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June 23, 2023

U.S. Department of the Interior, Director (630)
Bureau of Land Management
1849 C St. NW, Room 2134LM
Washington, D.C. 20240

RE: Conservation and Landscape Health; RIN 1004-AE92; OMB Control Number 1004-0NEW

Dear Director Tracy Stone-Manning:

The American Forest Resource Council (AFRC) submits the following comments on the Department of the Interior's proposal to create new regulations entitled, "Conservation and Landscape Health," which seeks to prioritize the health and resilience of ecosystems on Bureau of Land Management (BLM) lands. 88 Fed. Reg. 19,583 (Apr. 3, 2023).

AFRC is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. We represent over 70 forest product businesses and forest landowners throughout the West. Many of our members have their operations in communities adjacent to BLM managed land that this new rule will impact, and the management of these lands ultimately dictates not only the viability of their businesses, but also the economic health of the communities themselves. Rural communities, such as those affected by this rule, are particularly sensitive to the forest products sector because more than 50% of all manufacturing jobs within these communities are in wood manufacturing.

AFRC and its members strongly believe in – and practice – conservation and the responsible use of natural resources that benefit current and future generations. Conservation is a principal of modern, science-based forest and natural resources management and a foundational value of our members – which include the very people who help steward America's public lands and forests throughout the West.

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AFRC believes that a sustainable supply of timber is important to, and an outcome of, healthy and resilient forest land. Further, working lands and conservation are not mutually exclusive. On the contrary, we believe that misguided management paradigms, based on flawed and outdated concepts such as “forest protection” (but protection from what and from whom?), inadvertently inhibit the attainment of forest health and resilience. This flawed paradigm is most obvious in western states where high-intensity wildfire, insect infestations, and disease are responsible for more damage and destruction of federal lands than any other agent. This is partly evidenced by the “25-Monitoring Report on Monitoring Consultation under the Northwest Forest Plan,” which concluded that wildfire remains the leading cause for older forest losses on federal lands, accounting for about 70 percent of all losses since 1993.¹ This report was published based on data collected prior to the disastrous 2020 Labor Day wildfires that impacted over 110,000 acres of BLM managed land in western Oregon.

We are fortunate to have a bedrock law in the Federal Land Policy and Management Act of 1976 (FLPMA) that requires management based on the principles of multiple use and sustained yield “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.”² We are also fortunate to have existing regulations that require the BLM to solicit public input on potential uses of public land during the land management planning process. Based on these preexisting, clear guiding directions for a multitude of resources, we are confused by the intent of this proposed rule. We also believe that much of the substance of the rule is misguided or flawed. As explained below, we believe that this proposed rule was inappropriately developed with no stakeholder input or advanced notice and that the effects of this rule warrant preparation of an Environmental Impact Statement (EIS) due to the significant effects on the human environment.

Below is a summary of the AFRC’s comments:

- **The proposed rule needs to clarify that multiple use does not apply to the management of O&C Act timberlands.**
- **The proposed rule was inappropriately developed without stakeholder input or advanced notification.**
- **The proposed rule undermines public participation in the planning process.**
- **The proposed rule violates FLPMA’s multiple use mandate and misuses the term conservation.**

¹ Davis, Raymond J. et al. 2022. Northwest Forest Plan—the first 25 years (1994–2018): status and trends of late-successional and old-growth forests. Gen. Tech. Rep. PNW-GTR-1004. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 82 p., *available at*, https://www.fs.usda.gov/pnw/pubs/pnw_gtr1004.pdf.

² 43 U.S.C. § 1701(a)(8).

- **The BLM does not have statutory authority to create a conservation leasing program.**
- **The proposed rule does not clarify how the government will receive fair market value for conservation use.**
- **The concept of “carbon offset credits” is misguided and should not be permitted through “conservation leases.”**
- **The proposed rule’s changes to the designation and protection of Areas of Critical Environmental Concern violate FLPMA.**
- **The Economic and Threshold Analysis is flawed; the proposed rule will likely have a significant material effect on several facets of the economy.**
- **The effects of this rule warrant the preparation of an EIS.**
- **The proposed rule was pushed forward in a manner inconsistent with FLPMA’s state and local government coordination requirements.**

COMMENTS

I. The proposed rule needs to clarify that multiple use does not apply to the management of O&C Act timberlands.

The proposed rule does not discuss the interplay between FLPMA’s multiple use sustained yield obligations and the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (O&C Act), 43 U.S.C. § 2601, *et seq.* O&C lands are former railroad grant lands revested in the United States in 1916.³ In 1937, Congress enacted the O&C Act, which requires the subject lands to be devoted to “permanent forest production,” specifically mandating “the timber thereon shall be sold, cut, and removed in conformity with the princip[le] of sustained yield....”⁴⁵ Under the O&C Act, 50 percent of timber sale receipts are provided to the 18 counties in which the O&C lands are located, providing a substantial source of government revenues for these localities.⁶

Congress recognized that sustained-yield forestry would result in “providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facil[i]ties.” It also recognized the mandatory nature of sustained-yield forestry on the lands when enacting legislation in 1948 to reopen the O&C lands to exploration location, entry, and disposition under the general mining laws.⁷ U.S. District Court Judge Leon recently provided that the “BLM must

³ See *Oregon & Cal. R.R. Co. v. United States*, 238 U.S. 393 (1915); Chamberlain-Ferris Act of June 9, 1916, 39 Stat. 218; February 26, 1919 (40 Stat. 1179).

⁴ 43 U.S.C. § 2601.

⁵ 43 C.F.R. § 5040.1 (BLM regulations recognizing its authority to divide O&C lands into sustained-yield forest units).

⁶ 43 U.S.C. § 2605.

⁷ Act of Apr. 8, 1948, 80th Cong., 2d sess., ch. 179, Pub. L. No. 80-477, 62 Stat. 162.

ensure that the timber produced on O&C land is sold, cut, and removed in conformity with the principle of sustained yield. These are mandatory directives from Congress.”⁸ Moreover, the Ninth Circuit has recognized the O&C Act “as establishing timber production as the dominant use.”⁹

Although FLPMA generally governs BLM’s management of federal lands under a multiple-use sustained-yield model, **its savings clause provides that in the event of any conflict between its requirements and the O&C Act, the latter takes precedence.**¹⁰ Because the O&C Act mandates dominant use management of O&C timberlands for sustained-yield timber harvest, other uses are allowed only when subordinated to sustained-yield timber production.¹¹

For the reasons stated above, the proposed rule, and its inclusion of conservation use, cannot be applied to O&C timberlands. Therefore, the final rule must clarify that it will not apply to the BLM’s management of O&C timberlands.

II. The proposed rule was inappropriately developed without stakeholder input or advanced notification.

As an initial matter, AFRC is disappointed with the lack of stakeholder involvement before issuing the proposed rule, as well as the agency’s engagement during the comment period. Despite the significant implications of the proposed rule to all multiple use and conservation communities, including the proposed rule’s new conservation leasing program, the BLM did not appropriately engage stakeholders through an advanced notice of proposed rulemaking (ANPR) or Request for Information, which is a critical stage of participation to help shape the proposed rule. The BLM has also used a Notice of Intent to accompany the development of its analysis under the National Environmental Policy Act (NEPA) to help gather public input prior to proposing regulatory reform.¹²

⁸ *Am. Forest Res. Council v. Nedd*, No. 15-cv-01419 (RJL), 2021 WL 6692032, (D.D.C. Nov. 19, 2021), *appeal docketed*, No. 20-5008 (consolidated with Nos. 20-5009, 20-5010, 20-5011, 22-5019, 22-5020, 22-5021) (D.C. Cir. Jan. 24, 2020).

⁹ *Headwaters, Inc. v. BLM, Medford Dist.*, 914 F.2d 1174, 1183 (9th Cir. 1990); *but see Murphy Co. v. Biden*, 65 F.4th 1122 (9th Cir. 2023) (petition for rehearing en banc filed on June 7, 2023).

¹⁰ 43 U.S.C. § 1701 Savings Provisions Note (West 2010).

¹¹ *Am. Forest Res. Council v. Nedd*, No. 15-cv-01419 (RJL), 2021 WL 6692032, (D.D.C. Nov. 19, 2021), *appeal docketed*, No. 20-5008 (consolidated with Nos. 20-5009, 20-5010, 20-5011, 22-5019, 22-5020, 22-5021) (D.C. Cir. Jan. 24, 2020).

¹² *See, e.g., Bureau of Land Management, Interior, Notice of Intent To Conduct a Review of the Federal Coal Leasing Program and To Seek Public Comment*, 86 Fed. Reg. 46,873 (Aug. 20, 2021).

Moreover, the BLM's truncated comment period of merely 75-days and perfunctory virtual public meetings is insufficient to meaningfully engage the public regarding the agency's rulemaking. With respect to the proposed rule's conservation leasing program, it is apparent that the BLM has more outstanding questions than answers on how the rule should be finalized:

Is the term "conservation lease" the best term for this tool?; What is the appropriate default duration for conservation leases?; 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?; Should the rule clarify what actions conservation leases may allow?; Should the rule expressly authorize the use of conservation leases to generate carbon offset credits?; Should conservation leases be limited to protecting or restoring specific resources, such as wildlife habitat, public water supply watersheds, or cultural resources?

Clearly, the agency would benefit from continued stakeholder engagement before finalizing a rule that will have major impacts on public land management into the future.

For that reason, AFRC, along with a coalition, submitted a request that the BLM withdraw the proposed rule to reset the conversation and ensure that appropriate stakeholders are at the table to find durable solutions to some of the agency's challenges around multiple-use management.

III. The proposed rule undermines public participation in the planning process.

Section 202(f) of FLPMA states that the Secretary "shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands."¹³ Accordingly, the BLM's existing regulations pertinent to land use planning require an opportunity for meaningful public participation in the preparation of resource management plans and other planning activities.¹⁴ Additional regulations provide guidance and management direction regarding Resource Management Planning specific to issue identification. The "identification of issues" regulation states that "at the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs, and **resource use**, development and protection opportunities for consideration in the preparation of the resource management plan."¹⁵

¹³ 43 U.S.C. § 1712(f).

¹⁴ 43 C.F.R. § 1610.2.

¹⁵ 43 C.F.R. § 1610.4-1 (emphasis added).

Moreover, FLPMA does not specify or list potential uses on public lands; rather it directs the BLM to manage for multiple uses, with special consideration for the Nation's need for domestic sources of minerals, food, timber, and fiber.¹⁶ As the U.S. Supreme Court recognized, multiple use management "is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put[.]"¹⁷

Prior to this proposed rule, the BLM had not identified any specific uses in its regulations. Instead, the BLM's regulations were developed to direct agency managers to solicit input from members of the public and local stakeholders when developing and prioritizing potential uses during the planning process.¹⁸ The proposed rule would largely take the public out of the resource use identification process by, for the first time since the passage of FLPMA in 1976, predetermining what the single priority use would be.

The existing regulations support and encourage an inclusive, citizen-based approach to public land management. Whereas the proposed rule presents a top-down, authoritative approach to public land management. It is unclear what "problem" the BLM is trying to solve by attempting to cut the public out of important components of the planning process by adopting this approach. Surely if the BLM believed that the public supports a single use for public land management guided exclusively by conservation principles, then development of this proposed rule would be unnecessary as the current practice of soliciting public input during the planning process would yield the same results. The fact that the BLM is inclined to codify a single use indicates a fear that open public participation may not yield the results that the current Administration desires. We believe this shift away from active public participation will ultimately result in flawed land management decisions and a public that is detached from its public lands.

IV. The proposed rule violates FLPMA's multiple use mandate and misuses the term conservation.

As outlined above, neither FLPMA nor existing regulations identify specific uses for BLM land. The proposed rule constructs a narrative based on the notion that 1) FLPMA does identify specific uses, 2) those uses are prioritized in FLPMA, and 3) conservation is among those existing uses. The Executive Summary asserts that the proposed rule "clarifies that conservation is a use on par with other uses of the public lands under FLPMA's multiple-use and sustained-yield framework." This Summary also asserts that "the proposed rule does not prioritize conservation above other uses; it puts conservation on an equal footing with other uses, consistent with the plain language of FLPMA." However, such "plain language" simply does not exist in FLPMA.

¹⁶ 43 U.S.C. 1701(12).

¹⁷ *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004).

¹⁸ 43 C.F.R. § 1610.4-1.

Section 103 (c) of FLPMA defines “multiple use” as “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, 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 without permanent impairment of the productivity of the land and the quality of the environment.”¹⁹ Neither this section nor any other section in FLPMA identifies or prioritizes specific uses. Instead, uses are developed through public engagement during the planning process, as noted previously. Furthermore, there are no existing BLM regulations that emphasize any single use—the proposed rule, if adopted, would represent the first and only time that the BLM adopts a single use through the regulatory process.

Ultimately, the proposed rule does not propose to clarify any component of FLPMA, since those components do not exist. Nor is it proposing to put conservation on “equal footing” with other uses, since no other uses are codified into law or adopted in regulation. The proposed rule’s clarification that “conservation” qualifies as a “use” under FLPMA is a significant change to the current management scheme. The BLM can only manage lands for the multiple uses defined in FLPMA, unless the land has been specifically dedicated for certain management. The proposed rule’s inclusion of conservation as a use permits the BLM to manage land for conservation purposes, without a special land use designation. The proposed rule constrains the multiple-use mandate in FLPMA by defining and listing a single, priority use: conservation. Therefore, the adoption of the proposed rule would violate the requirement to manage public lands under the principles of multiple use under Section 302(a) of FLPMA.

Throughout the proposed rule, the BLM makes additional proclamations that are simply unsupported by existing law or regulation. In one instance, the BLM claims that the proposed rule “identifies and requires practices to ensure that the BLM manages the public lands to allow multiple uses while retaining and building resilience to achieve sustained yield of renewable resources.” Nowhere in the proposed rule does the BLM even reference uses other than “conservation,” let alone identify and require practices that would ensure their inclusion in future BLM management plans. In fact, Section III.B. of the proposed rule acknowledges that the BLM has only three ways to manage for conservation use: (1) protection of intact, native habitats, (2) restoration of degraded habitats, and (3) informed decision making, primarily in plans, programs, and permits.²⁰ If the proposed rule were adopted, the BLM managers would not only be shackled to adhering to a single use, but also to parsing their land base into distinct categories and applying narrowly defined treatments to each.

¹⁹ 43 U.S.C. § 1702(c).

²⁰ 88 Fed. Reg. at 19,585.

It is questionable whether the BLM even has the legal and statutory authority to designate “conservation” as a use. It is Congress who has provided the BLM with its multiple use and sustained yield authority, and any new authorities or new uses would require an Act of Congress. As the U.S. Supreme Court recently stated: “Agencies have only those powers given to them by Congress, and ‘enabling legislation’ is generally not an ‘open book to which the agency [may] add pages and change the plot line.’” *W. Virginia v. Env’t Prot. Agency*, 142 S. Ct. 2587, 2609 (2022). Before FLPMA was enacted, each use was authorized under other laws like the Mineral Leasing Act of 1920, the Mining Law of 1872, and the Taylor Grazing Act of 1934. And after FLPMA was enacted, each time a “use” was added to the multiple-use management scheme under FLPMA, Congress authorized parameters and directed the BLM to address that use.

Furthermore, conservation itself cannot be appropriately characterized as a “use.” According to the plain reading of the term, “conservation” is a purpose or an objective for how another use is applied. For example, the Cambridge English Dictionary defines the term “conservation” as “carefully using valuable natural substances that exist in limited amounts in order to make certain that they will be available for as long a time as possible.” The Cambridge Dictionary provides the following sentence as an example of how the term “conservation” should be used: “the main objectives are the conservation of materials and energy in support of the sustainable development program.”²¹ In this example, the use is some type of development and conservation is the objective that informs the manner in which that development will be conducted. Other dictionaries similarly define conservation. The Oxford Languages Dictionary²² defines conservation as “prevention of wasteful use of a resource,” and the Webster’s Third New International Dictionary²³ defines it as “the planned management of a natural resource to prevent exploitation, destruction, or neglect.” Based on its plain language, conservation is applied to describe another resource “use,” but the term conservation is not defined as a use.

Technical dictionaries are also helpful when interpreting the term “conservation.” The Society of American Foresters Dictionary of Forestry defines conservation as “the management of a renewable natural resource with the objective of sustaining its productivity in perpetuity while providing for human use compatible with sustainability of the resource.”²⁴ The “use” in this definition is the natural resource being managed for, and the term “conservation” refers to the objective of using that natural resource in a particular way.

²¹ Cambridge English Dictionary, available at <https://dictionary.cambridge.org/us/dictionary/english/conservation>.

²² Oxford Languages Dictionary, available at <https://www.oed.com/view/Entry/39564?redirectedFrom=conservation#eid>.

²³ Webster’s Third New International Dictionary, p. 483 (2002).

²⁴ Deal, Robert, Society of American Foresters Dictionary of Forestry, p. 36 (2nd ed. 2018).

Despite the BLM's position to the contrary, conservation in the context of land management cannot be applied by itself. For example, conservation of any given acre of land can only be achieved if there is a specific use being applied to that acre. If that acre is being used for cattle grazing, conservation could be achieved by limiting the intensity of that grazing to ensure productivity. If that acre is being used for timber harvesting, conservation could be achieved by moderation of the intensity of the harvest and replanting to ensure long-term forest health and productivity. Land conservation is attainable under each of these scenarios because that land was being *used*; however, the "use" could not be defined as "conservation." Conservation absent any other use is not conservation at all, it is preservation. If BLM's intent in the proposed rule is *non-use* of public land, then the word "conservation" should be replaced by the word "preservation" and defined accordingly.

V. The BLM does not have the authority to create a conservation leasing program.

Section 6102.4 creates a Conservation Leasing Program, which will allow conservation leases for either "restoration or land enhancement" or "mitigation."²⁵ The proposed rule claims that its authority to create a conservation leasing program arises under section 302(b) of FLPMA, 43 U.S.C. § 1732(b). According to the proposed rule, the Tenth Circuit in *Greater Yellowstone Coal. v. Tidwell*, 572 F.3d 1115, 1127 (10th Cir. 2009) (*Greater Yellowstone*), has recognized that section 43 U.S.C. § 1732(b) is considerably broader than the authority granted in subject-specific provisions. As stated above, it is questionable whether the BLM has authority to create a leasing program for conservation as a use.

The BLM's reliance on *Greater Yellowstone* is misguided and misleading. In that case, the court primarily discussed the interplay between special use permits granted under 43 U.S.C. § 1737(b) and BLM permitting in general under 43 U.S.C. § 1732(b). At issue was a memorandum of understanding (MOU) between the BLM and the State of Wyoming. The court held that the BLM did not violate the agency's permitting regulations under 43 U.S.C. § 1732(b) by authorizing the State to use BLM lands through a cooperative agreement, the MOU, under 43 U.S.C. § 1737(b). The court merely stated that the applicability of 43 U.S.C. § 1732(b) is broader than that of 43 U.S.C. § 1737(b), which is logical because 43 U.S.C. § 1737(b) is only meant to apply to special uses. *See Greater Yellowstone*, 572 F.3d 1115, 1127-28. The decision in *Greater Yellowstone* simply cannot be validly interpreted as a case that supports the position that the BLM has broad authority under 43 U.S.C. § 1732(b) to promulgate an entirely new public land use and leasing program through rulemaking without an Act of Congress.

²⁵ 88 Fed. Reg. at 19,591.

More pertinent and illustrative is another Tenth Circuit decision in *Public Lands Council v. Babbitt*, holding that a 1995 regulation—that allowed a permit for a 10-year duration to use public lands for conservation use to the exclusion of livestock grazing—was not authorized by any statute and, therefore, was invalid. The court found that the conservation use was not authorized under the Taylor Grazing Act, FLPMA, or the Public Rangelands Improvement Act, and that the primary purpose of the permits had to be a use: livestock grazing. *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1308 (10th Cir. 1999). The court found that the Secretary of the Interior lacked the statutory authority to issue grazing permits intended exclusively for conservation use. Further, upon appeal to the Supreme Court, the Secretary did not seek review of that portion of the Tenth Circuit’s decision. See *Public Lands Council v. Babbitt*, 529 U.S. 728, 747 (2000). And while the proposed rule, here, claims that the conservation leases are “not intended to provide a mechanism for precluding other uses, such as grazing, mining, and recreation,” it is hard to imagine how that will not be the end result.

Even if a conservation leasing program is somehow lawful, the BLM’s proposed rule has several issues. The proposed rule states conservation leases “would not override valid existing rights or preclude other, subsequent authorizations so long as those subsequent authorizations are compatible with conservation use.” First, the BLM has failed to define what is a “compatible” use under the conservation leasing program. There is no assurance that forest management, like treatments to improve forest health and resiliency, can be considered a conservation tool and, ultimately, a “compatible use” within the meaning of the proposed rule. Second, the use of the term “so long as” indicates the BLM’s clear intent to negate all other uses, in conflict with FLPMA’s multiple-use, sustained yield mandate.

Overall, the proposed rule’s conservation leasing program could put legally valid and ecologically necessary forest management projects at risk. This would be a perverse outcome that directly conflicts with the Biden Administration’s focus and prioritization of the nation’s forest health and wildfire crisis. Further, the use of a conservation lease for “restoration” or “mitigation” will remove operable lands from BLM’s timber sale program. The BLM needs to carefully consider how the conservation leasing program can be done “without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources”²⁶

VI. The proposed rule does not clarify how the government will receive fair market value for conservation use.

Section 102 (a)(9) of FLPMA requires that the United States receives fair market value of the use of the public lands and their resources unless otherwise provided for by statute. The proposed

²⁶ 43 U.S.C. §1702(c).

rule seeks input on fair market value assessment, but only in the context of conservation leases. The proposed rule lacks direction on how such values would be assessed for actions or inactions associated with conservation use outside of leases; nor does it direct how, if assessed, such value would be received by the government.

Fair market value for tangible uses such as timber or grazing rights can be determined using a competitive open market system. How the BLM is to assess the value of the “protection” of 100 “intact” acres of BLM land through inaction is unclear. Moreover, if the BLM was able to assess fair market value for those 100 acres set aside from any other uses, from whom would they receive that value? The proposed rule’s discussion of fair market value generates more questions than answers, and the BLM must provide greater clarity before finalizing the rule. The lack of information raises questions about government accountability, transparency, and proper oversight of any leasing program and the determination of fair market value for public assets that are collectively owned by the American people.

VII. The concept of carbon offset credits is misguided and should not be permitted through conservation leases.

The proposed rule’s section 6102.4 discusses FLPMA authorizations to regulate the use, occupancy, or development of public lands through leases, and outlines the concept of conservation leases under these authorizations. Specifically, the proposed rule asks for public comment on whether the rule should expressly authorize the use of conservation leases to generate carbon offset credits.²⁷

The BLM is asking the wrong question in the proposed rule. The question should not be whether to authorize the use of conservation leases to generate carbon offset credits. The question *should be* whether the concept of carbon offset credits is an effective strategy to slow the effects of climate change through increased net carbon sequestration and decreased net carbon emissions. The effectiveness of delaying or halting the potential harvest of timber, or the use of other renewable resources, to enable polluters the ability to continue to emit greenhouse gases through carbon offset credits is highly controversial and uncertain – scientifically, economically, environmentally, and socially – and we urge the BLM to take a hard look at the many facets of this practice to determine if its expansion to BLM land is in the public’s best interest.

The Intergovernmental Panel on Climate Change’s (IPCC) 2022 6th Assessment reaffirmed the carbon mitigation benefits of sustainable forest management, the benefits of substituting wood for more carbon intensive building products, and the potential negative consequences of policies

²⁷ 88 Fed. Reg. at 19,591.

that reduce sustainable timber harvests as the demand for wood products shifts to other countries (known as “leakage”) with less stringent environmental protections:

carbon storage in wood products and the potential for substitution effects can be increased by additional harvest, but with the risk of decreasing carbon storage in forest biomass when not done sustainably (Smith et al. 2019b). *Conversely, reduced harvest may lead to gains in carbon storage in forest ecosystems locally, but these gains may be offset through international trade of forest products causing increased harvesting pressure or even degradation elsewhere* (Pendrill et al. 2019b; Kastner et al. 2011; Kallio and Solberg 2018).²⁸ (emphasis added).

We urge the BLM to follow the guidance of the IPCC and consider the effects of sustainable forest management, substitution, and leakage when determining the effectiveness of carbon offset credits.

A. Sustainable forest management is a more effective tool to sequester carbon.

Active forest management is more effective in capturing and storing atmospheric carbon in forest and wood product carbon pools than a policy of hands-off management that precludes periodic harvests and the use of wood products. This notion is supported by analysis of the most recent U.S. Forest Service Inventory and Analysis (FIA) program’s report that summarize differences in growth (and hence sequestration) between owner types reflecting these different management strategies.^{29 30} This is also consistent with the findings and recommendations of international scientific bodies, including the IPCC. In fact, the IPCC’s 4th Assessment recognized the carbon mitigation benefits of forests and wood products:

“Mitigation options by the forestry sector include extending carbon retention in harvested wood products, product substitution, and producing biomass for bio-energy. This carbon is removed from the atmosphere and is available to meet society’s needs for timber, fiber, and energy.”

“In the long term, a sustainable forest management strategy aimed at maintaining or increasing forest carbon stocks, while producing an annual sustained yield of timber, fiber or energy from the forest, will generate the largest sustained mitigation benefit.”

²⁸ IPCC, *Climate Change 2022: Impacts, Adaptation, and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, Cambridge, UK and New York, NY, USA, 3056 pp. (2022).

²⁹ Oswalt, Sonja N., et al., *Forest Resources of the United States, 2017: a technical document supporting the Forest Service 2020 RPA Assessment*. Gen. Tech. Rep. WO-97. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office, p. 223 (2019), available at <https://doi.org/10.2737/WO-GTR-97>.

³⁰ Palmer, Marine et al., *Washington’s forest resources, 2007–2016: 10-year Forest Inventory and Analysis report*, Gen. Tech. Rep. PNWGTR-976. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station, p.79 (2019).

Other research supports the notion that, if the role of forests in combatting climate change is to reduce global greenhouse gasses through maximizing the sequestration of carbon from atmospheric CO₂, then increasing the acreage of young, fast growing small trees is the most prudent management approach. A 2016 study in the Pacific Northwest concluded that, although large trees accumulated carbon at a faster rate than small trees on an individual basis, their contribution to carbon accumulation rates was smaller on an area basis, and their importance relative to small trees declined in older stands compared to younger stands. It also noted that although large trees are important carbon stocks, they play a minor role in additional carbon accumulation.³¹

These conclusions support the practice of regular harvests at an age where tree growth begins to slow, storage of that tree carbon in long-lasting wood products, and proactive reforestation. A failure to do so would hamper that acre's ability to maximize carbon sequestration through the replacement of slow growing large trees with fast growing small trees and the storage of those large trees in long-lasting wood products. Not storing that carbon in wood products also poses the risk of losing the carbon in standing trees from high intensity wildfire, which is becoming increasingly prevalent on public lands in western states. A 2022 study estimated that wildfires in California in 2020 emitted 127 million metric tons of carbon into the atmosphere, making the greenhouse gas (GHG) emissions from wildfires the second most important source in the state, after transportation.³² For context, the U.S. Forest Service recently disclosed that the agency only "commercially harvests one tenth of one percent of acres within the National Forest System each year. Harvests designed to improve stand health and resilience by reducing forest density or removing trees damaged by insect or disease make up 86 percent of those acres. The remainder are final regeneration harvests that are designed to be followed by reforestation."³³ There is extraordinary opportunity to increase the practice of sustainable forest management on federal lands as an effective tool to sequester carbon.

Harvesting trees and transferring the stored carbon to wood products allows a land manager to "stack" the sequestration potential of that land. For example, assume an objective to maximize carbon sequestration on 100 acres over a 150-year period starting at year zero. Without active management and timber harvest, those trees would grow to 150 years and represent the only carbon sequestered on those 100 acres at the end of the 150-year cycle (assuming they don't burn in a wildfire). Alternatively, the trees could be harvested on a 50-year rotation and stored in wood products. After 150 years, there would be carbon stored in an existing 50-year-old stand,

³¹ Gray, A. N., et al., *Carbon stocks and accumulation rates in Pacific Northwest forests: role of stand age, plant community, and productivity*, *Ecosphere* 7(1):e01224. 10.1002/ecs2.1224 (2016).

³² Jerrett, Michael, et al., Up in smoke: California's greenhouse gas reductions could be wiped out by 2020 wildfires. *Environmental Pollution*, Volume 310, 2022, 119888, ISSN 0269-7491, available at, <https://doi.org/10.1016/j.envpol.2022.119888>.

³³ 88 Fed. Reg. 24,497 (April 21, 2023).

plus carbon stored in wood products from an additional two 50-year-old stands previously harvested. The figure below illustrates the concept of stacking.³⁴

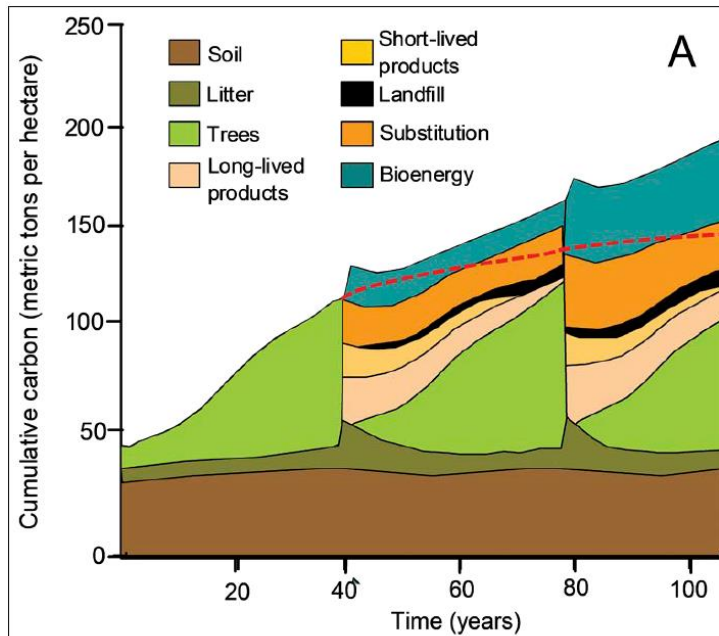


Figure 8.7—Carbon balance from a hypothetical forest management project in which the forest is harvested roughly every 40 years from land that started with low forest carbon stocks. This figure accounts for forest regrowth and carbon stored in wood products in use and landfills as well as the prevented release of fossil fuel carbon (also counted as stored carbon) via product substitution and biomass energy. It illustrates how forests can continue to accrue carbon over time with forest management. Figure is from McKinley et al. (2011) and adapted from IPCC (2007).

A 2013 study from the Journal of Sustainable Forestry summarized these concepts well:

More CO₂ can be sequestered synergistically in the products or wood energy and landscape together than in the unharvested landscape. Harvesting sustainably at an optimum stand age will sequester more carbon in the combined products, wood energy, and forest than harvesting sustainably at other ages.³⁵

To further illustrate, Figure 5 shows the volume growth of a Douglas-fir forest across five different “site” growing ground scenarios.³⁶ Basal area is a measurement of the “volume” of tree stems across a given acre. Basal area correlates to carbon sequestration as it describes how much tree volume exists.

³⁴ McKinley, Duncan C., et al., *A synthesis of current knowledge on forests and carbon storage in the United States*, Ecological Applications, 21(6), pp. 1902–1924 (2011).

³⁵ Oliver, Chadwick Dearing, et al., *Carbon, Fossil Fuel, and Biodiversity Mitigation With Wood and Forests*, Journal of Sustainable Forestry, 33:3, 248-275 (2014), DOI: 10.1080/10549811.2013.839386.

³⁶ McArdle, R. E., et al., *The yield of Douglas-fir in the Pacific Northwest*, Technical Bulletin No. 201, Department of Agriculture, Forest Service (1961).

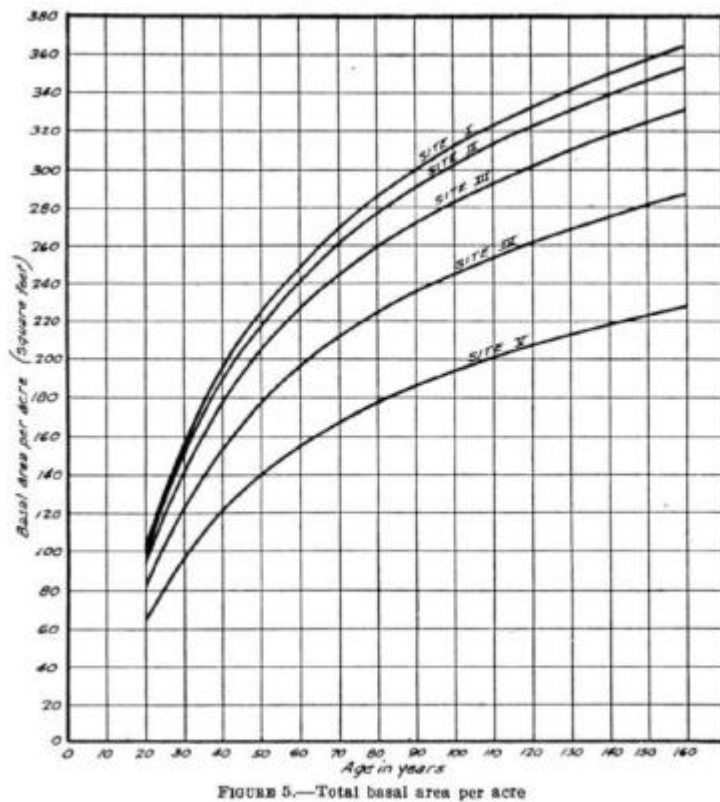


FIGURE 5.—Total basal area per acre

Consider the curve for “Site III.” At 50 years, that acre has accumulated about 205 square feet (sq. ft) of basal area. At 150 years, that acre has accumulated about 325 sq. ft of basal area. If the trees on that acre were left to grow for 150 years, 325 sq. ft of basal area and associated carbon would be sequestered by the end of the cycle. If those trees were cut and replanted every 50 years in a 150-year period, 615 sq. ft worth of basal area and associated carbon would be sequestered (205 sq. ft x 3=615 sq. ft) by year 150. With this scenario, a land manager could capture nearly twice as much tree growth, and sequester nearly twice as much carbon, on a 50-year harvest cycle than by leaving those trees to grow for 150 years.

Since basal area is only a measure of tree volume above ground, it does not account for tree volume below ground in the form of roots. Root growth is also a form of carbon sequestration. The concept we applied to above-ground growth could be replicated to below-ground growth. Consider the scenario where an acre of Douglas-fir is left to grow for 150 years. At the end of the cycle, there would be one network of roots below the ground. When trees are harvested the roots are left underground. So, in the scenario where trees are harvested every 50 years over the 150-year cycle, there will be three root networks underground at the end of the cycle instead of one. That additional below-ground growth further contributes to the overall sequestration capacity of any given acre of land.

B. Leakage.

Leakage occurs when emissions that are prevented in one locale are simply transferred to another region. Deferred harvests on BLM lands through the leasing of carbon offset credits will result in reduced timber supply in the region where those leases are sold. If certain mills must reduce lumber production due to a lack of available timber, this lumber production and the related emissions will merely shift to another state or country to meet domestic demand with additional transportation-related emissions.

A 2019 study calculated that there is nearly 82 percent leakage in California from the implementation of its carbon cap-and-trade program.³⁷ That means that 82 percent of the projects do not confer global greenhouse gas benefits because the emissions occur elsewhere. Productivity per acre in the Pacific Northwest, where the BLM manages over 2.5 million acres of forest land, is about 74 percent higher than the U.S. average and therefore for every acre removed from harvest in the Pacific Northwest, an average of 3.85 acres with average U.S. productivity are required elsewhere to fill the void.³⁸ If the wood supply comes from more boreal regions (e.g., Russia and Canada), we can expect the impact to be even larger.

C. Substitution.

Substitution occurs when a different product is used in place of the wood product that is withheld from the market by harvest deferral. In the case of softwood lumber, this substitution may occur with concrete, steel, or other composite materials that have much higher emissions associated with their production – leading to a net increase in carbon emissions due to the harvest deferral. A 2018 study yielded results that showed a significant reduction in greenhouse gas emissions for structures using wood as a building material as opposed to concrete or steel.³⁹ A 2021 study clearly showed the potential of carbon emission reductions that could be achieved in mass timber construction compared to the construction of traditional concrete mid- to high-rise buildings.⁴⁰

Published displacement and substitution factors are available to quantify the efficiency of using a wood-based product to reduce greenhouse gas emissions to the atmosphere compared to a non-wood alternative product. A 2020 meta-analysis quantified the range of greenhouse gas benefits of wood substitution and provided a clear climate rationale for increasing wood substitution in place of other products, provided that forests are sustainably managed and that wood residues are used responsibly.⁴¹ A 2021 study published in *The Journal of Sustainable Forestry* used recently published life cycle assessment data for analysis that compares the carbon consequences of a ‘no-harvest’ alternative for Pacific Northwest forests to a range of alternative uses.⁴² They found

³⁷ Haya, Barbara and William Stewart, *POLICY BRIEF: The California Air Resources Board’s U.S. Forest offset protocol underestimates leakage* (July 12, 2019).

³⁸ Oswalt, Sonja N. et al., *Forest Resources of the United States, 2017: a technical document supporting the Forest Service 2020 RPA Assessment*, Gen. Tech. Rep. WO-97. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office, p. 223 (2019), available at, <https://doi.org/10.2737/WO-GTR-97>.

³⁹ Laurent, A. B., et al., *Comparative Lifecycle Carbon Footprint of a Non-Residential Steel and Wooden Building Structures*. *Curr Trends Forest Res*, CTR-128 (2018).

⁴⁰ Puettmann, M. et al., *Comparative LCAs of Conventional and Mass Timber Buildings in Regions with Potential for Mass Timber Penetration*. *Sustainability* 2021, 13, 13987 (2021).

⁴¹ Sathre, R. and J. O’Connor, *Meta-analysis of greenhouse gas displacement factors of wood product substitution*, *Environmental Science & Policy* 13(2): 104-114 (2010).

⁴² Lippke, B., et al., *The Plant a Trillion Trees Campaign to Reduce Global Warming – Fleshing Out the Concept*, *Journal of Sustainable Forestry* 40(1): 1-31 (2021).

that accounting for only the harvested wood products (e.g., no substitution or solid waste disposal site storage) generates 1.2 times greater benefits than no harvest alternatives. When substitution is considered, the carbon benefit increases 1.6 to 5.9 times better than no harvest alternatives, depending on end uses. These climate mitigation benefits are real, measurable, and predictable. The BLM must consider and analyze these factors when assessing the effectiveness of carbon offset credit leases.

The National Council for Air and Stream Improvement (NCASI) recently conducted an analysis of the effect of deferred harvests on carbon storage, carbon sequestration rates, carbon emissions, and costs in a review document entitled “NCASI Review of Carbon Implications of Proforestation.”⁴³ Below is a summary of its findings:

The analysis was based on recent forest inventory data on private, planted Douglas-fir forests in Oregon and Washington. One of the scenarios included a 10% reduction in overall harvest volumes compared to a current baseline, resulting in extending the average harvest age by 12 years. Emissions from substitute products were estimated using published displacement factors, which express the emissions from a non-wood product per unit of emissions from the use of a comparable wood product. Positive values indicate that using a non-wood substitute causes more GHG emissions than using a wood product. Reported average factors for construction lumber substitutes range from 0.54 (Smyth et al. 2017) to 1.2 (Leskinen et al. 2018) to 2.1 (Sathre and O’Connor 2010). The deferred harvest scenario resulted in about a 4.5% reduction in annual net sequestration rates after considering substitution effects (using the most conservative displacement factor).

The NCASI analysis compared net carbon sequestration over 100 years for four forest management alternatives: proforestation (continuous forest growth, no timber harvest—essentially what a BLM carbon offset credit lease would resemble), a 10% reduction in harvest through extended rotations, the current baseline of forest management practices on private, planted forests, and a 10% increase in harvest levels through more active forest management. Table 2 and Figure 8 from the NCASI review clearly show that alternatives that reduce timber harvests result in a net reduction in the carbon sequestered in private, planted Douglas-fir forests in the Northwest.

⁴³ NCASI, Review of Carbon Implications of Proforestation (2020), available at, https://www.ncasi.org/wp-content/uploads/2020/12/Review_Carbon_Implications_Proforestation_Dec2020.pdf.

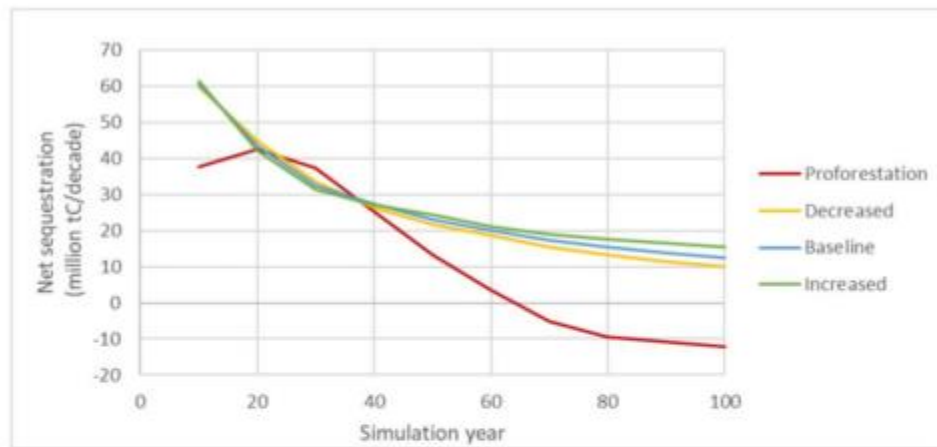


Figure 8. Net Sequestration for the Four Scenarios (in million tC per decade).

Table 2. Summary of 100-Year Average Annual Sequestration, Emissions, and Net Sequestration by Scenario.
(all values in million MT CO₂e/yr)

	Baseline	Increased	Decreased	Proforestation
Annual sequestration (growth)	31.3	32.2	30.4	22.7
Annual emissions from dead wood	1.8	1.8	1.8	2.84
Annual emissions from HWP	20.7	22.7	18.6	0.0
Annual emissions from substitution	0.0	-1.6	1.6	15.8
Annual net sequestration	8.9	9.2	8.5	4.1

We urge the BLM to strongly consider this compendium of scientific literature and empirical data before concluding that generating carbon offset credits is an effective way to reduce net GHG emissions.

VIII. The proposed rule’s changes to the designation and protection of Areas of Critical Environmental Concern violate FLPMA.

Section 202 (c)(3) of FLPMA directs the BLM to give priority to the designation and protection of areas of critical environmental concern (ACEC). Section 1610.7-2 of the proposed rule codifies this prioritization, specifically during the land use planning process, but also outside of the land use planning process. Subsection (c)(3) requires managers to actively solicit ACEC “nominations” from the public when developing new plans or revising existing plans. This subsection also acknowledges that nominations can be submitted and considered outside of the land use planning process, effectively creating an open solicitation period for ACEC nominations. Upon receiving such nominations, the proposed rule allows for “interim management” to be applied until the BLM assesses whether those nominations are consistent with current RMPs. There is no language in the proposed rule that requires this “interim management” to be consistent with current RMPs; in fact, it suggests that it may not be because

the BLM would impose it while they “assess whether the nomination is consistent with current Plans.” This open nomination period and interim management option has the potential to significantly disrupt ongoing management activities, particularly by those stakeholders who oppose such activities.

Furthermore, we believe that the authorization to permit ACEC nominations and establish “interim management” that may be inconsistent with existing Plans violates Section 202 of FLPMA. FLPMA does not grant the authority to establish ACECs outside of land use planning. Section 202(a) states that “[t]he Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.”⁴⁴ Section 202(c) permits the prioritization of ACECs “[i]n the development and revision of land use plans.”⁴⁵ However, there is no authorization that allows the BLM to accept “nominations” for ACECs at any time and to establish “interim management” that may disrupt ongoing activities that are consistent with existing RMPs.

The proposed rule also seeks to eliminate public notification of nominated ACECs by removing the existing requirement in current regulation 1610.7-2(b) that the BLM publish a Federal Register notice relating to proposed ACECs and allow for 60 days of public comment. The proposed rule indicates that the 60-day notification process is redundant with “other Federal Register publication requirements that apply to land use planning.” What the proposed rule fails to acknowledge is that ACEC nominations that occur outside of the land use planning process would not be publicly vetted through other Federal Register publication requirements that apply to land use planning. The removal of the 60-day public notification period would enable a back door for ACEC nominations to be adopted free of public review and participation.

The combination of 1) permitting ACEC nominations outside of the land use planning process; 2) elimination of the 60-day public comment period; and 3) the establishment of “interim management” that may be inconsistent with existing RMP direction, would effectively provide an avenue for any person to disrupt ongoing management activities consistent with current Plan direction without public participation. Such actions go far beyond FLPMA’s direction to prioritize the designation of ACECs and violate Section 202 of the Act.

⁴⁴ 43 U.S.C. §1712(a).

⁴⁵ 43 U.S.C. §1712(c).

IX. The Economic and Threshold Analysis is flawed; the proposed rule will likely have a significant material effect on several facets of the economy.

The BLM determined that the proposed rule did not meet a threshold established by Executive Order 12866, which requires the Office of Management and Budget review if a proposed regulation would “have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.” We believe that the single use nature of the proposed rule and the uncertainty surrounding the management directives associated with that single use will adversely affect certain sectors of the economy, the productivity of those economies, competition, and jobs in a material way. The Threshold Analysis does not consider these effects and, therefore, concludes incorrectly that the proposed rule is not economically significant.

The Threshold Analysis asserts that the proposed rule requirements are consistent with the BLM’s mandate to manage the public lands for multiple use and sustained yield, avoid unnecessary and undue degradation, and do not appreciably restrict the decision-space compared to a baseline without the proposed rule. As already discussed, the proposed rule would establish a new approach of single use management on BLM land, potentially on millions of acres of public land. Public input on uses for local management units would be confined to the conservation framework, and BLM land managers’ decision space would be significantly restricted. The BLM’s assertion to the contrary in its Threshold Analysis reflects a flawed understanding of the proposed rule, FLPMA, and existing regulations; and its conclusion that the proposed rule is not economically significant reflects a flawed understanding of the natural resource economy.

The forest products industry represents the economic and social fabric of many rural communities in western states. The BLM’s timber programs in Montana, Idaho, and Oregon generate over \$800 million in total economic output and support 3,579 jobs.⁴⁶ Montana, where the BLM manages 1.3 million acres of forest land, is home to a forest products industry that is one of the largest components of manufacturing in the state and employs over 7,200 people, earning \$320 million annually.⁴⁷ The economic activity associated with this direct employment generated additional economic opportunities by relying on other industries for raw and intermediate inputs and services, thus indirectly bolstering employment and wages in additional sectors. Public lands supplied 57 percent of the harvest in 2018. Between 2014 and 2018, one

⁴⁶ BLM, *A Sound Investment for America*, (2022), available at, [Socioeconomic Data | Bureau of Land Management \(blm.gov\)](https://www.blm.gov/socioeconomic-data).

⁴⁷ Morgan, Todd A., *Montana’s Forest Industry Employment and Income Trends, Declining Harvest Volumes and Increasing Productivity*, Bureau of Business and Economic Research, University of Montana. Forest Industry Technical Report No. 8 (2018).

large mill, one plywood plant, and numerous small mills in Montana closed permanently. Timber processing capacity dropped from 635 MMBF in 2014 to 489 MMBF in 2018.

The BLM manages 770,000 acres of forest land in Idaho. More than 12,700 workers were directly employed by Idaho's forest industry during 2019, with 9,350 in primary and secondary wood products and paper manufacturing, 2,200 in forestry and logging, and 1,100 in forestry support activities. Together, these workers earned about \$1.03 billion during 2019.⁴⁸

In Oregon, where the BLM manages over 2.5 million acres of forest land, the forestry sector generates over \$18 billion in output, over 71,000 jobs, and over \$8 billion in state gross domestic product. For every one million board feet of timber harvested on BLM lands in western Oregon, 13 local non-federal jobs are created or maintained, and an estimated \$647,000 of non-federal employment income is introduced into local economies.⁴⁹ The total economic contribution from the BLM's timber harvest is greater than employment income alone. In 2019, BLM timber sales contributed approximately \$625 million to Oregon's economy.

Technical reports from both 2010^{50 51} and 2012⁵² completed for the Forest Service determined, among other things, that:

- The forest products sector helps sustain the social, economic, and ecological benefits of forestry in the United States.
- Product revenues sustain economic benefits that include jobs and income.
- Ecological and social benefits can be supported by timber revenue to landowners that help keep land in forests and by forest treatments that can help maintain ecological functions.
- Wood products fulfill fundamental needs per capita and have remained competitive with alternate means of meeting those needs.
- U.S. lumber production and demand are expected to increase through 2040.

⁴⁸ Simmons, Eric A., et al., *Timber Basket of the Interior west: Idaho's Forest Products Industry and Timber Harvest*, Forest Industry Research Program, University of Montana (2019), available at, <http://www.bber.umt.edu/pubs/forest/fidacs/ID2019%20Tables.pdf>.

⁴⁹ USDI, BLM, PRMP/FEIS for the RMPs for Western Oregon; Volume 2. Table 3-181, pp. 778 (2016).

⁵⁰ Hayes, Steven W., et al., *Montana's forest products industry and timber harvest, 2018*. Resour. Bull. RMRS-RB-35. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. 54 p. (2021), available at, <https://doi.org/10.2737/RMRS-RB-35>.

⁵¹ Ince, P.J.; et al., *U.S. forest products module: a technical document supporting the Forest Service 2010 RPA assessment*. Res. Pap. FPL-RP-662. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory. 61 p. (2011).

⁵² Skog, Kenneth E., et al., *Status and Trends for the U.S. Forest Products Sector: A Technical Document Supporting the Forest Service 2010 RPA Assessment*. General Technical Report FPL-GTR-207. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory. 35 p. (2012).

Impacts to the economies in these states caused by reductions to federal timber supply are well documented. In March 2019, Swanson Group, which has been a family operated company since 1951, was forced to permanently close its sawmill in Glendale, Oregon. According to a Random Lengths report, Swanson said the closure was necessitated by log supply constraints forced on the company by federal timber policy.⁵³ In 2016, after over 90 years in business, Rough & Ready permanently closed its sawmill in Cave Junction, Oregon, representing the last sawmill in Josephine County. In 1975, the county boasted 22 sawmills. By 2003, that number dropped to six. Today, there are zero. In an interview with the newspaper The Oregonian, the family-owned mill's co-owner cited a lack of federal timber supply for the closure despite the fact that 80 percent of the forest land surrounding the mill is federally managed. The closure resulted in the loss of 85 jobs in a town with a population of less than 2,000.⁵⁴

The management paradigm outlined in the proposed rule would result in highly uncertain outputs from BLM managed land. Those outputs comprise the raw material that forms the foundation of the rural economies in Oregon, Idaho, and Montana that we outline above. This uncertainty is a function of the single use nature of the proposed rule and the directives to attain this use outlined in the proposed rule.

Since FLPMA was enacted, the BLM managed its lands based on the principle of multiple use with local public input used to identify and prioritize those uses. If finalized, this rule would lead the BLM down an entirely new path where outputs and benefits from BLM land would be entirely a function of how “conservation” is interpreted and applied by each BLM managing unit. This uncertainty is exacerbated by directives for “protection of intact landscapes” and “restoration” described in sections 6102.1, 6102.2, and 6102.3. These sections essentially divide BLM lands into two categories: those that are intact and those that are not. The management, or lack thereof, of these lands would be driven exclusively by either the protection and maintenance of intactness or the need to apply restoration to achieve intactness.

Under this paradigm, an acre of BLM forest land, for example, may be identified as “not intact” and in need of intermediate timber harvest to “restore” its intactness or identified as “intact” but in need of intermediate timber harvest to “protect” its state. The timber outputs from those treatments would be a function of the level of restoration or protection warranted, and therefore unknown. Another acre may be identified as “intact” and not in need of any active management. Timber outputs from that acre would be zero.

⁵³ Timber Industry News, Swanson Group to permanently close its Glendale sawmill (March 14, 2019), available at, <https://www.timberindustrynews.com/swanson-group-permanently-close-glendale-sawmill/>.

⁵⁴ Oregon Live, Closure of Rough & Ready mill in Josephine County highlights logging stalemate in Congress (April 19, 2013), available at https://www.oregonlive.com/environment/2013/04/closure_of_rough_ready_in_mill.html.

If this proposed rule is finalized, the impact to the level of timber outputs from BLM managed forest land would be highly uncertain due to the impetus for management being solely based on intactness. Only after BLM managers assess whether their managed land is intact or not intact could they estimate the level of timber supply available to local economies as an output from either restoration or protection treatments. And that estimate would be unpredictable as conditions change with fluctuating environmental stressors. Notable decreases from the current output levels or erratic and unpredictable outputs would alter the regional flow of timber supplies, disrupt local milling infrastructure, and cause domestic timber supply shortages (some of these impacts are further discussed in our section regarding leakage).

The BLM's conclusion that the proposed rule would not cause uncertainty and disruptions to the flow of timber products off BLM lands surrounding these rural communities that would amount to material adverse effects is baseless. This conclusion ignores the empirical data cited above that clearly links economic outputs and employment to timber product outputs from local sources. It also ignores the evidence that reductions in federal timber supply cause strains on competition that force mills to reach far beyond their historic purchasing circle, impacting neighboring regions.

X. The effects of the proposed rule warrant the preparation of an Environmental Assessment or Environmental Impact Statement.

The proposed rule fails to comply with NEPA. NEPA requires federal agencies to prepare an Environmental Impact Statement (EIS) for all "major Federal actions" that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(C). NEPA's requirement "is a deliberate command" that applies to all major federal actions, subject to limited exceptions.⁵⁵

The proposed rule indicates that the BLM intends to apply the Department Categorical Exclusion (CX) at 43 C.F.R. § 46.210(i) to comply with NEPA. However, the BLM cannot rely on a CX if "extraordinary circumstances in section 46.215 apply."⁵⁶ Because the proposed rule has "highly controversial environmental effects," has "highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks," and violates FLPMA, the O&C Act, and potentially other federal laws, the BLM was required to prepare an Environmental Assessment (EA) or EIS.⁵⁷

⁵⁵ *Cape Hatteras Access Preservation All. v. U.S. Dep't of Interior*, 344 F. Supp. 2d 108, 134 (D.D.C. 2004) (citation omitted).

⁵⁶ 43 C.F.R. § 46.210.

⁵⁷ See 43 C.F.R. § 46.215.

As outlined above, we believe that the outcomes stemming from this single use mandate are highly uncertain and present a high likelihood of negative repercussions to natural resource-based economies and the livelihoods of the rural communities that depend on them.

CEQ's NEPA implementation regulations indicate that EISs may be prepared for programmatic Federal actions, such as the adoption of new agency programs.⁵⁸ The sweeping nature of this proposed rule and the scope of its implementation across 245 million acres of BLM managed land warrant its classification as a new agency program. Shifting the agency's current multiple use mandate toward a single use directive of "conservation" across such a large expanse of land and the creation of conservation leases signifies a "new program."

Under NEPA, the BLM was required to address the proposed rule's significant environmental impacts and consider reasonable alternatives in an EIS or, at a minimum, an EA.⁵⁹ The BLM, however, has done neither. The BLM's failure to take a "hard look" at the environmental impacts of the proposed rule is arbitrary and capricious, an abuse of discretion, and contrary to the procedural requirements of NEPA and the Administrative Procedures Act.⁶⁰

In sum, the proposed rule is as a major federal action, as defined by existing regulations, and extraordinary circumstances present preclude the BLM from relying on a CX and, therefore, warrant the preparation of an EA or EIS.⁶¹

XI. The proposed rule has been pushed forward in a manner inconsistent with FLPMA's state and local government coordination requirements.

Section 202(c)(9) of FLPMA requires the Secretary of the Interior to coordinate "the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments."⁶² In coordinating, the BLM must consider the "policies of approved State and tribal land resource management programs."⁶³ The requirement to "coordinate" requires that the BLM treat the land use planning and management activities of State and local governments on par with its own and harmonize the BLM's land use inventory, planning, and management activities with the activities of State and local governments "to the extent consistent with the laws governing the administration of the public lands." This coordination requirement is broad

⁵⁸ 40 C.F.R. § 1502.4(b).

⁵⁹ 42 U.S.C. § 4332(2)(C).

⁶⁰ 5 U.S.C. § 706(2); 42 U.S.C. § 4332(2)(C).

⁶¹ 40 C.F.R. § 1508.1(q).

⁶² 43 U.S.C. § 1712(c)(9).

⁶³ 43 U.S.C. § 1712(c)(9).

and applies to regulations, directives, policies and guidance documents that impact land and resource planning and management.

In order to properly coordinate with State and local governments, the Secretary must: “to the extent [the Secretary] finds practical, keep apprised of State, local, and tribal land use plans,” “assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands,” “assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans,” and “provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands.”

AFRC has several members that are county governments. It is clear that the BLM did not coordinate with these local governments in the development of the proposed rule and, therefore, violated FLPMA.

XII. Conclusion.

In conclusion, AFRC is hopeful that management of all BLM land directed by FLPMA will remain guided by active public participation based on the principles of multiple use. We are deeply concerned that adoption of this proposed rule as it is currently structured will undermine both public participation and multiple use, traditions and values that the American public expects.

We urge the BLM to withdraw the proposed rule, or, at a minimum, engage in a more inclusive and transparent process that would start with an advanced notice of proposed rulemaking that clearly outlines what “problem” the BLM is seeking to solve, what outcome the BLM is hoping to achieve, and what information the government is lacking and seeking to obtain from the public, issue experts, and interested stakeholder groups. In no case should the proposed rule move forward without addressing the specific policy and legal concerns and objections outlined above.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Joseph".

Travis Joseph
President/CEO