

**Written Testimony of Sharon Buccino,
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Before

**House Committee on Natural Resources:
Subcommittee on National Parks, Forests and Public Lands**

**“Building Back Better: How America’s Public Lands Can Help Deliver
a Prosperous and Secure Future for All”**

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Good morning Mr. Chairman and members of the subcommittee. Thank you for the opportunity to testify. My name is Sharon Buccino. I teach Public Land Law as an adjunct professor at the University of Wyoming. I also currently direct the Lands Division at the Natural Resources Defense Council (NRDC). NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 3 million members and online activists nationwide, served from six offices across the country. My remarks represent the views of NRDC. They do not represent, imply representation of, nor are authorized by the University of Wyoming.

Current times demand new legal mechanisms for managing America’s public lands. We need to integrate decision making across ownership and jurisdictional lines. We need to collect, organize, and deploy information so that we can quickly adjust our decisions as circumstances change. We need to include the voices of those who have been denied a meaningful role in managing our public lands – voices of indigenous and other people of color.

A new comprehensive legal framework for public land management could help and Congress should work on this. But plenty can be done now to move us in the right direction in the meantime within the existing statutory framework provided by the Federal Land Policy and Management Act, the National Forest Management Act and the National Environmental Policy Act.

Vision

We have the opportunity as a nation to chart a course that delivers prosperity and security to all. How we manage the fossil fuels and other resources that our public lands and waters hold is the key to this promising future. We cannot afford to make decisions today that lock our children into more greenhouse gas emissions tomorrow. We must invest in the clean energy sources of the future and the jobs such investment offers. We must welcome groups that because of income or racism have not shared in the benefits our public lands and waters offer.

Our public lands provide a common ground on which we can unite. It takes listening to each other and taking action that maximizes public good, rather than private profits. Over the decades, Republicans and Democrats have united to support conservation of public lands and waters. At least until the Trump era.

Recent Damage

So how did we do over the past four years in moving toward this vision? Did actions taken by our public land managers at the Department of the Interior and the Agriculture Department increase inclusive, informed and integrated decision-making? Unfortunately not.

Former President Trump dismantled Bears Ears National Monument in Utah and the inter-tribal commission that was created to help manage it. The Interior Department reversed plans developed with various stakeholders and local elected officials to conserve sage grouse and their habitat across 10 western states. The Council on Environmental Quality made wholesale changes to the regulations implementing the National Environmental Policy Act – limiting the kinds of actions subject to review, dramatically restricting the scope of review and curtailing public participation. The former President acted to rescind the withdrawal of offshore waters in the Arctic and Atlantic from oil and gas leasing.

A Path Forward

How can we do better moving forward? And how can we act in a way that does not result in its reversal each time we have a new national election? We need to integrate, inform and include.

Integrate

Our public lands need to be seen and managed as an integrated whole. Different agencies can have different roles, but they must work within a single comprehensive framework. This includes the state, local and private landowners that make up a landscape.

1. Managing across space – breaking down local, state and federal boundaries

The effort led by the Western Governors Association to protect the greater sage grouse offers an example of how collaboration across a landscape can work. Sage grouse numbers were rapidly declining across its range. A court settlement gave the U.S. Fish & Wildlife Service until September 15, 2015, to make a decision about whether to list the sage grouse as

threatened or endangered under the Endangered Species Act. This deadline and the consequences that would flow from listing created an incentive to bring various parties together to take action that would avoid a listing.

In 2011, then Secretary of the Interior Ken Salazar designated the Governors of Wyoming and Colorado to chair a Greater Sage-Grouse Task Force along with the Director of the Bureau of Land Management.¹ The Task Force met quarterly and helped shape amendments to BLM's Resource Management Plans – as well as relevant Forest Plans – in 10 western states.² The amendments prioritized oil and gas leasing outside priority sage grouse habitat. Numerous states and counties participated as cooperating agencies in completing the analysis of environmental impacts under the National Environmental Policy Act.³

Unfortunately, after all this effort the Trump Administration acted to undo the results of such collaboration. We need to collaborate more across local, state and federal boundaries, not less.

2. Managing across time – taking into account future generations

In addition to managing across space, federal land managers must manage across time. The two statutes that provide the foundation of much of public land law today – the Federal Land Policy and Management Act (FLPMA) and the National Forest Management Act (NFMA) – both speak to sustainability and the need to take into account long-term needs.

a. FLPMA

Even lands managed for “multiple use” cannot be used in ways that deny their benefits to future generations. FLPMA defines “multiple use” as “harmonious and coordinated management of various resources without permanent impairment of the productivity of the land and the quality of the environment.”⁴ Congress required that BLM manage the public's lands so they are “utilized in the combination that will best meet the present and future needs of the American people.”⁵ In the development and revision of land use plans, the Secretary of the Interior shall “weigh long-term benefits to the public against short-term benefits.”⁶

¹ Press Release, *Salazar, Mead Reaffirm Commitment Toward Development of Landscape Level Greater Sage-Grouse Conservation Strategy in the West*, Dec. 09, 2011. Available at: <https://www.doi.gov/news/pressreleases/Salazar-Mead-Reaffirm-Commitment-toward-Development-of-Landscape-Level-Greater-Sage-Grouse-Conservation-Strategy-in-the-West>.

² Press Release, *Historic Conservation Campaign Protects Greater Sage Grouse*, Sept. 15, 2015. Available at: <https://www.doi.gov/pressreleases/historic-conservation-campaign-protects-greater-sage-grouse>.

³ See, e.g., BLM, *Sage Grouse Focal Areas Withdrawal Environment Impact Statement: Idaho, Montana, Nevada, Oregon, Utah & Wyoming* (Dec. 2016), at i. Available at: https://eplanning.blm.gov/public_projects/nepa/70697/94514/114120/SFA_DEIS_Main_Text_508.pdf.

⁴ 43 U.S.C. § 1702; see also, 43 C.F.R. § 1601.0-5.

⁵ 43 U.S.C. § 1702.

⁶ 43 U.S.C. § 1712.

b. NFMA

The laws governing America's national forests also define multiple use in terms of non-impairment of productivity.⁷ In the last decade, the Forest Service has defined its mission around intergenerational equity. The mission of the Forest Service is "to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations."⁸

c. NEPA

Enacted in the same decade as FLPMA and NFMA, the National Environmental Policy Act (NEPA) also speaks to sustainability and the need to address long-term needs. NEPA requires the federal government "to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."⁹ NEPA provides that it is the continuing duty of the federal government "to fulfill the responsibilities of each generation as trustee of the environment for succeeding generations."¹⁰

Courts have repeatedly held that agencies like the Bureau of Land Management must analyze the impacts of its decisions on climate change. A decision by a federal district judge in Washington, DC, resulted in the suspension of numerous oil and gas leases in Utah, Wyoming and Colorado as a result of BLM failure to take a hard look at the impacts of burning the fossil fuels extracted pursuant to the leases.¹¹ Earlier, a judge in Montana found unlawful BLM's decision to open all the lands in the Buffalo (WY) and Miles City (MT) field offices to coal leasing without considering the climate change impacts.¹²

d. Oil and Gas Leasing Moratorium

To fulfill our responsibility to future generations, we must begin to manage the fossil fuels that our public lands and waters hold in a way that solves catastrophic climate change, rather than stokes it. A moratorium on new oil and gas leases is a critical step. Oil, gas and coal have been an invaluable part of America's history. They have led to tremendous progress, but their continued use is leading our children to disaster. Going forward, we must invest in renewable energy, efficiency and conservation. Let's climb out of the hole we've dug rather than continue to dig it deeper. Such transition has consequences – for workers and for communities. We must address them. Inaction is not an option. Continuing on the same path we are on has even greater consequences.

⁷ 16 U.S.C. § 531.

⁸ USFS, *National Forest System Land Management Planning*, 77 Fed. Reg. 21162 (Apr. 9, 2012).

⁹ 42 U.S.C. § 4331(a).

¹⁰ *Id.* § 4331(b)(1).

¹¹ *WildEarth Guardians v. Zinke*, 368 F.Supp.3d 41 (D.D.C. 2019).

¹² *Western Organization of Resource Councils v. BLM*, 892 F.Supp.3d 1234 (D.Mt. 2018). See generally, Burger, Michael & Jessica Wentz. *Evaluating the Effects of Fossil Fuel Supply Projects on Greenhouse Gas Emissions and Climate Change Under NEPA*, 44 Wm. & Mary Env'tl. L. & Pol'y Rev. 423 (2020).

Our public land laws not only authorize, but demand, a moratorium on new fossil fuel leases. The Mineral Leasing Act authorizes the Secretary of the Interior to lease oil, gas and coal “in [her] discretion.”¹³ It does not require leasing. As discussed above, FLPMA requires the Secretary of the Interior to exercise her discretion in a way that protects future generations. Continued leasing of federal fossil fuels harms future generations. Science tells us this, but so are youth across the nation. It is time we listen and act.

The requirement to hold quarterly lease sales added by the Federal Onshore Oil and Gas Reform Act of 1987¹⁴ does not trump the Secretary’s duty to future generations. This lease sale requirement applies only to lands “eligible” for leasing. FLPMA provides explicit authority to exclude certain uses entirely for a given area.¹⁵ The current climate and biodiversity crises the nation faces demand a limitation on the lands and waters eligible for new leasing.

Inform

We must give federal land management agencies the staff and resources to complete the stewardship that we expect of them. Outreach and public engagement are important at the front end of decision-making. It takes creativity, but it also takes resources. Monitoring is critical at the back end. No matter how good BLM’s outreach and the decision-making is when revising a Resource Management Plan, it does not do the public lands and waters or the communities involved any good if there is no monitoring to assess the results of a plan’s implementation. This takes staff and resources as well – more than the public land management agencies currently have.

Investing in the staff we trust to steward our public lands and waters is a smart money move. Yes, there are many demands on the public treasury right now. But this brings us back to the mandate to manage for the benefit of future as well as current generations. If we do not make these investments in agencies like the Bureau of Land Management and the Forest Service now, the costs will be much higher in the future than what it would take to invest wisely now. This is what Building Back Better is about. Just as we would with our own personal money, Congress needs to invest in a way today that delivers the returns we seek in the future.

Include

We must find ways to include the voices that have been left out previously in the management of our public lands. Congress should demand that federal agencies like the Department of the Interior reach out to those who have not previously had a meaningful voice in public land management and include them in decision-making. President Obama’s memorandum *Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters* included some powerful suggestions.¹⁶ The former President

¹³ 30 U.S.C. § 201(a)(coal); § 226(a)(oil and gas).

¹⁴ 30 U.S.C. § 226(b)(1)(A).

¹⁵ See, e.g., 43 U.S.C. § 1712(e). The Secretary shall report large-scale total exclusions to Congress.

¹⁶ President Barack Obama, *Memorandum for Heads of Executive Departments and Agencies: Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters*

directed agencies including the Interior Department and the Forest Service to among other things: (1) ensure that recipients of federal funding are taking action to improve visitation, access, and recreational opportunities for diverse populations; and (2) identify multiple public liaisons with a diversity of backgrounds and perspectives to facilitate input from and engaging with diverse populations in land and water management processes.¹⁷ The time is now to act on these ideas.

The Next100 Coalition offers a powerful vision of where we need to go and how to get there. Founded in 2016 as the nation celebrated the 100th anniversary of the National Park Service, the Next100 Coalition speaks of the need for a new era of conservation and stewardship that “protects our public land heritage for *all* to access and enjoy.”¹⁸ The Next100 Coalition calls for an inclusive approach to our public lands that: (1) reflects the faces of our country; (2) respects all cultures; and (3) takes responsibility for actively engaging all people.¹⁹

1. Tribal co-management

As designated by President Obama in 2016, Bears Ears National Monument put equity and inclusion into action. His proclamation spoke of the humans who occupied and stewarded the land for thousands of years.²⁰ “In recognition of the importance of tribal participation to the care and management of the objects identified above, and to ensure that management decisions affecting the monument reflect tribal expertise and traditional and historical knowledge,” the Proclamation established an inter-tribal Bears Ears Commission to guide the management of the monument.²¹ Congress should support the immediate reestablishment of the Commission and the resources it needs to help steward these lands in the way they deserve. In doing so, we can protect the large, intact landscapes the nation needs to solve the climate and biodiversity – as well as the equity – crises we face.

Including tribal voices is not only good for the tribes, it is good for all of us. Dominant white culture has failed to find the solutions for sustaining our public lands. Indigenous wisdom and experience can help find some answers.

Many more opportunities for tribal co-management of public lands exist. Both the Department of the Interior and the Agriculture Department should aggressively pursue them. Congress should act to help them.

2. Land and Water Conservation Fund

Just last year, Congress took the important step to fund the Land and Water

(January 12, 2017). Available at: <https://obamawhitehouse.archives.gov/the-press-office/2017/01/12/presidential-memorandum-promoting-diversity-and-inclusion-our-national>.

¹⁷ *Id.* at Sec. 2.

¹⁸ Next100 Coalition, *Vision*. Available at: <https://next100coalition.org/our-vision/>.

¹⁹ *Id.*

²⁰ President Barack Obama, *Proclamation 9558: Establishment of the Bears Ears National Monument*, 82 Fed. Reg. 1139 (Jan. 5, 2017).

²¹ *Id.* at 1144.

Conservation Fund (LWCF) as it was intended when created. Established in 1964, the LWCF provides a cornerstone for conservation in America. It not only provides funds for federal acquisition, but also supports local parks and open space. Recent analysis has shown that the United States has fewer forests, streams, wetlands, and other natural places near where Black, Latino, and Asian American people live.²² We need to change this. Nature is no longer an amenity, but a necessity to everyone's health and well-being. The Department of the Interior should help state and local governments develop conservation projects and increase open space that brings nature to those who have not traditionally had access to it. Congress can help by passing the Parks, Jobs & Equity Act.²³ Thank you Chairman Neguse for your leadership on these issues.

30x30 – Protecting 30 Percent of the Nation's Lands and Waters by 2030

The Biden Administration's initiative to protect thirty percent of the nation's lands and waters by 2030 offers a tremendous opportunity to achieve some of the changes we need. Such action is a concrete step toward what a growing consensus of scientists says we must do. Renowned biologist E.O. Wilson spelled this out for us five years ago in his book *Half Earth*. He said: "Despite all of our pretenses and fantasies, we always have been and will remain a biological species tied to this particular biological world."²⁴ It is not about saving nature for its own sake, but about saving nature to save ourselves.

We are destroying the natural systems upon which all life depends. Protecting these natural systems is the reason that NRDC was founded over 50 years ago. It remains at the core of NRDC's mission today.²⁵ The power of 30x30 is that it allows us to take actions that address the climate and biodiversity crises our nation faces at the same time. If done right, we can also address the current social justice and equity crisis. When done right, 30x30 integrates conservation across political lines. It makes decisions informed by science. It includes the diverse viewpoints we need to make wise decisions.

There is something in 30x30 for everyone. It is not just about wilderness. It is not one size fits all. The task is too big. We need private landowners, local governments, states and tribes to be part of the necessary conservation gains. Building back better requires natural infrastructure, not simply concrete or steel. Increased funding for local open space and private conservation can provide critical pieces to the 30x30 agenda.

²² Jenny Rowland-Shea, Sahir Doshi, Shanna Edberg & Robert Fanger, *The Nature Gap: Confronting Racial and Economic Disparities in the Destruction and Protection of Nature in America* (July 2020). Available at: <https://www.hispanicaccess.org/news-resources/research-library/item/978-the-nature-gap-confronting-racial-and-economic-disparities-in-the-destruction-and-protection-of-nature-in-america> .

²³ Barragan, Turner and Neguse Introduce Bipartisan Parks, Jobs & Equity Act: Legislation Provides \$500 million in Stimulus Funding for Urban Parks (March 9, 2021). Available at: <https://barragan.house.gov/barragan-turner-neguse-introduce-bipartisan-parks-jobs-and-equity-act/> . See also, Marissa Ramirez, Erica Holloman-Hill, Mona Wang, and Darryl Haddock, *Parks and Public Lands Poised for Justice* (NRDC February 9, 2021). Available at <https://www.nrdc.org/experts/marissa-ramirez/parks-and-public-lands-poised-justice> .

²⁴ E.O. Wilson, *Half Earth* (W.W. Norton & Co. 2016).

²⁵ NRDC Mission Statement. Available at: <https://www.nrdc.org/about> .

Conclusion

To end, I'll come back to where I started – a vision of an equitable and vibrant future for all. Our nation's public lands can play a critical role in such a future. But we can't take them for granted. We must act now to ensure that their benefits are here tomorrow as well as today.

Thank you for your consideration of these important issues and for the opportunity to participate in this hearing.

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