



Bureau of Land Management's (BLM) Conservation Rule

May 4, 2023

BLM's proposed [Conservation and Landscape Health Rule](#) would stretch the original intent of the [Federal Land Policy and Management Act \(FLPMA\)](#) and revise the priorities and focus of land use management. Under FLPMA, Congress tasked BLM with managing public lands for "multiple use and sustained yield" of resources. FLPMA specifically defines "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. FLPMA mandates public lands are to "be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber". BLM should withdraw this rule.

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.

The rule includes aspects of, yet goes far beyond, BLM's Planning 2.0 rule that was overturned by Congress in 2017 under the Congressional Review Act. Specific problems with the rule include:

- 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.
- Designating new and expanded Areas of Critical Environmental Concern (ACECs) in the name of ecological resilience and intact landscape. ACECs have historically been used to preclude productive multiple uses. The rule would greatly expand the size and use of ACECs, remove the requirement for proposed ACECs to be noticed separately from land use planning documents, 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.
- Establishing a conservation leasing program that is completely at odds with the concept of leasing in FLPMA. FLPMA addresses leasing for the defined principal uses, not conservation. Conservation leases could be used for restoration projects, compensatory mitigation, and noneconomic casual uses. As with ACEC designations, conservation leasing would remove lands from productive uses. The rule provides few details on how conservation leases would be designated and administered and whether they could be applied to lands already designated for other uses. BLM does not seem to have considered how federal and state governments would be compensated for the loss of mineral and grazing revenues.

- Adding several new definitions not found in the law to establish conservation as a priority in planning and permitting processes. For instance:
 - “Intact landscape” is defined as “an unfragmented ecosystem...large enough to maintain...viable populations of wide ranging species” to support “ecosystem resilience.” This new concept would aid in designating large amounts of land off-limits to FLPMA-defined uses.
 - “Protection” is a common notion now redefined as conservation, indicating a step further than preventing FLPMA’s standard of “undue degradation.”
 - “Resilient ecosystems” is a new term about maintaining or regaining functions in the face of “environmental stressors” like drought, wildfires, or other disturbances.

- Revising several definitions to establish conservation as a priority above other uses. Examples of particularly problematic revised definitions include:
 - “Landscape” has been expanded to include watersheds and ecoregions
 - “Casual use” describes the short-term, noncommercial uses a “conservation lease” would allow
 - “Sustained yield” includes the new concept of “ecosystem resilience”
 - “Important resources” are now arbitrarily determined by BLM, giving itself broad discretion
 - “Unnecessary and undue degradation” has been expanded to encompass harm to the land or resources that BLM peremptorily deems excessive or disproportionate.

- 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.

- 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. The rule would allow BLM to use third parties to collect, manage, and expend mitigation funds collected from permit holders, which would establish a pay-to-play system for the use of public lands.

- Prioritizing BLM acquisition of private lands in order to protect intact landscapes and ecological systems while decreasing lands available for multiple uses.