Testimony of Hayden L. Ballard
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Before the Natural Resources Committee
Federal Lands Subcommittee
U.S. House of Representatives
Regarding H.R. 7006
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Chairman Tiffany, Members of the Subcommittee, I appreciate the opportunity to participate in the hearing today through the submission of this written testimony.

My name is Hayden Ballard, and I serve as Legal Counsel to the State of Utah's Public Lands Policy Coordinating Office ("PLPCO"). As the name implies, the role of our agency is to coordinate with federal agencies, other state agencies, the public and other stakeholders to further the State of Utah's adopted policies regarding federal land management. Through this coordination, we seek to find practical solutions to the array of challenges facing Utah's public lands.

We strongly support H.R. 7006, a bill "to prohibit natural asset companies from entering into any agreement with respect to land in the State of Utah or natural assets on or in such land." While the overall text of this bill is brief, the benefits of prohibiting natural asset companies from entering into any agreement with respect to land in the State of Utah, are great. This bill is a direct response to a proposed rule put forth by the Securities and Exchange Commission ("SEC"), just last fall, to allow the New York Stock Exchange ("NYSE") to adopt a new listing standard for the listing of Natural Asset Companies"[1] or "NACs".

While this notion of authorizing NACs seems harmless enough on its face, we were extremely concerned when the SEC proposed this rule, and just as relieved when the SEC withdrew the same. The concern arose from the fact that the proposed rule had many latent, and potentially extremely harmful consequences to Utah's federal land and federal land users. Chief among these harmful consequences was that this proposed rule would have created a funding vehicle for the implementation of the BLM's proposed "Public Lands Rule" or "Conservation and Landscape Health Rule"[2] (or simply the Conservation Rule) which was proposed last year as well. While this testimony is specific to Congressman Curtis's bill H.R. 7006, and the prohibition of NACs from acquiring any interests in Utah, it is impossible to discuss the negative effects of NACs in Utah without also discussing this Conservation Rule. In short, hand-in-hand, the NAC Rule coupled with the Conservation Rule would have provided the necessary financing for those who wished to remove "multiple-uses" from our federal lands through the purchase of conservation leases. Allow me to explain.

[1] 88 FR 68811.
[2] 88 FR 19583.

In terms of high-level understanding, the BLM's "Conservation Rule," attempts to redefine the BLM's multiple-use mandate under the Federal Land Policy and Management Act of 1976 ("FLPMA")[3] to include "conservation" as a use (in the process unilaterally bypassing Congress to amend this statute) and placing conservation on par with other multiple-uses of the land such as livestock grazing, recreation, energy development, etc.

To implement "conservation" as a use on par with the other statutorily defined multiple-uses, the BLM intends to issue "conservation leases" to businesses, organizations, individuals, and arguably government bodies, who would hold the leases to further conservation purposes.[4] During the Clinton Administration, the BLM tried to amend its grazing regulations to allow for the issuance of leases solely for conservation. This provision in the regulations was struck down by the 10th Circuit Court of Appeals in 2000, as "the court found that the Secretary of the Interior (acting through the BLM) lacked the statutory authority to issue grazing permits intended exclusively for "conservation use."[5] While the BLM was thwarted in its attempts then to issue permits and/or leases solely for conservation purposes, it has again made this attempt through its own separate rule.

The burning question left unanswered through this rule making process has been where would the money come from to purchase these conservation leases? Surely some companies, organizations and individuals would have the capital available to simply purchase conservation leases outright, but without a way of receiving a return on that "investment" it seems that there was a missing piece as to how these leases would be funded. Enter stage left the SEC's NAC rule.

In brief, the SEC's proposed rule on NACs stated that a proposed NAC could issue shares in a publicly traded company, that would then acquire ecological performance rights, or EPRs, by obtaining a license concerning such rights from a government entity or a private landowner. For purposes of the SEC's Proposed Rule on Natural Asset Companies, the BLM's Conservation Rule would arguably open the door for businesses to purchase a conservation lease (conveniently for a period of 10 years, the same as the licensing requirements imposed by the SEC's Proposed Rule)[6] and thereby become eligible for NAC listing as they now hold ecological performance rights on federal land.

During the public comment period, the State of Utah submitted comments adamantly opposing the implementation of the SEC's NAC Rule, and urged the SEC amend the proposed rule in a manner that would prohibit companies seeking to qualify as NACs from using the purchase of BLM Conservation Leases to qualify as ecological performance rights. Allowing NACs to purchase BLM Conservation Leases as ecological performance rights simply allows companies to make money off of the well-meaning public (via an Initial Public Offering or the subsequent trading of stocks) to then purchase these leases from the BLM, all for taking that land completely out of use and allowing it to remain untouched and fallow. This allows the BLM to make money

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[3] 43 U.S.C. §§ 1701 – 1785.
[4] 88 FR 19600; Proposed Rule §6102.4(a).
[5] *Public Lands Council v. Babbitt,* 167 F.3d 1287, 1308 (10th Cir. 1999), aff'd, 529 U.S. 728 (2000).
[6] 88 FR 68815.

for doing nothing, and allows the NAC to make money for doing nothing, all at the expense of the American people who are being misled into believing they're making a difference.

Further, this interlocking scheme imperils the viability of our western livestock grazers, as these conservation leases (if purchased on top of existing federal grazing allotments) threatens to put them out of business if they are seen as being incompatible with the terms of the newly created conservation lease. This could be done even though a growing body of scientific research points to the fact that removing all use of the land (particularly grazing animals) results in greater desertification in western, arid landscapes.[7] In short, not only would removing grazing NOT improve the environment, the allowance of conservation leases to qualify as EPRs is simply the funding mechanism necessary for the implementation of the BLM's disastrous conservation leasing scheme in general.

As highlighted up to this point, the SEC's NAC rule contained the latent ability to completely turn on its head the proper functioning working landscapes on federal/public lands. Relatedly, the SEC's Proposed Rule threatens Utah's ability to properly provide food, fiber and fuel to its citizenry through the noblest of human endeavors – agriculture itself.

This threat arises from the fact that the SEC NAC rule imposed various reporting requirements on potential NACs, as well as ongoing restrictions on what types of activities may be engaged in by the NAC. For example, the proposed rule stated that "the NAC will be *prohibited from engaging directly or indirectly in unsustainable activities."* What was defined as being an "*unsustainable activity*" included the term "*perpetuating industrial agriculture*" and the rule provided that the NAC would be "*prohibited from using its funds to finance such unsustainable activities*".[8] If an NAC were to willfully or unwillingly venture into an unsustainable activity, then "*the NAC will be subject to delisting from the NYSE*."[9]

The problem here is that the proposed rule never attempted to define what constituted "perpetuating industrial agriculture" or to justify why this undefined term was an "unsustainable activity". This could mean a wide variety of operations, both large and small, including family livestock ranchers and crop farmers. There simply was no attempt to define what was meant by industrial agriculture. Further, the term could encompass suppliers, such as a feed store, as that could seen as a business that was "perpetuating" industrial agriculture. This ambiguity could very well be exploited by a potential NAC to purchase a private farm or ranch and then take it out of production as to remain eligible for listing as an NAC. In short, when coupled with the BLM's Conservation Rule, the SEC NAC rule would have provided the funding necessary to purchase

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[7] *See generally* Alan Savory, *Holistic Management: A Commonsense Revolution to Restore our Environment,* Third Edition, Island Press, Library of Congress Control Number 2016941253 (2016); *see also See* Peter Byck, Roots so Deep Trailer, *available at:* www.rootssodeep.org (2023); *see also* Peter Byck, et. al, *Improvements in soil properties under adaptive multipaddock grazing relative to conventional grazing,* Agronomy Journal, *available at:* https://carboncowboys.org/images/published_research/pdfs/Agronomy_Journal_2022-Mosier-Improvements_in_soil_properties_under_adaptive_multipaddock_grazing.pdf (2022); *see also* Bill Weir, *Hamburgers and steaks are a big climate problem. Could new grazing practices be the answer?,* CNN, *available at*: https://www.cnn.com/2023/07/03/us/climate-crisis-cattle-amp-grazing/index.html (2023).

[8] 88 FR 68814.

[9] *Id.*

conservation leases on top of existing grazing allotments and other uses, and take those lands out of production. When used on private ground, the rule would have allowed for the same outcome on private farms and ranches. At a time when less than 2% of the nation's population is engaged in agriculture, and in a time when food costs are skyrocketing, purposefully taking working lands out of production, in the name of acquiring ecological performance rights, is a danger to our nation's agriculture and her citizens.

In addition to these concerns, the SEC's NAC rule contained no prohibition on the foreign ownership of NACs, which raises yet another concern. At a time when many states are banning the foreign ownership of our agricultural lands, this rule would have opened the door for foreign adversaries to purchase controlling shares in NACs (or create them outright) and then purchase ecological performance rights (whether on public or private ground) and take those lands out of production – artificially controlling our natural resources and food production.

For the reasons outlined, our agency opposed the implementation of the SEC's NAC rule last year, and were relieved to see its ultimate withdrawal.

It is for the same reasons we are now extremely supportive of Representative Curtis's bill that takes a proactive approach to ensure that NACs are not imposed on Utahns in the future. We thank Representative Curtis for his dedicated work to move this bill forward and urge your support for this bill.

I again thank the subcommittee for the opportunity to participate and voice these concerns and make known our support.