The **Western Landowners Alliance** advances policies and practices that sustain working lands, connected landscapes and native species.

July 3, 2023

Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C St. NW, Washington, D.C. 20240

Via Electronic Submission

Re: Conservation and Landscape Health (88 Fed. Reg. 19583; April 3, 2023).

Dear Secretary Haaland:

Western Landowners Alliance (WLA) is a landowner-led, non-partisan organization that advances policies and practices that sustain working lands, connected landscapes and native species. We appreciate the opportunity to comment on the Bureau of Land Management's (BLM) proposed "Conservation and Landscape Health" rule.

Western Landowners Alliance strongly supports the objective of conserving and restoring ecological health, productivity and habitat connectivity across BLM lands. Our members are proud stewards of the western landscape, including public lands, and dedicated to managing and conserving working lands for the benefit of both people and wildlife. We believe that more can be done on the part of Congress, the agency and all stakeholders to care for our public lands. We have long advocated that the BLM develop a coherent restoration policy and appreciate the agency's investment in catalyzing this effort.

At the same time, effective and enduring public policies require broad engagement and support, particularly in the context of multiple use public lands. While the proposed rule has garnered support from many environmental organizations it has also generated widespread confusion, concern and opposition from deeply vested stakeholders and communities across the West. This sets the stage for increased conflict, politicization and regulatory instability.

Detailed below are specific comments, questions and suggestions for ways in which the rule may be improved. We remain concerned, however, with fundamental elements in the current draft. Given the scope of the rule, its potential impacts, and the questions that remain to be

answered, we recommend the BLM restart the process to allow for more meaningful public engagement from the outset.

Western Landowners Alliance's primary concern with the rule is not that it asserts the importance of conservation and restoration, but that it sets conservation in contrast and potential conflict with authorized uses under the Federal Lands Policy and Management Act (FLPMA). It excludes active management from its definition of conservation, segregates conservation as a "use" and suggests both explicitly and implicitly that protection (e.g. limited or non-use), coupled with restoration, is the preferred strategy for the management of BLM's multiple use lands and "intact landscapes" in particular.

FLPMA establishes that a primary purpose of these lands is to provide the food, fiber and energy resources upon which the nation depends, specifically limiting authorized major uses to domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation and timber production.[1] FLPMA also requires the conservation of these resources and other important environmental values. It stops short, however, of declaring conservation to be an authorized "use".

As a guiding principle and desired outcome, conservation should be integrated into all uses and activities. It should be a fundamental part of both business and recreation. There are situations in which minimizing human activity and limiting impact is essential. Temporary deferment or rest, for example, is an important component of successful grazing management. Limiting recreational activity during sensitive times for wildlife is another example. In some places, wilderness or other designations supported by local communities may be appropriate. At the same time, active management of our forests and rangelands, including well-managed grazing, timber and fire-fuel harvest, is vital to the health and integrity not just of BLM lands but of the larger western landscape, including intermingled federal, state, tribal and private lands.

Implementation of the BLM's multiple use mandate is profoundly challenging, particularly across widely varied landscapes with many dynamic variables and multiple stakeholders. It is our experience that while high-level guidance is important, success on the ground most often hinges on positive relationships between people. Community-based collaborative conservation has a growing track-record of finding surprising paths forward in even the most complex and challenging situations. Toward that end, the BLM should consider ways the rule and the rule making process itself can foster engagement and collaboration among the agency and diverse stakeholders at federal and local levels in meeting the multiple use mandate.

[1] 43 U.S.C. 1702(l)

WLA respectfully submits the following comments for consideration:

Purpose[2]

The BLM states that the purpose of the rule is to "ensure healthy wildlife habitat, clean water, and ecosystem resilience" so that public lands can "resist and recover from disturbances like drought and wildfire." The rule would also "enhance mitigation options, establishing a regulatory framework" along these lines.

WLA Comment: The *purpose* of this rule, if not certain specific elements within the rule, sits broadly within the BLM's existing authority, and the emphasis on restoration is something that WLA supports and for which we have consistently advocated. At the same time, missing from the purpose is an explicit recognition of the role that active management, including livestock grazing and forest management, plays in promoting and restoring rangeland and forest health and productivity.

We suggest adding the following language "ensure healthy wildlife habitat, clean water, and ecosystem resilience, *including utilizing existing uses and active management to achieve these outcomes."*

Definitions[3]

Conservation: "Maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions." The BLM notes that within the framework of the proposed rule, "protection" and "restoration" together constitute conservation.

WLA Comment: This definition is deficient in several areas. It is also the most significant definition in the rule given the purpose of clearly defining conservation as a "use" and establishing the conservation lease mechanism. Suggesting that "protection" and "restoration" combined equal "conservation" omits much of the ongoing active management and stewardship work of permittees. The omission implies that conservation and active management are distinct and mutually exclusive.

At a functional level, the BLM also uses "restoring" and "protecting" in the definition for conservation and "conservation" in the definition for restoration and protection below, suggesting the terms are interchangeable.

[2] 88 Fed. Reg. 19588
[3] 88 Fed. Reg. 19598

We suggest defining conservation as: *"The management, restoration, utilization and protection of land and natural resources in a manner that sustains or enhances natural resource values, biodiversity and ecological function over time."*

Intact Landscape: "An unfragmented ecosystem that is free of local conditions that could permanently or significantly disrupt, impair, or degrade the landscape's structure or ecosystem resilience, and that is large enough to maintain native biological diversity, including viable populations of wide-ranging species." The BLM further adds that, "Intact landscapes have high conservation value, provide critical ecosystem functions, and support ecosystem resilience."

WLA Comment: WLA supports the goal of maintaining habitat connectivity and ecological integrity where possible. Clarification is needed as to what constitutes a "local condition" and how active management and resource use within the BLM's multiple use mandate are contemplated within the definition of an "intact landscape". In many cases, landscape connectivity exists because of, not in spite of, existing management activities.

The BLM should integrate how they will work with existing permittees in evaluating landscape connectivity and recognize existing stewardship efforts in terms of maintaining this, which we strongly recommend the BLM integrate into their final definition.

Protection: "The act or process of conservation by preserving the existence of resources while keeping resources safe from degradation, damage, or destruction."

WLA Comment: As suggested above, conflating protection with conservation is problematic, particularly in the context of active management. Additionally, certain forms of active management or restoration may cause short-term degradation, damage or destruction in the service of long-term landscape health and resilience. In that sense, this definition seems to be at odds with the broader purpose of the rule. We suggest that the BLM either strike this definition and all references within the proposed rule or rework it into the definition of conservation.

Our suggestion for the latter is: *"Conservation is the management, restoration, utilization and protection of land and natural resources in a manner that sustains natural resource values, biodiversity and ecological function over time."*

Resilient Ecosystems: "ecosystems that have the capacity to maintain and regain their fundamental structure, processes and function when altered by environmental stressors such as drought, wildfire, nonnative invasive species, insects, and other disturbances."

WLA Comment: We appreciate the BLM's attempt to define this term but note that the proposed definition lacks clarity in how the "capacity" for ecosystems to function will be evaluated and what will constitute "fundamental structure, processes and function" in light of

shifting conditions on the landscape. See below under "Ecosystem Resilience and Land Health Standards" for more detailed comments on this point.

Restoration: "The process or act of conservation by assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed."

WLA Comment: As noted above, the proposed rule seems to use conservation, restoration and protection interchangeably at times. If conservation is the combination of restoration and protection, but restoration also means the "act of conservation," it is difficult to understand how this will be applied consistently.

We suggest looking to the Forest Service's definition of restoration with the following modifications: *"Restoration means creating and maintaining healthy, resilient* ***lands and waters*** *~~forests~~ capable of delivering* ***multiple*** *~~all the~~ benefits that people* ***and fish and wildlife*** *get from them: clean air and water, carbon sequestration, habitat for native fish and wildlife,* ***food and fiber, energy and minerals,*** *forest products, opportunities for outdoor recreation, and more."*[4]

Conservation Use[5]

The proposed rule clarifies that conservation is a use on par with other uses of public land. Authorized officers would be required to identify and seek to maintain intact landscapes by utilizing available watershed condition classifications and other available data. The rule states that during the resource management planning process, some tracts of public lands should be put into a conservation use--such as by appropriately designating or allocating the land--to maintain or improve ecosystem resilience. When determining, through planning, whether conservation use is appropriate in a given area, authorized officers would determine "which, if any" landscapes to manage to protect intactness, necessarily taking into account other potential uses in accordance with the BLM's multiple use management approach.

WLA Comment: FLPMA is clear that the Secretary has the authority and obligation to manage authorized uses in a manner that conserves natural resource values. While we firmly believe that conservation and restoration should be integrated broadly into the BLM's land planning and management framework under FLPMA, the framing of conservation as a use in contrast with other uses is problematic in this context. In many cases, conservation as an outcome can be achieved through cooperative and thoughtful management of existing uses, in tandem with an expanded, agency-wide restoration framework. In these same cases, framing conservation as a use may inadvertently shut off the very management avenues needed to achieve conservation outcomes.

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[4] https://www.fs.usda.gov/restoration
[5] 88 Fed. Reg. 19590

Establishing conservation as a “use” also appears to be inconsistent with FLPMA in which “‘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.”[6] The concept of conservation as a “use” has been tested before. In a 1995 rulemaking, the BLM proposed “conservation use” permits on grazing allotments. The permits would have allowed grazing to be removed for the full 10-year length of the permit. In 1999, the 10th Circuit Court of Federal Appeals upheld a district court’s finding that the Secretary lacked the authority to issue such permits. The 10th Circuit Court found, “In short, it is true that the TGA, FLPMA, and PRIA give the Secretary very broad authority to manage the public lands, including the authority to ensure that range resources are preserved. Permissible ends such as conservation, however, do not justify unauthorized means.”[7]

Under the present draft rule, “conservation leases” are proposed not as a substitute for grazing, but rather as a potentially compatible “layered” use for the purposes of “protection and restoration.” Nevertheless, placing “conservation on equal footing”, rather than integrating conservation into other uses, sets the stage for conflicts with and displacement of the uses explicitly authorized under FLPMA. Despite language in the proposed rule that this does not “prioritize conservation above other uses” the proposed rule does explicitly prohibit the authorization of other uses deemed incompatible with conservation use.

Further confusing the issue, the proposed rule also suggests that during the resource management planning process, some lands should be set aside for “conservation use.” Setting land aside for “conservation use” in a manner that would then subsequently exclude other uses appears to add a new form of land designation.

Finally, it is unclear why “conservation use” in the form of conservation leasing is prioritized on intact landscapes where the ecosystem is found to be unfragmented and where natural processes are functional. The rule states that conservation leases may be authorized for the following activities: i) conservation use that involves restoration or land enhancement; and ii) conservation use that involves mitigation.[8] Given that conservation leasing is authorized for restoration and mitigation, it would seem that conservation leases would be more appropriately targeted to degraded landscapes where restoration and enhancement are most needed.

[6] 43 U.S.C. 1702(l)

[7] Public Lands Council v. Babbitt, 529 U.S. 728 (2000)

[8] 88 Fed. Reg. 19600

Restoration Prioritization and Planning[9]

The proposed rule would direct the BLM to emphasize restoration across public lands to enable achievement of its sustained yield mandate and would encourage active management to promote restoration when appropriate to achieve ecosystem resilience. The BLM also proposes to identify priority landscapes for restoration at least every five years. The proposed rule would require authorized officers to include a restoration plan in any new or revised Resource Management Plan. Actions would be coordinated with partners, and BLM staff would also be required to track progress toward achieving restoration goals and ensure restoration projects are consistent with the land health standards, restoration goals and objectives, best management practices, and Resource Management Plan restoration plans.

WLA Comment: We appreciate the coordinated and consistent application of landscape restoration in BLM policy. In identifying priority landscapes for restoration, WLA suggests that the agency coordinate closely with permittees, states and affected communities to ensure that restoration planning reflects needs on the ground and is designed in keeping with FLPMA's multiple use mandate. In monitoring and tracking progress toward achieving restoration goals, we encourage the agency to utilize a cooperative approach to monitoring and management that empowers and supports permittees as front-line partners in restoration.

Conservation Leasing [10]

To achieve the stated purpose of the rule in developing a framework to "protect intact landscapes, restore degraded habitat, and ensure wise decision making in planning, permitting, and programs," the BLM establishes a new "conservation lease" mechanism. The BLM notes that the purpose of conservation leases would be to promote both protection and restoration on public lands, while providing opportunities for engaging the public in the management of public lands for this purpose.

As proposed, conservation leases would be available to individuals, organizations or other entities seeking to restore public lands or provide mitigation for a particular action. The BLM specifies that conservation leases may be issued either for "restoration or land enhancement" or "mitigation." In general, conservation leases would be issued for a maximum period of 10 years, except in case of leases providing compensatory mitigation, which would be issued for a period of time commensurate with the adverse impact being offset. The BLM further notes that conservation leases are not intended to provide a mechanism for precluding other uses, such as grazing, energy, mining and recreation.

[9] 88 Fed. Reg. 19599
[10] 88 Fed. Reg. 19600

WLA Comment: Under this rule, conservation leases appear to be a tool primarily to facilitate development elsewhere on BLM lands through an in-house approach to mitigation. WLA has several concerns with conservation leasing as proposed.

The agency notes that leases will be available for restoration and land enhancement or mitigation, leaving out what is perhaps the biggest potential benefit of this proposed rule to reimagine how the agency works collaboratively with permittees to facilitate more widespread, coordinated active management and restoration. On this point, we recommend that the BLM either redefine conservation leases to explicitly clarify the role of stewardship and active management, or include an additional authorization of "stewardship leases," which may include restoration as defined above, that better recognize and support the essential role of ongoing, active management through grazing, forest management and other uses. This will help the agency achieve the stated purpose of the rule.

The agency should also clarify how conservation leases will be administered such that they proactively achieve certain outcomes instead of an addition by subtraction type approach that assumes minimizing or eliminating uses will inherently result in conservation or restoration.

Additionally, while the agency notes that leases would not override valid, existing uses, there is no clarification on how grazing permit renewals or transfers would be handled under a conservation lease beyond the broad statement that subsequent authorizations would not be precluded "so long as those subsequent authorizations are compatible with the conservation use." We request further clarification on how the BLM will ensure that existing uses explicitly authorized under FLPMA will not be in conflict inherently with a conservation use or lease as framed in this rule. We are concerned that the rule as drafted could enable organizations that wish to eliminate certain uses from BLM lands to take advantage of this tool.

The term "conservation lease" itself is confusing. If our interpretation of the intent is correct, "stewardship contract" or "restoration contract" would more accurately describe the purpose of the mechanism. Congress has authorized the use of stewardship contracting on federal lands enabling agencies to trade the value of forest products for land management and services.[11] A similar arrangement could be made in which the agencies trade transferable conservation or mitigation credits for land management services, though Congressional authorization for such a program is likely required.

Under the proposed rule, "conservation leasing" appears to be constructed more along the lines of "right of way" leasing in which any entity can propose a lease at any time for needs such as pipelines and cell phone towers. The proposed rule states: "The BLM will determine

[11] Section 604 (16 USC 6591c) of Public Law 108-148 as amended by Section 8205 of Public Law 113-79, the Agricultural Act of 2014

whether a conservation lease is an appropriate mechanism based on the context of each proposed conservation use and application, not necessarily as a specific allocation in a land use plan. Conservation leases could be issued to any qualified individual, business, non-governmental organization, or Tribal government."

Western Landowners Alliance has several concerns with this approach. First, the proposed rule appears to provide conflicting guidance as to where a conservation lease may be appropriate. The rule says that areas appropriate for "conservation use" will be identified and "set aside" in the resource management planning process, yet as noted above, the proposed rule also states that, "The BLM will determine whether a conservation lease is an appropriate mechanism based on the context of each proposed conservation use and application, not necessarily as a specific allocation in a land use plan." In the latter case, the agency, which is already understaffed, may find itself overwhelmed by having to respond to unlimited lease nominations.

Allowing anyone to nominate conservation leases in any location at any time may confound coherent and efficient land use planning and management. Further, it would either exclude existing users and other stakeholders from participating in the decision-making process for each lease or, if there was a mechanism for their input, could create an overwhelming burden for them. For example, would a grazing permittee have the opportunity to evaluate and comment on a conservation lease nomination affecting their permit? If not, how would the agency determine whether there may be a conflict with the existing use? If so, permittees could find themselves having to respond continuously to lease proposals. Would permittees and other stakeholders have the opportunity to submit competing bids? If so, this would demand significantly more time from the agency. If not, it could generate a chaotic competition to secure "first in line" leases.

The rule exempts "casual use" from the requirement of a land use authorization under lands covered by a conservation lease. Casual use is defined in the rule as "any short-term, noncommercial activity that does not cause appreciable damage or disturbance to the public lands or their resources or improvements…." However, the rule does not address the cumulative impacts of casual use on public land resources, and particularly wildlife. For example, even relatively low impact outdoor recreational activities such as hiking have been shown in multiple studies to have significant impacts on wildlife.[12] If wildlife conservation and

[12] Taylor, A. R., & Knight, R. L. (2003). Wildlife Responses to Recreation and Associated Visitor Perceptions. *Ecological Applications*, *13*(4), 951–963. http://www.jstor.org/stable/4134735 & Larson CL, Reed SE, Merenlender AM, Crooks KR (2016) Effects of Recreation on Animals Revealed as Widespread through a Global Systematic Review. PLoS ONE 11(12): e0167259. https://doi.org/10.1371/journal.pone.0167259

habitat restoration are a primary focus of conservation leasing, how will casual use be monitored, evaluated and managed to ensure the cumulative impacts do not conflict with the purpose of the lease?

While conservation leasing as proposed raises significant concerns, WLA does support creating opportunities for permittees and other stakeholders to collaborate with the agency in restoring BLM lands. Emerging ecosystem service market opportunities and mitigation policies provide increasing opportunities to fund improvements that benefit all stakeholders. Many collaborative restoration projects are already underway within BLM's existing authorities. Western Landowners Alliance recommends designing a collaborative restoration policy informed by stakeholders and successful projects. We also recommend that the BLM evaluate and address existing barriers to restoration. For example, costs and delays associated with the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) are frequently identified as the primary barrier to forest and rangeland restoration projects. Lack of staff capacity and turnover within the BLM is another frequently cited barrier.

Western Landowners Alliance also supports opportunities for grazing permittees to diversify both management and income in delivering multiple resource values of public benefit. Targeted stewardship contracts designed in collaboration with permittees and other stakeholders could be a beneficial tool if properly designed and not in conflict with grazing as a primary use.

In 2003, the BLM considered but ultimately did not pursue a concept called "Conservation Partnerships." According to the Congressional Research Service, "The goal of conservation partnerships between permit holders and the BLM would be to improve environmental health. A permittee could enter into a performance-based contract with the BLM to undertake projects to restore streambanks, wetlands, and riparian areas; enhance water quantity and quality; improve wildlife or fisheries habitat; support the recovery of threatened or endangered species; and other actions. In return, the permittee could receive management flexibility, increased livestock grazing, and stewardship grants to pay for investments in conservation practices."[13] This more targeted type of approach working collaboratively with permittees would be preferable to the current conservation leasing proposal.

Outcomes-based grazing and joint cooperative monitoring are additional tools that can be utilized under existing BLM authorities to advance restoration and conservation on BLM lands. Rest, for example, is an important component of successful grazing management and can lead to increased productivity in the long term. Over the past two decades, extreme and prolonged

[13] https://www.everycrsreport.com/reports/RL32244.html#fn6

drought and wildfire have significantly impacted many BLM lands. In some cases, longer periods of prescribed rest within the context of a grazing management plan may be needed to enable lands to recover than is presently allowable under current policy. Greater flexibility with retained accountability on grazing allotments can enable producers and the BLM to work together more effectively to integrate active management, rest, restoration, evolving science and innovative practices in restoring land health and productivity.

Ecosystem Resilience and the Fundamentals of Land Health[14]

The proposed rule would set forth a framework for the BLM to make wise management decisions based on science and data, including at the planning, permitting, and program levels, that would help to ensure ecosystem resilience. Authorized officers would be required to identify priority watersheds, landscapes, and ecosystems that require protection and restoration efforts; develop and implement mitigation, monitoring and adaptive management strategies to protect resilient ecosystems; and meaningfully consult with Tribes and Alaska Native Corporations. Consistent with applicable law and the management of the area, authorized officers would also be required to avoid authorizing any use of the public lands that permanently impairs ecosystem resilience.

WLA Comment: We support the conceptual ideal of managing for ecosystem resilience. That being said, as land managers, we know that in practice this can be difficult to define, measure and accomplish, particularly in the context of changing climate conditions. The general definition of ecosystem resilience outlined in the rule is the land's ability to resist and recover from major disturbances such as drought and fire. The rule also states that ecosystem resilience will be achieved by protecting or restoring natural habitats and ecological functions and specifies the land health standards necessary to achieving ecosystem resilience.

As with ecosystem resilience, it is challenging to define, measure and achieve these land health standards. Watershed function, ecological processes and wildlife habitats change over time and have been fundamentally and permanently altered by human activity over thousands of years. For example, fire is an important natural process in fire-adapted ecosystems. However, given the reliance of human communities on municipal watersheds and increasing development in the wildland-urban interface, it is not possible in many cases to allow natural fires to burn. Other natural processes have been similarly impacted. Where it is not possible to restore natural processes, the BLM should provide guidance as to alternative strategies and tools. In many cases, these require active management. For example, forest thinning and livestock grazing are often used to replicate the effects of fire on forests and rangelands. Domestic

[14] 88 Fed. Reg. 19602

livestock can be managed to replicate the role that bison once played in maintaining grassland ecosystems.

The rule also states that "Consistent with applicable law and the management of the area, authorized officers would also be required to avoid authorizing any use of the public lands that permanently impairs ecosystem resilience." The rule goes on to say: "Permanent impairment of ecosystem resilience would be difficult or impossible to avoid, for example, on lands on which the BLM has authorized intensive uses, including infrastructure and energy projects or mining, or where the BLM has limited discretion to condition or deny the use." It also would require authorized officers to exercise "a precautionary approach for resource use when the impact on ecosystem resilience is unknown or cannot be quantified." The proposed rule then seeks to clarify, saying: "In other words, the proposed rule does not prohibit land uses that impair ecosystem resilience; it simply requires avoidance and an explanation if such impairment cannot be avoided." In short, authorized officers are *required to avoid* but cannot *prohibit* any uses that impair or have unknown impacts on ecosystem resilience. We are concerned that this directive generates uncertainty on all sides and sets the stage for increased conflict and litigation. We are also uncertain how the agency's mitigation policy, which more specifically attempts to address potential resource impacts from authorized uses, is contemplated in relation to this element of the proposed rule.

Fundamentals of Land Health[15]

The proposed rule would establish four fundamentals of land health—watershed function, ecological processes, water quality, and wildlife habitat—that would form the basis for land health standards and guidelines that the BLM would develop in land use plans. Application of these land health standards would apply to all BLM lands and program areas, beyond the current application solely on grazing lands.

WLA Comment: As noted above, while we agree in principle with these standards and that such standards should be applied equally to all BLM lands and program areas, it is important for the BLM to consider the broader landscape context and the reality that watershed function, ecological processes and wildlife habitats change over time and also have been fundamentally and permanently altered by human activity over thousands of years. In addition, climate is a primary driver of landscape condition. Increasingly volatile climate conditions compound the challenge of establishing and managing for land health metrics and guidelines. Collaboration, cooperative monitoring and flexibility for adaptive management become increasingly crucial in

[15] 88 Fed. Reg. 19603

this context. The agency should provide greater clarification to ensure it does not create unrealistic or vaguely defined standards that set the stage for increased conflict and litigation.

We support the application of standards to all program areas, including recreation which is having significant detrimental impacts on increasing portions of the landscape and on wildlife. At the same time, while clear mechanisms exist to hold grazing permittees and other permitted users accountable, it is unclear how recreational users would be held similarly accountable, particularly given the fact that the BLM is not sufficiently funded and staffed to provide adequate monitoring, management and enforcement.

Areas of Critical Environmental Concern (ACEC)[16]

The proposed rule would explicitly clarify that ACECs hold a role as the "principal designation for public lands where special management attention is required to protect important natural, cultural, and scenic resources, and to protect against natural hazards."

New regulatory provisions would "emphasize that resources, values, systems, processes or hazards that are found to have relevance and importance are likely to warrant special management attention and would further identify four considerations when evaluating the need for special management attention, to inform potential ACEC designations in a land use plan."

The proposed rule would also clarify that in land use planning, the BLM must include at least one plan alternative that analyzes in detail all proposed ACECs, in order to analyze the consequences of both providing and not providing special management attention.

WLA Comments: While WLA supports conserving and protecting important and sensitive values on the landscape, we have several concerns with this element of the rule.

As written, the rule may be bringing on a larger "burden of proof" responsibility to the agency to prove that lands do NOT warrant ACEC coverage under a possible stream of ACEC petitions. In other words, the BLM may be opening itself up to the same workload backlog that the U.S. Fish and Wildlife Service suffers from under the Endangered Species Act due to these requirements. WLA recommends striking §1610.7-2(g) that would require planning documents to "include at least one alternative that analyzes in detail all proposed ACECs to provide for informed decision making on the trade-offs associated with ACEC designations."

Additionally, ACEC designations do not always result in desired outcomes and in many cases additional regulatory layers can preclude the very management actions necessary to conserving

[16] 88 Fed. Reg. 19593

or restoring the resource value. Some ACECs and wilderness study areas are in poorer ecological condition than surrounding allotments that are actively managed. As landscape conditions change and as science and management evolve, greater flexibility is needed to be able to implement adaptive management and restoration, particularly in sensitive areas. The BLM has limited capacity to monitor and manage the 245 million acres within its jurisdiction. Partnering with permittees in the monitoring and management of sensitive environmental areas can be a collaborative and cost-effective approach to achieving desired outcomes and should be considered within the rule.

Comments on the rulemaking process

By almost any account, the proposed rule would have major impacts across BLM lands, on stakeholders and on the agency. Agricultural communities in the West are facing immense challenges, including drought, severe water shortages, wildfire and volatile markets. This is an opportunity for the BLM to work collaboratively with affected stakeholders to design solutions that meet environmental needs while also supporting ranchers and local economies. While the BLM has hosted several listening sessions on the rule, participants in the sessions have observed that engagement was limited to a BLM presentation on the basic elements of the rule followed by a short Q&A session where limited questions submitted in writing were addressed. A more meaningful and inclusive stakeholder engagement process could better inform and lead to greater understanding and support for the proposed rule. Should the BLM elect to move forward with the current proposal, WLA suggests further extending the comment deadline and providing opportunities for meaningful dialogue with key stakeholder groups.

Sincerely,

Lesli Allison
Chief Executive Officer
Western Landowners Alliance