I was a Realty Specialist with the BLM, specializing in conservation, land use and trespass for 10 years and as a Manager with the USFWS focused on policy, budget, public meetings, wildlife, subsistence and the regulatory process. I worked in partnership with many conservation organizations throughout my career, and still do so in my retirement.

I will organize my comments to correspond with the sections as written in the Proposed Rule.

### III. Background. A. The Need for Resilient Public Lands

The discussion on “services and values,” falls short of the big picture in the needs statement, which I believe BLM is capable of addressing. The description of “threats” also should be more robust.

Other factors that should be incorporated into this NEEDS statement are:

**1. POPULATION AND HUMAN PRESSURES.** Human population is increasing and development pressure is continuing to escalate. In 1976, when FLPMA was passed into law, the world’s human population was approximately 4 billion, it is currently at 8 billion. The US population has grown from approximately 200 million to 340 million. With a growing population comes a shift in the supply and demand ratio, and the definition and potential efficacy of how we address “resilience” in our ecosystem.

In addition to the minerals, oil, livestock and recreation the BLM public lands supply, they also supply ecosystem goods and services for the public. From 2001 to 2022, the United States lost 46.5Mha of relative tree cover, equivalent to a 17% decrease since 2000 (Global Forest Watch). A paper by the Stanford Woods Institute for Environment (February 8, 2023) states that new analysis shows the U.S. has accounted for more wetland conversion and degradation than any other country. Wetlands and trees are key to photosynthesis (converting carbon dioxide to oxygen, for us to breathe) on our planet. When we look at using public lands for public services, ecosystem services should factor prominently in the NEEDS statement.

Perhaps this section could also provide a narrative of how life-sustaining ecosystem goods and services such as clean air, water, fertile soils, and key pollinators are addressed in the NEEDS statement for resilience and stewardship of public lands.

A 2016 paper by the Brookings Institute states “A fundamental transformation is underway in the Intermountain West. What were once desert outposts and small cities have become massive and booming urban regions. This section describes the dominant growth, economic, and demographic trends shaping the region.” They state three basic trends are emerging: (1) The region is in the midst of a population explosion; (2) The region’s economy is rapidly changing; and (3) Rapid growth is changing the face of the region.

Another threat or stressor that should be discussed in the NEEDS statement is the push for extraction of Rare Earth Elements (REE) on public lands in response to a search to move to alternative energy sources. This is driven by our desire to wean our society from fossil fuels, and to address the acceleration of climate change. In an article published in the Harvard International Review on August 12, 2021 titled “Not So “Green Technology: The complicated legacy of rare earth mining,” they describe the growing demand and the two primary methods for REE mining, both of which release toxic chemicals into the environment. It states that in addition to the hazards of toxic wastewater and gas, overall for every ton of rare earth, 2,000 tons of toxic waste are produced.

BLM’s mandate is a challenging one and has earned it many nicknames throughout the years as it has attempted to satisfy all the users placing demands on the lands they manage in public trust. The pressures will continue to grow as our population grows and resource needs increase. With this in mind it is vital to define these pressures and priorities well, so when it is time to build the necessary resiliency, we have accurate targets in which to measure our success. It is time to take a birds eye look at the issues and problems before we try to focus in on developing a step by step conservation lease program, which could potentially serve as a distraction to addressing the real challenges.

**2. FRONTIER MENTALITY.** Our country was established on a Frontier mentality. The Western states were seen as a vast, unlimited supply of natural resources. The Government encouraged development, extraction and settlement of these underutilized areas. I think we can safely say, that we have transitioned from a concept of “unlimited resources” to one “scarcity and competing demands.” This SHIFT in mentality should be incorporated into this section. We only have to look at case studies within our own country and in other countries throughout the world, for examples of how misguided decisions on land and water use have negatively effected natural resources, economies and quality of life.

**3. WATER.** Limited water supplies and contentious water issues have been part of life in the western states for years. Current and future water needs and supply need to be better addressed in the NEEDS statement.

According to a 2014 Government Accountability Report, 40 out of 50 state water managers expect water shortages under average conditions in some portion of their states over the next decade. Lake Mead and Lake Powell, our country's two largest reservoirs are both a record low levels since they were first constructed 86 and 56 years ago. A United Nations report dated August 2, 2022 is titled "As the climate dries the American west faces power and water shortages, experts warn."

Water reserves and resources in western states have typically been replenished by snowmelt in the mountains. The amount of glaciers and snowmelt in the mountains has changed, and so has the type of demand. For example, the states of Arizona and California are currently fighting each other over the water from the Colorado River. An article on May 5, 2023 in Mother Jones states "The Colorado River Wars are based on bad math." It discusses how poor projections in addition to a "once-in-a-millennium drought" have led to a lack of water in a supply that is critical to human demands and natural systems. This serves as an example of mistakes that should not be repeated, by assuming there is "Plenty to go around."

#### **4. WILDFIRE BEHAVIOR AND URBAN INTERFACE**

Wildfires are increasing in intensity and are becoming more devastating on public lands and on the urban interface that abuts them. This should also be addressed as a threat in the NEEDS statement.

**5. SOLAR.** "Solar is booming in the California Desert, if Water Issues Don't get in the Way." An article in Inside Climate News on June 26, 2023 describes how Utility-scale solar farms spreading rapidly across the desert Southwest are stressing the region's already overtaxed groundwater and communities are beginning to push back. The article states these projects are being overseen and approved by the BLM, which knew the solar projects might impact local groundwater aquifers, but have nonetheless been approving them.

The 2012 Western Solar Plan created by the BLM, is now being reviewed by the BLM to open up areas for solar development in five more states. How is this proposed rule being considered in unison with other development and land use plans, such as the Solar Plan?

The Nevada Globe reported on November 28, 2021, that the Rosendin Solar Farm, in Clark County, used more than 20 million gallons of water in just 2 months. It did not report how the usurping of that much water effected the wildlife, plants, soils, aquifer, surface water that were suddenly impacted due to the drawdown. I would suggest these types of threats also be addressed in the NEEDS statement.

According to EPA's findings in 2015 "Water Use in the United States," Thermoelectric power and irrigation were two of the largest users of water in 2015. Now that more Solar farms are being established, have EPA's new data (hopefully there is something more current than the 2015 numbers) been addressed in the NEEDS statement?

**6. CLIMATE CHANGE.** Climate change effects also need to be addressed and fleshed out, even though we are at the early stages of realizing how the effects we are currently experiencing might cascade. Public lands should be viewed as a public asset that can be used in addressing the approach, and used as a vital part of the solution we undertake to mitigate effects of climate change and build long-term resilience.

Mammals, Birds, Fish, Reptiles, Amphibians, Insects and Plants are all showing signs of stress and decreased populations. As biological, carbon based beings, we human beings have similar life cycle requirements and depend upon many of the other life forms to serve their role

in this cycle. As we stress the system, we will continue to learn where our interdependencies lie. I would encourage you to address biodiversity in your efforts to increase resilience.

**7. EXISTING DATA.** I add this as a threat, as it is apparent that data is still being stovepiped, and not shared well within and between agencies, businesses, universities and organizations. In addition to BLM, other Department of Interior Agencies, such as the US Fish and Wildlife Service, NOAA, Soil Conservation Service, USGS and other's have been using GIS, modeling and other computer mapping systems for years to inventory, tract, project and use as a decision tool. Many conservation organizations, mineral development companies, oil exploration, state, county and local agencies have robust systems to collect and analyze data. Instead of stovepiping this data, how can it be shared across the agencies and organizations for a better, more streamlined and comprehensive decision making process, incorporating social science, biological science and physical science and yes even political priorities, into a successful paradigm shift toward a more robust and comprehensive land management approach.

### III. Background. B. Management Decisions to build Resilient Public Lands

Paragraph 3, addresses restoration of degraded landscapes and how the public would be able to assist with this. I think the section could also use an explanation on how these landscapes became degraded, and whether or not actions that led to the degradation have been addressed in the present tense and in future cases. More simply put, if these were the result of a permitted or unauthorized use, has the entity that caused the degradation, been held accountable for the damages and/or restoration?

This section should also address what would happen to the site, once the 10 year conservation lease has expired. Would those lands be open to other uses, that may negate the conservation goals of the previous lease? Would there be any type of longer term conservation measures implemented to ensure the effort was not in vain?

Would BLM and agency restoration specialists be involved in the planning and restoration or oversight of the work done on the conservation lease? If multiple conservation leases are issued in an area, who will be responsible for the oversight and coordination so the efforts are working in a unified approach? Who will be responsible to determine if the actions and materials used in the restoration effort use the appropriate native seeds and plants, appropriate soils, techniques, monitoring and maintenance? Who will be financial liable for the completion of the conservation measures? How will access be granted and permitted for access to the site for these activities per 43CFR 2900 and 43CFR 2800?

Please clarify, the terms "restoration" and "mitigation" seem to be used interchangeably in this section and can be very different efforts. The primary difference between the two, is whether or not the effort is being conducted as a requirement to the party as an off-set for a disturbance they are causing on another location (mitigation), or if it is a voluntary action to meet a conservation objective (restoration). You may want to consider making these two into separate and distinct actions now, as it will save you a lot of time down the road with appeals if required mitigation gets confused with restoration, or vice versa.

### III. Background. C. Science for Management Decisions to Build Resilient Public Lands

I would suggest strongly that you consider using another definition for "Land Health." In citing a definition specific to range health, you will certainly struggle and be challenged with that definition when the habitat type that requires restoration does not fall cleanly into the

definitions found in 43 CFR 4180.1. Perhaps you can select a scientific restoration term and definition that is clearer in its scientific scope, such as: “Habitat Restoration” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning the majority of natural functions to the lost or degraded native habitat.” You could follow this definition with a bulleted list of actions you would consider appropriate under this Proposed Rule.

Furthermore, I would suggest you reference the USFWS habitat restoration and mitigation policies, as it may provide additional scientific language and guidance for formulating the wording and approach in this proposed rule. Two excellent ones to reference are the Endangered Species Act Compensatory Mitigation Policy, and the Partners for Fish and Wildlife Program. You may also find excellent guidance in the USDA Farm Bill Programs, that focus on habitat restoration.

### III. Background. D. Inventory, Evaluation, Designation, and Management of ACEC's

The last sentence in this section is troubling. If the term ACEC, means Area of Critical Environmental Concern, this sentence does not make sense. One would assume that in order to be designated an ACEC, management decisions would have been made in the designation process that determined this area had outstanding values that resulted in its becoming an ACEC. This sentence leads the reader to question whether or not the ACEC's importance would be diminished or negated if a proposal came in for a land use on the same site, by someone with influence, financial or political power. Or if the ACEC may be very attractive for another use, once it had been restored, altering the results of the restoration efforts. Please clarify this section.

### III. Background. F. Related Executive and Secretarial Direction

I am pleased to see the new directives, policies and strategies and hope these are carefully integrated into body of the Proposed Rule.

### IV. Purpose

Please provide a definition for “healthy wildlife habitat” in 6101.4.

Please provide a definition for “Ecosystem resilience” in 6101.4.

I recommend the first sentence be rewritten, as it oversimplifies the problem, and furthermore misses the point of the purpose of public trust lands. The lands are to be managed for future generations, not just to recover from drought and wildfire.

Once again, this paragraph freely mixes the terms restoration and mitigation and appears to conflate the two. They are two separate processes, and should be addressed as such. One is most often linked to a regulatory, or mandated action, the other is not. Restoration efforts can be completed under a mitigation plan or agreement, but the terms are not interchangeable, as they appear to be used here.

I am very confused about the jump in this section to focusing on forests on public lands. The Background section of this document seemed to imply this rule was for all public lands managed by the BLM, with a particular emphasis on establishing ACEC's. This section appears to focus on forest management. Does the purpose also include restoration on public lands that are not forested? Please clarify. It appears that this section might have even been a cut and paste edit from another document.

### IV. Definitions

This section should be re-written to omit the phrase “The proposed rule would define the term” from each definition and list the word you are defining first. For example, “Casual Use” as used in reference to conservation leases.... If you need to use that wording, please use it only once at the top of the column of definitions.

I would strongly recommend that all of the definitions in this section be tightened up. They are much too wordy and some are even obscure. There are other words in the document that need to be defined in this section as well. If you fail to make them crisp and easy to understand, there will be many years of confusion and wasted time attempting to debate them and sort them out later. The public and your employees will be very appreciative of your efforts for years to come, if this section is crystal clear.

Some examples:

Best Management Practices - Once again this definition mixes restoration and mitigation

Please provide a definition for “Compensatory mitigation actions”

Please provide a definition for “Conservation Lease.” How will this be differentiated from definitions and regulations contained in 43 CFR 2010 Leases?

Please do not attempt to redefine definitions that the BLM already uses in 43 CFR nor redefine the terms if they are used by sister agencies, doing similar work. This only serves to confuse the public, who are often times working on multiple projects or coordinating their activities with multiple agencies.

Casual Use has a different definition in 43 CFR 2920.0-5. Do you foresee any confusion having a different definition in this section? The definition given in this draft would be very difficult to articulate, let alone enforce.

Instead of referencing how “Mitigation” definition is consistent with the CEQ regulations, just write what it is and then if you’d like make a reference at the end, you could add that it is consistent with the CEQ regulations. This is way too wordy and will not serve the purpose you intend it to serve.

Mitigation strategies should not be tied to public uses, it should be linked to the type of actions that will be required of an entity that is required to perform mitigation.

Other terms used in the Background Section of this document that also need definitions are:

- Durable restoration
- Durable mitigation
- Existing Land Health Standards
- Adaptive Decisions
- Land Health Assessments
- Intact, native landscape
- Landscape resiliency

Definition for restoration should be consistent throughout the document. See section 6102.3. Please check other definitions for consistency throughout the document, as sometimes when there are multiple authors of a document, this can slip through the cracks.

I would like to re-emphasize that each of these definitions needs to be tightened up. Perhaps referencing a handbook or textbook's set of definitions, would aid in this process. Or as suggested before (Section III. C) , look to definitions already crafted for the term in the BLM regulations, or look to USFWS or NRCS for well honed definitions of the terms you want to incorporate.

#### Section 6102.4(a)(3) Public comments on "conservation lease proposal"

a.

Conservation lease is NOT the best term to use. I would recommend you use one term to address and describe mitigation projects. Perhaps one could be "Mitigation Projects" and the other "Conservation Projects." I would suggest you leave the concept and term lease, out of it. If you wanted to incorporate lease language into the project permit, that would give you an option, based upon the scope of each project plan.

Mitigation projects should be a written agreement between the permittee and the agency, with specific measurable actions, specific practices and materials and measurable outcomes. It should also contain remediation actions, timelines and specifics that will happen if the outcomes are not achieved. Bonding and other costs for monitoring by the agency may be included. You may want to consult the USFWS Manual on Mitigation Policy, to see if their approach is similar to what you are attempting to achieve.

The Voluntary projects should be named and referred to differently than the mitigation projects. Remember you are working with volunteers, organizations and individuals who are probably going to be volunteering their time, energy and funds to contribute to a higher purpose. They are not required to do this work (as opposed to those doing mitigation work) and will not want to be compared to or lumped in the same basket with them. Who will pay for the restoration projects and how can they be assured their projects will be allowed to pay dividends for the goals of the projects, out into the future?

What rights would a conservation leaseholder have? Can they manage the site for their project? Can they restrict use on the site? How can they plan to "protect" the site during the process, so no one else will disturb or vandalize the site? Will the BLM offer any patrols or enforcement to protect the work being conducted on the site? What types and amounts of vehicles, pack animals or aircraft will be allowed? Can they set up a camp or shelters adjacent to the site, to allow them easier access or nearby storage capabilities? If there is a camp, or people at the site all day, what measures will be implemented to deal with water usage, water and human waste disposal, trash, fuel and chemical storage, to provide a few examples.

Are you prepared to develop a recognition program for volunteers and organizations that are successful in their projects? What will you do to promote and reward?

b.

Before you can determined a default duration for a "conservation lease" you have to have a better idea of the purpose of that lease. Is it to insure completion? Protection? To insure the site has time to recover and meet the restoration goals? Determine whether all will have the same default duration, as some habitats may recover faster and more complete than others. Once the lease has expired, then what? Will the work and restoration be honored by not permitting the site for another purpose?

c.

I would suggest you address the question of why you would want to use a conservation lease, and what purpose it would serve? Would you want to use a conservation lease to promote lands around a community in fire prone habitat, to mitigate fire hazards now and into the

future? Would you want a conservation lease around habitat that was restored or enhanced for a federal or state listed species? Would you want a conservation lease to ensure fresh surface and groundwater sources are maintained with the highest water quality and that adequate quantities are available for the natural ecosystem, the neighboring communities and the farmers and ranchers that have been drawing water off that source for years to feed the community? Would a conservation lease preclude the development of that site, during and after the restoration has been conducted?

Local and national approach is critical to planning, project review and developing strategies for restoration on federal public lands. The public lands managed by the BLM are held in trust for all of the peoples of the US. Local input on the planning process is important, but it is equally important to be cognizant of the pressure that can be applied by local political pressures and economic reasons. This document alludes to making decisions at the local level, and I would like you to clarify that the BLM has no intent to limit comments from a broader constituency across the nation, who also have an interest in all federal public lands.

I would suggest you start with GIS layers and possibly some modeling in addition to the Resource Management Plans (RMP) to address high priority areas for restoration, and areas that can be managed in accordance with the restoration goals into the future, once the restoration is complete. Involve as many of the conservation organizations as you can, and colleges and universities, to share digital information on areas of concern, and areas they have already determined to be of high priority within their organizations and partnership efforts.

We utilized a saying in our restoration partnership efforts  $1 + 1 = 3$ . If you combine your efforts you get much more than just the simple sum of your parts. Share the work and the credit.

d.

Yes, if you have a lease, you should certainly state what uses are allowed or disallowed.

Who decides what future actions will be approved or denied once the restoration work is completed?

This proposal discussed bonding obligations for conservation leases? Do other land use proposals such as grazing, mining, oil exploration, or solar array's require similar bonding?

e.

I do not think the leases should be used for carbon offset credits. It is a highly speculative process, and I do not believe the government should be selling credits on public lands. I think it is a potential tool to assist in conservation efforts on private lands, but public lands are held in trust for all citizens, and should not be open to the carbon offset market. I would certainly recommend you check with the Solicitors Office, on the legality of that idea. It might also be considered to be unfair market practices from the perspective of private landowners that are in that business.

f.

If you are posing the question of what else conservation leases could possibly be used for, it would be helpful to provide examples of what else you are considering, besides the resources you have listed.

#### Summary:

Unfortunately, I have exhausted the time I have budgeted for review on this draft. Once again, I commend you for your efforts to move the conversation of conservation forward, by proposing a novel approach, and asking for comments from the public. I encourage you to continue with your efforts, but try to articulate the bigger questions and threats well in your "Needs



Statement” in the Background section first, so you have a clear purpose, before trying to articulate how you hope to accomplish them. You should also incorporate more discussion on biodiversity.

You are on a good path, but need to backup and broaden and clarify your focus. Please jump back into revising this idea and draft, without throwing up your arms and running out of the building. You have successfully introduced a new discussion in how FLPMA can be modified to meet our current needs and challenges. We need to demonstrate to the next generation that we are a lot smarter than they thought we could be.

Once again, I would like to thank you for your efforts.