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Testimony Before the House Committee on Natural Resources
Legislative Hearing on H.R. 3397 Regarding
The Bureau of Land Management's Conservation and Landscape Health Rule
June 15, 2023

Chairman Westerman and Ranking Member Grijalva, thank you for the opportunity to testify today. It has been six years, 51 weeks since I appeared before the Senate Committee on Energy and Natural Resources to testify on the Bureau of Land Management's (BLM) Planning 2.0 rule, a rule that was overturned by Congress in 2017 under the Congressional Review Act (CRA) and a rule that is only different from BLM's proposed conservation and landscape health rule by the terms used and the additions attached. I wonder if many aspects of this new rule don't run afoul of the CRA requirement that a rule so overturned "may not be reissued in substantially the same form..."

With the proposed conservation and landscape health rule, BLM is attempting to upset the balance on federal lands that has been in place for nearly 50 years, since the passage of the Federal Land Policy and Management Act (FLPMA) in 1976. With this rule, BLM would eventually become an agency like the National Park Service that is focused primarily if not solely on conservation and preservation, rather than remain the foundational multiple-use agency that FLPMA, BLM's organic statute, requires.

Nearly 40% of the United States consists of lands managed by federal, state, or local government in various designations.¹ Americans enjoy 112 million acres of wilderness areas,² 85 million acres of national parks,³ 58.5 million acres of roadless areas in National Forests,⁴ 95 million acres of wildlife refuges,⁵ 39 million acres in BLM's National Landscape Conservation System, and 21.3 million acres of Areas of Critical Environmental Concern.⁶ Further, Interior Secretary Haaland has withdrawn from energy and mineral leasing 589,000 acres in Alaska, Minnesota, Nevada, and New Mexico and is contemplating another withdrawal of 225,000 acres in Colorado.

Among the vast 714 million acres of federal landholdings and mineral estate, there are extensive working landscapes that contribute to the wealth and prosperity of all Americans. These lands are appropriate for, "...the Nation's need for domestic sources of minerals, food, timber, and fiber", as FLPMA states. Within FLPMA, Congress specifically defined "principal or major uses" as limited to mineral exploration and production, livestock grazing, rights-of-way, fish and wildlife development, recreation, and timber. Of course FLPMA calls for the protection of the environment, water, and cultural resources, but does not list conservation as a use.

¹ [USGS Gap Analysis Project](#), U.S. Geological Survey (USGS), July 5, 2022.

² [Aldo Leopold Wilderness Research Institute home page](#), U.S. Forest Service Rocky Mountain Research Station, accessed June 8, 2023.

³ [National Park System About Us page](#), U.S. National Park Service, accessed June 8, 2023.

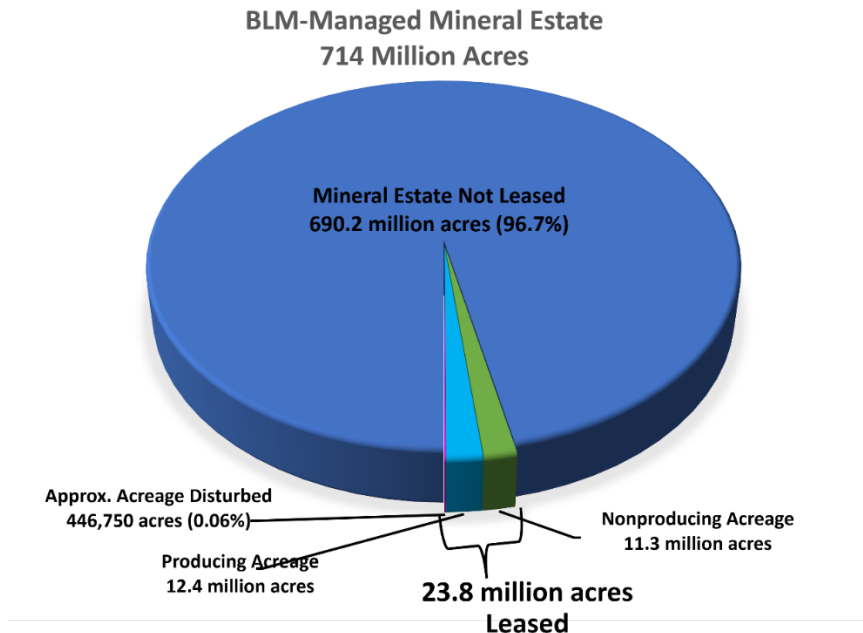
⁴ [Welcome to Roadless Area Conservation](#), USDA Forest Service, accessed June 8, 2023.

⁵ [National Wildlife Refuge System](#), U.S. Fish & Wildlife Service, , accessed June 8, 2023.

⁶ [Public Land Statistics 2021](#), U.S. Department of the Interior/Bureau of Land Management, June 2022, Table 5-1.

With the conservation rule, BLM is elevating conservation to a use ostensibly on par with the FLPMA-defined uses and tipping the balance that has been, however imperfectly, maintained on its 244 million acres. Further, because conservation-only would apply everywhere and is not compatible with anything, it would always be in direct conflict with productive uses. BLM would have the difficult task of trying to navigate through those conflicts, which past experience has shown is not something at which BLM excels. The rule is a bridge too far from FLPMA. The majority of BLM lands are appropriate for productive multiple uses. These productive activities are important not only to supply Americans with the basics of modern life, but also to sustain rural communities across the West.

At Western Energy Alliance, we are proud that oil and natural gas producers operating on federal lands provide about 10% of American production and return \$9.2 billion in revenue to the American people. Leased acreage is at a historic low even as federal onshore revenue is at a high. We are much more efficient on federal lands, producing more from less land, a balance that the members of Congress who passed FLPMA in 1976 would be proud of and which I hope this committee appreciates today. We produce a huge resource for the American people while protecting the land and disturbing just 0.06% of public lands.⁷



⁷ [Fiscal Year 2022 oil and gas statistics](#), BLM, February 10, 2023. We calculate surface disturbance using the method BLM has historically used of five acres per federal well. This chart was released yearly by BLM during the Bush Administration. Since BLM stopped releasing it during the Obama Administration, likely because the low disturbance didn't fit the preferred narrative, Western Energy Alliance re-creates it every year. The five-acre disturbance was used by BLM to account for all disturbance resulting from the well pad, including roads to access the well pad. Because of horizontal and directional drilling that reduce surface disturbance up to 70% by clustering multiple wells per pad, we believe five acres overestimates surface disturbance but have stuck with it as a conservative estimate.

Those who claim we should not produce oil and natural gas on federal lands because of climate change conveniently ignore the fact that if we do not produce them on federal lands, we must produce from nonfederal lands or import the energy from overseas where it is not subject to strict environmental standards. Federal production is some of the most sustainable in the world because of all the additional protections on federal lands. In the continued absence of energy sources that do everything that oil and natural gas do, just saying “no” to federal production means less clean energy and more greenhouse gas emissions.

FLPMA’s intent was a sensible approach to the management of federal lands. However, BLM’s proposed conservation rule would impose unduly restrictive measures that violate the multiple-use and sustained yield mandate by closing or restricting unnecessarily large amounts of land to productive uses. Not only would the rule change the face of FLPMA, but it attempts to enable BLM to sidestep its statutory mandates in the Mineral Leasing Act, the Taylor Grazing Act and the 1872 Mining Law. If finalized, the rule would make it more difficult to develop in energy-rich basins across the West, decrease investment, and prevent job creation.

Whereas in the Planning 2.0 rule BLM called it “landscape-level” planning, BLM is now talking about “intact landscapes.” Whereas Planning 2.0 called for downplaying the voices of communities that derive their livelihoods from multiple uses on federal lands and their elected officials, in the current rule BLM would shut down public comment completely when designating Areas of Critical Environmental Concern (ACEC) and not even bother to engage the public in determining what areas would be subject to conservation leasing. We find the following aspects of the rule particularly troubling:

- Making conservation a multiple use and prioritizing ecological resilience and intact landscapes over productive uses, thereby expanding the intent of FLPMA and providing BLM an avenue to preclude FLPMA-defined uses on public lands. Essentially anything designated an intact landscape will be managed as an ACEC or wilderness.
- Establishing a conservation leasing program that is completely at odds with the concept of leasing in FLPMA. BLM simply does not have the authority to issue leases for conservation to the exclusion of FLPMA-specified land uses. Ironically, the proposed rule’s purported interest in promoting FLPMA’s goals is at odds with FLPMA’s fundamental requirement of land use planning. Even if BLM possessed statutory authority to issue conservation leases, it could only do so after designating areas as eligible for conservation leasing through a land use planning process and complying with the National Environmental Policy Act (NEPA). The rule appears to side-step the NEPA requirement. BLM does not seem to have considered how federal and state governments would be compensated for the loss of mineral and grazing revenues.
- ACECs have historically been used to preclude productive multiple uses. The rule would greatly expand the size and use of ACECs and make it more difficult to remove ACEC designations. The rule would allow interim management for ACEC nominations that have not yet gone through the required planning process. Large-scale ACECs could severely decrease the amount of land available for productive uses.
- Adding several new definitions not found in the law or revising definitions to establish conservation as a priority in planning and permitting processes. For instance:

- o “Intact landscape” and “resilient ecosystems” are new concepts that would aid in designating large amounts of land off-limits to FLPMA-defined uses. The rule lacks objective standards so that their meaning and the resulting management would lie in the eye of the beholder.
- o “Landscape” has been expanded to include watersheds and ecoregions.
- o “Protection” is a common notion now redefined as conservation, indicating a step further than FLPMA’s standard of “undue degradation”. “Unnecessary and undue degradation” has been expanded to encompass harm to the land or resources that BLM peremptorily deems excessive or disproportionate.
- o “Casual use” is redefined to apply only to short-term, noncommercial uses, thereby obviating casual activities related to oil and natural gas that do not cause significant surface disturbance as previously defined.
- o “Sustained yield” includes the new concept of “ecosystem resilience” and violates FLPMA by erasing the concept of “multiple use” from the definition. The proposed rule seeks to transform FLPMA’s sustained yield goal to a preservation mandate in a manner inconsistent with FLPMA and its judicial interpretation.
- o “Important resources” are now arbitrarily determined by BLM, giving itself broad discretion.

The numerous, nebulous concepts in the proposed rule and the questions arising about how they would be applied to land management indicate that BLM should have pursued an Advanced Notice of Proposed Rulemaking or a Request for Information instead of advancing a proposed rule. We have joined other groups including the Public Lands Council, National Cattlemen’s Beef Association, American Mining and Exploration Association, Safari Club International, National Association of State Departments of Agriculture, American Farm Bureau Federation, and Federal Forest Resource Council in requesting BLM withdraw the proposed rule and engage meaningfully with appropriate stakeholders before moving forward with this rule. At the very least, BLM should acknowledge that this is a major rulemaking, extend the comment period, and hold meaningful public meetings in every state with significant BLM lands.

- Formalizing a compensatory mitigation framework to offset impacts to important, scarce, or sensitive resources to the *maximum extent possible*. Compensatory mitigation applied to the maximum extent possible is highly subjective and could be used to preclude development. Fundamentally, the Mineral Leasing Act does not permit BLM to require compensatory mitigation of federal lessees and require them to offset on-lease impacts with off-lease mitigation actions.
- Requiring a Fundamentals of Land Health review prior to authorization for use, a process currently applied only to grazing. BLM already struggles with large backlogs in grazing permit renewals because of this review requirement. Applying it to all uses would only serve to increase permitting backlogs for all productive uses.

Thank you for the opportunity to testify. I look forward to discussion during the hearing to better understand BLM’s intentions. I urge Congress to pass H.R. 3397 to overturn BLM’s conservation and landscape health rule.