BLM Conservation and Land Health Rule

On April 3, the Bureau of Land Management (BLM) published a proposed rule that proposes significant, concerning changes to the agency's authority under the Federal Land Management and Policy Act (FLPMA). The proposal was developed with no stakeholder involvement or awareness, which is clearly evident upon review of the contents. PLC has substantive issues with the contents of the rule as well as the agency's intentional avoidance of advance feedback during the drafting of the proposal. PLC is leading industry engagement ahead of the June 20, 2023 comment deadline and coordinating with other multiple use stakeholders. Our concerns include, but are not limited to, the following:

The rule violates Congressional direction for multiple use under FLPMA by adding a new "use" without express Congressional authorization.

- FLPMA clearly defines acceptable uses of public lands, and "conservation" is not included as a use. During the course of enacting the multiple use and sustained yield management principles, "conservation" has broadly been a factor in supporting sustained use of and yield from landscapes in a healthy and productive way, but has never been an authorized use.

The proposed rule does not put this new "use" "on par with other uses", but gives conservation leases the power to eliminate multiple use on federal lands.

- By elevating conservation as a "use" under FLPMA, BLM has created a route to remove all uses from the landscape through the use of conservation leases. While no other use has the ability to remove another use from the landscape, conservation leases "…would not override valid existing rights or preclude other, subsequent authorizations *so long as those subsequent authorizations are compatible with the conservation use."* The rule makes clear that valid and existing rights – other multiple uses – will be held hostage to conservation leases: a clear violation of the multiple use mandate.

BLM's inappropriately narrow definition for "conservation" creates conflicts with other agencies, and other BLM interpretations, cementing the message that BLM does not believe that conservation and multiple use are compatible.

- The rule provides a definition of conservation that is limited to "restoration and protection", not active management of the landscape. With this definition, BLM has hampered their own ability to conduct meaningful, ongoing management of landscapes.
- The definition further makes clear that the BLM believes that removing multiple use from the landscape is necessary in order to conduct restoration and protection, a stark departure from the agency's management directive. By separating conservation outcomes from the multiple use mandate, BLM is sending a clear signal they do not believe uses like grazing can be compatible with conservation outcomes.

Elevating conservation as a use under FLPMA and creating a leasing system appears to violate existing case law.

- In the late 1990s, the BLM's efforts to establish conservation as a "use" under FLPMA during revisions of the grazing regulations was struck down in federal court because the agency lacked the authority to issue a permit for conservation purposes. The same concept applies here; BLM does not have the authority to create a new use under FLPMA.

BLM inaccurately asserts FLPMA directs the agency to "promote" the use of restrictive ACEC designations, despite purported commitments to rangeland objectives.

- Time and again the agency has demonstrated their inability to manage an ACEC after designation. The agency's interpretation here that FLPMA directs the agency to promote the use of ACEC designations is both incorrect and conflicts with other rule components.

The BLM alleges this rule is not a "major rule" and is therefore not subject to a CRA.

- PLC disagrees entirely. The creation of a new use under FLPMA, creation of a new leasing system, and changes to the parameters around a landscape designation tool, all qualify this to be a significant rule. For reference, the BLM has said that updates to the grazing regulations, which are an existing set of rules that are simply being updated, is a significant rulemaking, but the creation of a totally new use is not. The BLM does not have the authority to make this determination.

The BLM already has avenues to engage the public in public lands conservation, and underutilizes all tools. Instead, the agency is promoting a new rule that provides no new meaningful tools while opening the door for administrative and legal challenges to bedrock federal lands law.

- The proposed rule compromises strategic management efforts by promoting fragmented acts of conservation, increases administrative burden, and will undermine long-term conservation strategies.
- The BLM has the ability to utilize public dollars through the BLM Foundation, cooperative agreements, and many other partnerships without authorizing a new, non-competitive leasing system that compromises the agency's mission.
- The BLM has been clear they do not plan to update resource management plans to coordinate leasing activities. The result will be random, fragmented applications from the public that are not coordinated to address landscape-level objectives and not tied to underlying environmental evaluations. The BLM intends to develop a Categorical Exclusion for application of all conservation leasing practices, one that is sure to be hopelessly vague and unable to withstand judicial scrutiny.
- The failure to clearly distinguish between conservation leases, compensatory mitigation, restoration objectives, and bonding confuses existing authorities in the agency's toolbox.

PLC Position

PLC and its members are committed to conservation of the landscape using grazing in a way that sustains ongoing uses and objectives identified under law. Despite the agency's consistent reassurance to the grazing community that they agree that grazing is conservation, the rule contains no such recognition.

The BLM compromised the trust of the grazing and larger multiple use community by developing a proposed rule with longstanding controversial topics with no advance discussion. This proposed rule is not the appropriate mechanism if the intent is truly to have an open dialogue and create a durable outcome.

PLC opposes the rule as written and calls for the agency to reconsider the rule. Questions? Please contact Kaitlynn Glover (kglover@beef.org) or Sigrid Johannes (sjohannes@beef.org) at 202-347-0228.