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June 20, 2023

U.S. Department of the Interior
Tracy Stone-Manning, BLM Director
Director (630), Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attention: 1004–AE92

To be submitted electronically via the Federal eRulemaking Portal at:
<https://www.regulations.gov/commenton/BLM-2023-0001-0001>

RE: RIN 1004–AE-92 Conservation and Landscape Health Proposed Rule and Economic and Threshold Analysis

Dear Director Stone-Manning:

Thank you for the opportunity to submit comments regarding the proposed Bureau of Land Management ("BLM") rule titled "Conservation and Landscape Health" (88 Fed. Reg. 19583, April 3, 2023) ("proposed Rule") and associated Economic and Threshold Analysis ("Economic Analysis"). As Mesa County is 73% public lands, decisions regarding federal lands has the potential to significantly impact the economic and socioeconomic wellbeing of our residents and communities.

It is the opinion of the Mesa County Board of County Commissioners ("Mesa County") that the proposed rule is a significant departure from current land management policy and will have unintended consequences that could hinder the multiple use mandate of public lands, as established by the Federal Land Policy and Management Act ("FLPMA"), and further threaten a substantial economic base that is vitally important to local governments. Given these concerns, we offer the following general comments on the proposed Rule:

Uncertainty shrouding Rule development and the vague nature of the proposed Rule leads only to conjecture

The process by which this proposed Rule was developed remains unknown, resulting in a disconcerting lack of clarity. No stakeholder engagement process was initiated beforehand to provide affected parties with an opportunity to address the perceived need for the Rule or to engage in meaningful dialogue with the BLM. The significance of engaging stakeholders and soliciting their perspectives cannot be understated, as it is through such inclusive processes that robust, well-informed regulations are crafted, fostering a sense of ownership and collaboration among all parties involved.

While Mesa County understands that vagueness may allow boots-on-the-ground land managers a degree of flexibility to tailor solutions that enhance efforts of restoration and conservation, there is also an opportunity for that flexibility to be misused. The vagueness also leads those directly affected to make a vast number of inferences regarding potential impacts, both positive and negative, the Rule may have on our public lands. As such Mesa County requests, the BLM revisit the need for the proposed Rule in a process that adheres to the National Environmental Policy Act ("NEPA") and allows stakeholders to assist in developing a less ambiguous proposed Rule, complete with a range of alternatives, well devised definitions, and appropriate sideboards that adhere to the BLM's multi-use mandate.

Does FLPMA give the BLM legal authority to create a new “use”?

Mesa County questions the BLM's legal authority to modify 43 CFR part 1600 and create 43 CFR 6100 in order to establish conservation as a recognized "use." Mesa County maintains that such an interpretation exceeds the agency's authority and runs counter to the established principles and guidelines governing public land management. Further, the addition of conservation as a use is in direct opposition to FLPMA's Section 102 definition for “principal or major uses” which states:

The term “principal or major uses” includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.ⁱ

Mesa County firmly asserts that the decision to include conservation as a recognized "use" within 43 CFR part 1600 and as identified in the proposed § 6101.5 *Principles for eco system resilience*, must be revisited and ultimately determined by Congress to ascertain the true intent and scope of the regulation. Given the significance of such a modification and its potential implications for public land management, Mesa County believes that any amendments to the regulatory framework require explicit guidance and direction from Congress. By deferring the decision back to Congress, the original legislative intent behind 43 CFR part 1600 can be thoroughly examined, ensuring that any changes align with the purpose and objectives originally envisioned by lawmakers.

Intent to apply a Categorical Exclusion is unacceptable for a major Federal action that will have significant affects on the quality of the human environment

Mesa County disagrees with the BLM's intent to apply a Categorical Exclusion (“CX”) to this proposed Rule given the potential to dramatically change public land management and use. The proposed Rule undeniably satisfies multiple criteria classified as extraordinary circumstances, as explicitly outlined in § 46.215.ⁱⁱ Mesa County strongly urges the BLM to complete a full Environmental Impact Statement for the proposed Rule to ensure a thorough analysis, comprehensive opportunities for public input, including Cooperating Agency coordination, and an in-depth analysis of possible financial impacts to local communities.

Mitigation and restoration framework already mandatory for current leasing requirements

Renewable energy, oil and gas, and grazing lease holders are required to not only mitigate the impacts of their activities and, in many cases, restore the land to a condition that equals or surpasses its original state at the commencement of the lease. Mitigation measures encompass a range of actions, including strategic re-siting of development sites to avoid sensitive areas and minimize disruption to migration corridors and cultural resources. Furthermore, lease conditions require adherence to specific timing limitations during critical periods like winter range occupation and brood rearing months, oftentimes necessitating suspension of projects to ensure the protection of vulnerable wildlife. In the case of grazing, adjusting grazing patterns is vital to facilitate the recovery of plant species and ensure future productivity of the land.

Lease holders recognize that degraded lands are detrimental to their projects and livelihoods, posing a significant threat to their overall well-being. They recognize that the health and vitality of the land are paramount for the long-term success and sustainability of their endeavors. By acknowledging the adverse consequences of degraded lands, lease holders are committed to actively engaging in land restoration and rehabilitation efforts. Their dedication to preserving and restoring the environment needs to be recognized as a benefit to public lands management.

Capacity of BLM staff to assume additional management responsibilities is subject to scrutiny and raises valid concerns

The BLM currently faces a backlog of maintenance projects and continues to struggle with timely permit and lease review, issuance, and renewal. Conservation leases, while managed by external organizations, will still require oversight, permitting, and enforcement by agency staff to monitor compliance, enforce lease conditions, and participate in land-use planning.

Furthermore, the proposed Rule introduces a mandate for a Restoration Plan to be included in each new or revised Resource Management Plan (“RMP”) and a watershed condition classification with all land use planning processes. However, current RMP’s and other planning processes are subjected to lengthy completion times and frequently rely on outdated scientific information long before their designated lifespan concludes. The proposed Rule neglects to acknowledge the necessity for supplemental personnel and additional resources to alleviate the burden resulting from the increased demands of development, implementation, and reporting this Rule requires, further straining an already stretched agency.

Specific comments regarding the changes to 43 CFR Part 1600:

§ 1610.7-2 Designation of areas of critical environmental concern

The proposed Rule states “The BLM has found that these Federal Register publication requirements do not provide value above and beyond the general public involvement process...” which is highly concerning. The term "value" is inherently subjective. NEPA assumes a pivotal role in promoting transparency and informed decision-making by empowering individuals and communities to actively participate in the decision-making process, enabling them to provide valuable input, express concerns, and contribute their perspectives. Through such inclusive engagement, NEPA ensures that the diverse interests of the public and vital environmental considerations are considered. Stripping away the necessity for public participation is a serious disservice to the American public.

Mesa County currently has thirteen Areas of Critical Environmental Concern (“ACECs”) covering 123,000 acres, dedicated to safeguarding diverse resources within the region. While the restrictions imposed on these areas are not as stringent as those associated with Wilderness Designations or Wilderness Study Areas, they do impose limitations on activities such as mineral material disposal, non-energy solid leasable mineral exploration and development, right-of-way exclusions, and uses that involve surface disturbance and/or occupancy.

Mesa County does not support the broadening of the ACEC regulations and firmly asserts that any proposals for ACEC designations should rigorously adhere to defined criteria of relevance and importance, and be supported by credible and comprehensive data. It is imperative that the determination of an ACEC’s designation necessity be based on a thorough evaluation of the area in question and its unique ecological, cultural, or scientific significance. By ensuring a robust and evidence-based approach, the integrity of ACECs can be preserved, facilitating effective resource protection while striking an appropriate balance with compatible land uses and community needs.

Comments specific to 43 CFR Part 6100:

Part 6100 Ecosystem Resilience

6101.4 Definitions.

There are several definitions that lack specificity and must be more clearly defined to enable effective communication and minimize the potential for confusion or misinterpretation of the Rule's requirements. The following terms and definitions are just a few that require clarification and more deliberate definitions than the proposed Rule currently offers:

1. The definition for Best Management Practices (“BMP”s) is deliberately vague and provides no guidance to what impacts should be mitigated for, how criteria for a BMP is determined, or how outcomes will be evaluated . The definition utilizes terms like "state-of-the-art," and "practicable," which are subjective and open to interpretation. The definition does not provide clear guidance on what actions or measures qualify as BMPs in relation to the goals and objectives for conservation leases.
2. The existing narrow definition of "conservation" must be substantially expanded to encompass the wide array of measures currently being implemented across various forms of public land use to enhance ecosystem health, protect biodiversity, promote sustainable resource management, and mitigate the impacts of human activities on our public lands.
3. Given that authorization may not be authorized for non-compatible use, the terms “compatible use” and "casual use" must be better defined. It is necessary to establish a more precise definition of “non-commercial activities” to determine the specific types of use that fall under this category. For instance, in the case of a conservation lease aimed at restoring a riparian stream crossing that was previously utilized by ATVs as the sole means of traversing from one side of the trail to the other, will non-commercial ATV recreationalists be allowed to continue crossing the stream during the lease period? Or will the trail will be closed off to prohibit further travel. If the latter of the two, will the closure be temporary or permanent?
4. The definition for "high quality information" should be clearly defined in the proposed Rule, including specific credentials or criteria that establish the standards for information to be considered as such. It is essential for the Rule to identify the "applicable federal law and policy" that outline the standards of "objectivity, utility, integrity, and quality" rather than merely mentioning them without proper elaboration.

To ensure a comprehensive understanding of the proposed Rule, it is imperative to define certain terms that are not currently clarified. These terms include:

1. Degrade, degraded, and degradation: These terms are used throughout the proposed Rule, yet no explicit definition is provided for what constitutes degradation or what characteristics define a degraded landscape.
2. "Temporarily" in relation to closures or the limitation of public access: The proposed Rule mentions temporary closures or limitations on public access for certain areas due to authorized conservation leases. However, the term "temporary" lacks a precise definition within the proposed Rule, necessitating a clear and specific definition to avoid ambiguity.
3. "Intact ecosystems": While the proposed Rule provides a definition for "intact landscapes," it also refers to "intact ecosystems" in Subpart 6102. It is crucial to include a definition of "intact ecosystems" within the proposed Rule to ensure clarity and consistency in its implementation.
4. "Qualified individual": In order to ensure that conservation leases are awarded to applicants who possess the necessary knowledge, experience, and resources to successfully undertake restoration or mitigation projects, it is imperative to define the term "qualified individual" within the proposed Rule.
5. “Casual factors” : Authorized officers are to determine if “casual factors” are responsible for lands not meeting standards. This term needs defined to understand the differences between “causal factors” and “casual use.”

Clarifying these terms and definitions is essential to providing clear guidelines, avoiding ambiguity, and ensuring that appropriate management decisions can be made to strike the right balance between conservation efforts and continued multiple use.

Subpart 6102—Conservation Use to Achieve Ecosystem Resilience

6102.2 – Management to Protect Intact Landscapes

The proposed Rule states that certain tracts of public lands should be designated for “conservation use” during the resource management planning process, with the aim of preserving or enhancing ecosystem resilience. However, the BLM already possesses a comprehensive array of management prescriptions that effectively safeguard the productivity of lands, preserve wildlife habitats, and uphold water and air quality. Introducing an additional layer of “protection” through the proposed Rule appears duplicative in light of the existing regulations and may not necessarily offer superior safeguards compared to the available management options. It is crucial to evaluate whether the proposed Rule genuinely enhances the conservation outcomes beyond what is already achieved through the BLM’s current practices and regulations.

6102.4 Conservation leases.

Mesa County presents the following comments and questions to the BLM regarding proposed § 6102.4 *Conservation leasing*:

1. As presented, the proposed Rule does not include a competitive bid process for conservation leases. A competitive bid process would encourage efficient resource development, stimulate innovation and investment, and promote public interests through transparency and community engagement. Mesa County encourages the BLM to implement a competitive bid process for lands eligible for conservation leasing.
2. Mesa County is concerned about the potential prioritization of conservation leases over existing and future leases, as indicated by the following bolded excerpt from the Supplementary Information, Section III(B) paragraph three of the proposed Rule:
The proposed rule introduces conservation leases as a new tool for restoring degraded landscapes. These leases would not supersede valid existing rights or prevent other subsequent authorizations, as long as those authorizations align with the conservation objectives.
Mesa County firmly believes that conservation leases should not be granted superiority over any other land use.
3. Never, at any time, should a conservation lease leave the assets of another leaseholder inaccessible or stranded.
4. Conservation leasing should not preclude future timber sales on the 37.6 million acres of forest land managed by the BLM. These forests provide important supplemental resources to the timber industry. Further, the sustainable harvest of timber lessens the severity of wildfire, preserves watershed health, and improves forest health.
5. § 6102.4(2): The term “qualified individual” is subjective and demands further explanation including a clear definition and the eligibility criteria for receiving a conservation lease. This will enable a fair and objective evaluation process and ensure the awarded leases are entrusted to individuals who have the requisite qualifications and capabilities to effectively carry out the required conservation efforts.
6. § 6102.4(3)(ii): Conservation leases, for mitigation purposes, should adhere to the same 10-year maximum term as a conservation lease for restoration or protection.
7. § 6102.4(4): Please clarify if there is an opportunity for leases to overlap, if agreed upon by both

- parties and the uses are compatible?
8. § 6102.4(5): As mentioned in our comments regarding definitions, the term “casual use” needs to be defined, particularly in respect to conservation leases areas that may be “temporarily closed” to incompatible uses.
 9. § 6102.4(b): If a competitive bid process is not implemented, all conservation lease applications should be analyzed through an appropriate NEPA process to allow stakeholders, adjacent leaseholders, and other public land users an opportunity to review the application and provide comment, in a review period not less than 30 days from the date of notice in the Federal Register. All analysis should require thorough examination of the financial implications, considering the tradeoffs between different lease types, their impacts on local communities that may lose revenue as a result of the lease, as well as a cost/benefit analysis for the potential increase to long-term productivity potential of the lands.
 10. § 6102.4(c)(1): The application should include reasoning for the conservation lease, including credible and comprehensive data supporting the need for the lease. As previously mentioned, applicants should identify any possible financial implications to state and local governments as a result of the request.

Subpart 6103 Tools for Achieving Ecosystem Resilience

6103.1 Fundamentals of land health

The proposal to apply land health standards and guidelines from the 43 CFR § 4180.1 Fundamentals of rangeland health, thereby establishing a consistent set of criteria for all lands, appears commendable in theory. However, Mesa County fails to understand how land health standards, created to ensure productive lands for grazing, will be applied across other landscapes. Further, lingering concerns persist regarding the BLM’s ability to efficiently conduct the necessary reviews within reasonable timeframes.

There is apprehension that the BLM's current resources and capacity may not be adequate to handle the increased workload brought about by the implementation of these standards. Delays in review processes could result in prolonged decision-making and potentially hinder the effective management of public lands. As stakeholders, it is essential to ensure that the BLM possesses the necessary staffing, expertise, and support to carry out timely and thorough assessments, enabling the successful implementation of the proposed land health standards without compromising efficiency.

Comments Specific to the Economic and Threshold Analysis:

In Mesa County, the BLM manages approximately 980,000 acres of public lands, encompassing an extensive network of over 1,400 miles of recreational trails, 200 grazing allotments, in excess of 8,000 mining claims, and over 500 oil and gas leases. These invaluable resources not only contribute significantly to the region's revenue but also play a pivotal role in sustaining the economic well-being of Mesa County. Altering the accessibility of lands presently open for income-generating leasing and development has the potential to diminish opportunities for generating tax revenue for local governments, thereby impeding their fiscal growth.

The Economic and Threshold Analysis of the proposed Rule fails to adequately capture the true costs of implementation. Considering the substantial departure from current land management practices and the potential impact on economic benefits, a more comprehensive analysis is warranted. This analysis should encompass potential losses in revenue from Severance Taxes, Mineral Lease payments, Payment in Lieu of Taxes (PILT), business personal property taxes, as well as changes in revenue from recreation and other tourism-based land uses on a local and state level. By conducting a thorough examination of these factors, a more accurate assessment of the Rule's economic implications can be achieved.

Conclusion

The speed with which this Rulemaking is being fast tracked is highly concerning. Changes of this magnitude deserve an opportunity for comprehensive dialogue and full consideration of all ramifications that the proposed Rule may have on all facets of public lands and the stakeholders that interact with them. Mesa County encourages the BLM to reconsider the fast track of this process and complete a full EIS that will allow for an inclusive, transparent, and collaborative process, to better understand the impacts of this decision on our natural resources and the communities adjacent. Thereby, Mesa County reserves the right to submit additional comments and formally requests Cooperating Agency status in any future NEPA process regarding this proposed Rule.

Sincerely,

Janet Rowland
Chair, Mesa County Commissioner

Cody Davis
Commissioner

Bobbie Daniel
Commissioner

cc: Mesa County Administration
Peter Baier, Mesa County Administrator
Todd Starr, Mesa County Attorney

ⁱ Bureau of Land Management. (2016). The Federal Land Policy and Management Act of 1976, as Amended: Section 102(c). Retrieved June 11, 2023, from https://www.blm.gov/sites/default/files/AboutUs_LawsandRegs_FLPMA.pdf

ⁱⁱ § 46.215 Categorical exclusions: Extraordinary circumstances." Electronic Code of Federal Regulations. Accessed June 7, 2023. URL: <https://www.ecfr.gov/current/title-43/subtitle-A/part-46/subpart-C/section-46.215>

Extraordinary circumstances (see paragraph 46.205(c)) exist for individual actions within categorical exclusions that may meet any of the criteria listed in [paragraphs \(a\)](#) through [\(l\)](#) of this section. Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official.

(a) Have significant impacts on public health or safety.

(b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

(d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

(f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.