July 5, 2023

Director Tracy Stone-Manning
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attention: 1004–AE92

RE: (Federal Register # 2023-06310) Support for BLM Public Lands Rule – Conservation and Landscape Health

Submitted electronically via Regulations.gov

Dear Director Stone-Manning:

Please accept and fully consider these comments on the proposed Bureau of Land Management (BLM) Public Lands Rule, submitted on behalf of the National Audubon Society (Audubon). Our 1.6 million members are deeply invested in sound stewardship of our nation’s public lands and seeing that America’s public lands are managed in a balanced way that benefits current and future generations. For over 100 years, Audubon has worked to protect birds and the places they need, today and tomorrow throughout the Americas using science, advocacy, education, and on-the-ground conservation. Audubon has a long history of engagement and collaboration with BLM on conservation and issues related to lands managed by BLM.

Audubon is proud to work alongside our partner organizations within the Audubon network, our affiliated chapters. These 194 independent chapters, representing members in 41 states, have come together to submit their own letter of grassroots support for the BLM’s efforts in this proposed rule. We acknowledge their diverse local interests and recognize the important legacy that sound management of America’s public lands means for so many across our country.

Audubon supports the proposed BLM’s Public Lands Rule and applauds the intention to promote conservation and prioritize the health and resilience of ecosystems across public lands. Among the more than 3,000 species that reside on BLM-managed lands are more than 300 bird species, which spend more than half of their time across these various habitats. While Audubon’s focus is on avian species, we are also keenly aware that healthier landscapes will benefit local communities and our nation as a whole. The American people need a forward-thinking approach such as is proposed here so as to create a clear process by which to manage our nation’s public lands to ensure healthy landscapes, abundant wildlife habitat, clean water and balanced decision-making.
Promoting conservation and land health are consistent with the BLM’s mission, authorities and responsibility. Our nation's public lands are experiencing extreme weather events such as wildfires, droughts, and severe storms – which are occurring at increasing frequency and intensity. The best available conservation science says that ecosystems should remain unfragmented, large, and connected to be resilient in a climatically uncertain future.1 BLM must take action to ensure the health and resilience of the ecological areas that wildlife and communities depend on.

This proposed rule drives us in the direction of having healthy intact landscapes that are more resilient and able to recover more easily in the face of natural disasters. Audubon strongly supports the three main components of the proposed Public Lands Rule: (1) protect the most intact, healthiest landscapes, (2) restore landscapes back to health, and (3) ensure wise decision-making, based on science and data.

I. Legal Authority

The BLM’s proposed Public Lands Rule is entirely consistent with Congress’s direction under the Federal Land Policy and Management Act (FLPMA) that BLM manage the public lands for conservation, as well as consumption – that is, “for multiple use and sustained yield.” 43 U.S.C. §§ 1701(a)(7) & 1732(a). Congress directed the agency to manage public lands in a way that “protect[s] the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archaeological values” and that the agency, “where appropriate, will preserve and protect certain public lands in their natural condition.” Id. § 1701(a)(8). Among other conservation obligations, FLPMA specifically directs BLM to “give priority to the designation and protection of areas of critical environmental concern” and to maintain a current “inventory of all public lands and their resources and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern” and reflecting changed conditions and “new and emerging resource and other values.” Id. §§ 1711(a) & 1712(c)(3). It also obligates the agency, “by regulation or otherwise, [to] take any action necessary to prevent unnecessary or undue degradation” when “managing the public lands.” Id. § 1732(b).

FLPMA’s definitions of multiple use and sustained yield further evidence Congress’ intent that public lands be managed for conservation purposes. Multiple use is defined as:

management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources.

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without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. Id. § 1702(c). (emphasis added)

Sustained yield means the “achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.” Id. § 1702(h).

Congress also directed that BLM “establish comprehensive rules and regulations after considering the views of the public” to effectuate these goals. 43 U.S.C. § 1740. That is precisely what BLM is doing with this proposed rule.

The agency’s proposed rule is consistent with long-standing agency practice and legal precedent interpreting the BLM’s statutory mandate and authority. See, e.g., Nat’l Mining Ass’n v. Zinke, 877 F.3d 845, 872 (9th Cir. 2017) (“[T]he principle of multiple use confers broad discretion on an implementing agency to evaluate the potential economic benefits of mining against the long-term preservation of valuable natural, cultural, or scenic resources.”); New Mexico ex rel. Richardson v. Bureau of Land Mgmt., 565 F.3d 683, 710 (10th Cir. 2009) (“BLM’s obligation to manage for multiple use does not mean that development must be allowed . . . . Development is a possible use, which BLM must weigh against other possible uses—including conservation to protect environmental values[,]”); Oregon Natural Desert Ass’n v. Bureau of Land Mgmt., 625 F.3d 1092, 1098-99, 1113-15 (9th Cir. 2010) (wilderness characteristics are among the “resource and other values” of the public lands that BLM must inventory and manage “as part of the complex task of managing ‘the various resources without permanent impairment of the productivity of the land and the quality of the environment.’”). As the U.S. Supreme Court explained in Norton v. Southern Utah Wilderness Alliance, “[m]ultiple use management’ is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put,” and that “not all uses are compatible.” 542 U.S. 55, 58 (2004).

II. Corridors and Connectivity

Audubon is encouraged to see habitat connectivity and wildlife corridors emphasized in the proposed rule. Such connectivity is essential to allow migrating wildlife – including birds – to adapt to the impacts of a changing climate. The rule could be strengthened to more broadly identify habitat connectivity and migration corridors as a conservation priority in recognition of their important role in supporting ecological resilience.

Authority for Corridors and Connectivity

Under FLPMA, the agency has authority to identify, protect, and restore fish and wildlife habitat, as it has done for decades. Protection and restoration of migration corridors would be consistent with this authority and practice. FLPMA’s guiding policy directs the BLM to manage public lands to “provide food and habitat for fish and wildlife” and its definition of multiple use includes the “long-term needs of
future generations” for resources including “wildlife and fish[.]” 43 U.S.C. §§ 1701(a)(8), 1702(c)
1712(c)(3).

Further, the BLM may designate areas of critical environmental concern to protect fish and wildlife,
among other values. 43 U.S.C. §§ 1702(a); 1711(a). This is all in addition to the broader direction
discussed above to manage public lands for conservation values and uses. The agency’s proposal to
manage public lands to protect wildlife and fish that rely on intact landscapes and resilient ecosystems
furthers this Congressional mandate, as do the changes proposed below.

**Recommendation: Add specific language that prioritizes the conservation of corridors and
connectivity.**

We ask that the proposed rule more broadly identify habitat connectivity and migration corridors as a
conservation priority.

Given the importance of habitat connectivity and migration corridors in supporting ecosystem resilience
and allowing fish and wildlife species to move and migrate to adapt to changing conditions, we
encourage the BLM to explicitly identify habitat connectivity as a required consideration and priority in
the rule for both protection and restoration. Habitat connectivity and wildlife migrations are critical in
supporting the abundance and presence of wide-ranging species—both within intact landscapes and in
connecting intact landscapes to one another. Specific recommendations are as follows:

1. § 6101.4 – To integrate habitat connectivity and migration corridors more explicitly into the rule,
we recommend BLM to define both “Areas of Habitat Connectivity” and “Wide Ranging Species.”
Suggestions for those two definitions are as follows:

   *Areas of habitat connectivity* means habitats that support or facilitate species movements and
other ecological processes across terrestrial and aquatic ecosystems, such as seed dispersal,
migrations, and stopover sites.

   *Wide-ranging species* means species requiring habitat across landscapes, sometimes with
separate seasonal components, to fulfill their annual and biological needs.

We additionally recommend that BLM include “areas of habitat connectivity” or “connectivity” as a
component of the Intact Landscape and Resilient Ecosystem definitions, and that “wide-ranging species”
be retained in the Intact Landscape definition. Doing so would ensure that connectivity and corridors are
considered throughout the rule when these terms are mentioned.

Further, given the threat of fragmentation to connectivity and the functionality of migration corridors,
we recommend that “fragmentation” be identified as a stressor under the definition of Resilient
Ecosystems and that it be identified as a disturbance that could be restored in the definition of
Restoration.

2. § 6102.1(a)(3) – We recommend adding “intact” to ecosystem restoration so that it reads
“Maintaining or restoring intact and resilient ecosystems.” Doing so could help prioritize the restoration
of intactness (eliminating fragmentation) in addition to resilience on the landscape.
3. § 6103.1(a)(4) We appreciate the rule’s focus on the fundamentals of land health as a component of achieving ecosystem resilience, and encourage the BLM to update the fundamentals in both the Public Lands Rule and at 43 CFR § 4180.1 as the BLM updates its grazing regulations. Doing so would establish habitat connectivity and migration corridors as a component of ecosystem resilience through land health. Specifically, we recommend the following changes at §6103.1(a)(4) in the proposed rule.

(4) Habitats and habitat connectivity are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed and Candidate species, and other special status species, and wide-ranging species integral to native ecosystems.

Finally, in implementing these provisions, BLM should support, collaborate and consult with Tribal, State, and local governments to manage lands and waters for connectivity, given the role of Tribes and States in managing healthy wildlife populations.

Numerous Federal Policies Justify and Support these Changes

By directly integrating specific wildlife connectivity and migration corridors language into the Public Lands Rule, the BLM would further implement several administration, Department of Interior (DOI), and BLM directives and priorities. Specifically:

- Nov. 2018: The Secretary of Interior signed SO 3362, directing DOI bureaus to work with western states to enhance and improve big game winter range and migration corridors. SO 3362 specifically directs DOI and its bureaus to:
  - Avoid development in the most crucial winter range or migration corridors during sensitive seasons;
  - Minimize development that would fragment winter range and primary migration corridors;
  - Limit disturbance of big game on winter range; and
  - Utilize other proven actions necessary to conserve and/or restore the vital big-game winter range and migration corridors across the West.

- May 2021: The Biden-Harris Administration issued the Conserving and Restoring America the Beautiful Report, where it committed to “Expand Collaborative Conservation of Fish and Wildlife Habitats and Corridors” as a priority focus issue, and continue with the implementation of SO 3362.

- November 2022: The BLM issued Instruction Memorandum (IM 2023-005) to ensure habitat connectivity, permeability and resilience is restored, maintained, improved, and/or conserved on public lands.

- November 2022: The U.S. Geological Survey (USGS) in partnership with states and Tribes, released the Migration Mapper, a free application designed for researchers, biologists, and managers, to analyze fine-scale GPS collar data collected from migratory ungulates. Additionally, USGS has published three volumes of big game migration maps. The new maps add valuable
tools for land managers to mitigate the impacts on wildlife while offering the BLM an opportunity for science-based partnerships with USGS, states, and Tribes.

- March 2023, the Council on Environmental Quality issued Guidance for Federal Departments and Agencies on Ecological Connectivity and Wildlife Corridors. This guidance directs federal agencies to “to conserve, enhance, protect, and restore corridors and connectivity during planning and decision-making, and to encourage collaborative processes across management and ownership boundaries.”

III. Mitigation (§6102.5-1)

Mitigation is a widely accepted regulatory tool. Sound mitigation policy provides the BLM with a structured, rational, and transparent framework for meeting its multiple use and sustained yield mandate. When properly designed and implemented and evaluated at appropriate scales, mitigation policies can reduce conflict between conservation and land use activities.

Authority for Mitigation

BLM’s proposed rule requires mitigation. It provides that “authorized officers shall, to the maximum extent possible, require mitigation to address adverse impacts to important, scarce or sensitive resources.” 88 Fed. Reg. 19583, 19603 (April 3, 2023) (to be codified at 43 C.F.R. § 6102.5-1(b)). The Federal Land Policy and Management Act (FLPMA) not only authorizes BLM to take such action; the Act arguably mandates such action.


FLPMA delegates authority to manage federal public lands to the Secretary of the Interior through the BLM. Such authority includes the discretion not to allow certain uses in certain places. See e.g., New Mexico et rel. Richardson v. BLM, 565 F.3d 683, 710 (10th Cir. 2009). Mitigation gives BLM leeway to allow destructive uses by addressing the harm such uses trigger.

Mitigation provides a critical tool to fulfill BLM’s multiple use mandate. As FLPMA states, “The Secretary shall manage the public lands under principles of multiple use and sustained yield.” 43 U.S.C. § 1732(a). Both “multiple use” and “sustained yield” speak to BLM’s duties to future generations. FLPMA defines “multiple use” as “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment.” 43 USC § 1702(c). Under FLPMA, “sustained yield” means “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.” 43 USC § 1702(h).

While the Act authorizes a variety of uses, BLM’s approval of such uses must ensure that resources of the public lands remain for future generations. Such resources are not to be used up by the current
generation. The public lands shall be managed in a way that “will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.” 43 USC § 1701(a)(8).

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.” 43 USC § 1702. 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.” 43 USC § 1712. Moreover, “in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources.” 43 USC § 1732(b). Mitigation for adverse impacts is required to satisfy BLM’s obligation to prevent “unnecessary or undue degradation” (UUD) under FLPMA.² The IBLA and courts have recognized that BLM has authority to incorporate mitigation measures into project authorizations to prevent UUD.³ BLM fails to fulfill its duty to future generations if it does not include mitigation when authorizing destructive activities on BLM managed public lands.

**Recommendation: BLM should require, implement and enforce effective mitigation that meets standard principles.**

BLM has long included compensatory mitigation requirements in land use planning and management decisions.⁴ Mitigation – avoidance, minimization and, where appropriate, compensatory mitigation – allows multiple uses to proceed while ensuring associated impacts are fully offset. Given BLM’s broad authorities to adopt and impose mitigation, the BLM must adopt, implement, and enforce well-designed mitigation in order to ensure the continued health of our public lands.

Audubon supports the requirement in the rule to apply the full mitigation hierarchy when authorizing actions on BLM managed lands. The mitigation hierarchy is set of guidelines used widely across a variety of industries to guide development in a manner that limits adverse impacts to important, scarce or sensitive resources.

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² *Rocky Mountain Oil & Gas Ass’n v. Watt*, 696 F.2d 734, 739 (10th Cir. 1982) (“In general, the BLM is to prevent unnecessary or undue degradation of the public lands.”).

³ See, e.g., *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 76, 78 (D.C. Cir. 2011) (citing with approval *Biodiversity Conservation Alliance*, 174 IBLA 1, 5–6 (March 3, 2008), which held that an environmental impact may rise to the level of UUD if it results in “something more than the usual effects anticipated from development, subject to appropriate mitigation” (emphasis added)); *Biodiversity Conservation Alliance v. BLM*, No. 09-CV-08-J, 2010 U.S. Dist. LEXIS 62431, at *1, *27 (D. Wyo. June 10, 2010) (holding that infill drilling project would not result in UUD where BLM required enforceable mitigation of project impacts).

⁴ Justin R. Pidot. The Bureau of Land Management’s Infirm Compensatory Mitigation Policy, 30 Fordham Envtl. Law Rev 1, 4 (2018) (article arguing against prior, Trump Administration, policy that disclaims statutory authority for BLM to impose compensatory mitigation); see also, Pidot, 61 B.C.L. Rev. at 1062.
Mitigation must be adopted and applied consistent with a common set of defined principles and standards. This will be essential to ensure the project does not result in “unnecessary or undue degradation” of public lands. Important features of standard mitigation policies include:

- **Establish a mitigation goal**: Sound mitigation policies are guided by a clear goal statement. A goal of net conservation benefit is appropriate where mitigation must be relied upon to avoid unnecessary and undue degradation. We support the language in the proposed rule requiring mitigation to address adverse impacts in the case of important, scarce, or sensitive resources, “to the maximum extent possible”.

- **Loss/gain methodology**: Mitigation programs should have in place loss/gain methodologies to quantify impacts and offsets. Habitat value must be quantified to establish that the mitigation goal pertaining to habitat has been met. These methodologies should be based on a measure of the capacity of areas lost and offset. It is important to address any variation in the quality of habitat for the different species impacted by including measures of habitat functionality and using adjustment factors to account for the risk of project failure. It is critical that BLM have a high degree of confidence that direct, indirect, and cumulative impacts would be offset.

- **Site selection, service areas, scale-appropriate decision making, and appropriate actions and habitat types**: Mitigation programs should provide guidance on appropriate criteria for selecting offset sites, including distance from impact site, boundaries within which impacts may be offset, and any requirements for identifying offset areas based on relevant scale-appropriate conservation information.

- **Performance standards**: Mitigation programs should have in place performance standards that are clear, science-based, measurable, and designed to track compliance, effectiveness, and inform any needed adjustments for improvement. They should also clearly specify the conservation outcomes that are expected.

- **Durability**: All mitigation measures should be designed such that conservation gains are durable.

- **Duration**: Measures should be designed to be in place at least as long as the duration of the direct and indirect impacts.

- **Mitigation on Public Lands**: BLM should employ the policy prescriptions and tools it has available to allow for effective compensatory mitigation on public lands. This includes measures such as conservation leases using the authorities of the BLM to ensure the defensible, long-term conservation of any land identified as an offset (§ 6102.4).

Audubon supports the provision in the proposed rule that would allow for impacts that occur on BLM lands to be replaced, or offset, in a similar manner on BLM lands. While resource conservation on private or state-owned lands is valuable, the BLM must have the ability to even the balance of impacts to public lands with benefits on public lands.

- **Additionality**: Offsets should provide a new contribution to conservation, additional to what would have occurred without the offset.
• **Equivalence**: Compensatory mitigation measures should strive to deliver offsets that are “in kind” in terms of habitat type, functions, values, and other attributes.

• **Monitoring and adaptive management**: Monitoring and adaptive management are essential to ensure mitigation delivers the intended result.

• **Certainty and transparency to regulators, developers and the public**: Mitigation programs should strive to maximize consistency in implementation and provide predictability for project proponents, participating agencies, and mitigation providers.

These are critical components of regulatory mitigation programs and are considered standards of the mitigation industry as they provide fairness and transparency to all involved parties and, importantly, ensure conservation gains are realized to fully offset resource impacts. We recognize that many of the above principles are already addressed in existing BLM guidance and policy on mitigation.

Implementation of the rule must occur in accordance with consistent application of the BLM’s own laws, regulations and guidance for mitigation, including IM 2021-046, Mitigation Manual (1794-M), and the Mitigation Handbook (H-1794-1), which set standards and principles for compensatory mitigation. We recommend that §6102.5 incorporate, or at least reference, key elements of the existing BLM Manual and Handbook.

Audubon also supports the approval of third-party mitigation fund holders, where appropriate, as stated in §6102.5-1(c). Harnessing the expertise and reach of third parties, including private sector mitigation providers, is critical to stimulate increased restoration and land enhancement activities at the scale needed for BLM-managed lands. (The proposed rule specifically acknowledges the role of market-based mitigation providers and mitigation banks in §6102.5(a)(7).)

Yet on April 3, 2023 the BLM issued Instructional Memorandum (IM) 2023-037, “BLM Mitigation Fund Holder Policy.” The IM provides guidance for the types of entities that are qualified to hold mitigation funds generated by a BLM permit obligation. We agree that the BLM must be judicious in who they allow to hold these funds, yet the IM currently omits private third-party mitigation providers. The rule §6102.5-1(f) should be revised to clarify the eligibility of entities to hold mitigation funds, so long as they meet other stated criteria. Subsequent to finalization of this rule, IM 2023-027 should be revised.

**IV. Conservation Leasing (§6102.4)**

With 90% of the lands managed by BLM open to natural resource leasing and development, we are encouraged to see conservation leases discussed in the proposed rule. Oil and gas developments, mining and other uses that have permanent and compounding impacts on the landscape continue to be authorized to move forward, yet no comparable mechanism exists for wildlife and natural and scenic values. The lack of certainty for conservation values presents unacceptable risks to irreplaceable resources and ecosystems that are essential to overall ecological health, wildlife migration, recreation and cultural practices.

As presented in the proposed rule, conservation leases could be used for two purposes: restoration and mitigation. Audubon supports conservation leases as a mechanism that can lead to better managed
lands by realizing more durable conservation and restoration efforts, and we offer recommendations on important clarifications that could ensure that conservation leases are implemented consistently and effectively.

**Authority for Conservation Leasing**

As described above, the Federal Land Policy & Management Act (FLPMA) obligates BLM to manage public land to preserve and protect an array of non-extractive resources and values, as part of its multiple use and sustained yield mission. 43 U.S.C. §§ 1701(a)(8), 1702(c) & (h), & 1732(a). Title III of FLPMA provides express direction to “regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands.” 43 U.S.C § 1732(b). BLM has used this broad grant of authority for a range of land use authorizations, consistent with the relevant land use plan, including permits for recreational events and music festivals, telecommunications rights-of-way, leases for mineral extraction, and even art installation projects. BLM’s proposal to establish conservation leasing as a durable mechanism to promote the protection and restoration of public lands is consistent with the broad grant of authority in Title III. It is also consistent with direction in the agency’s Compensatory Mitigation Handbook, which recognizes that, “[c]onsistent with applicable law, policies, and land use plans, the BLM may authorize (e.g., by issuing a lease, a right-of-way, etc.) the use of BLM-managed lands as the site for a compensatory mitigation mechanism.” H-1794-1 at 2-23.

**Recommendation: BLM should restore and durably conserve areas of ecological and cultural importance through the use of conservation leases.**

Audubon supports the concept of conservation leases, which is a tool that would allow the BLM to meet its mission of sustained yield by creating a mechanism to ensure ecosystem resilience through “protecting, managing, or restoring natural environments, cultural or historic resources, and ecological communities, including species and their habitats.” The proposed rule would specify that conservation leases may be issued either for “restoration or land enhancement” or “mitigation.” Audubon agrees that both of these options for conservation leases are needed and appropriate. Given the recent science that has shown a staggering annual loss of 1.3 million acres of functional sagebrush habitat across the West, the BLM must have tools to help to reverse this trend.5

A conservation lease would open more options for funding of restoration or enhancement projects on BLM-managed lands. This is necessary work on many BLM lands that are degraded by factors such as drought, the spread of invasive annual grasses, unprecedented wildfires, as well as other permitted multiple uses. Restoration projects often require significant labor and can take a long time to fully realize

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the ecological benefits – like in sagebrush, for example, it can take more than 30 years to fully restore habitat.

The BLM has historically struggled to achieve long-term restoration of public lands on a large scale, and the need for restoration efforts are now staggering. Conservation leases, if designed and implemented properly, could provide a new method for funding, staffing and monitoring restoration and enhancement projects to fully restore millions of acres of public lands for the enjoyment of people and to make the land more resilient to future impacts from drought, wildfire and the spread of invasive annual grasses.

With regard to conservation leases for mitigation, the purpose of compensatory mitigation is to offset impacts to the landscape. A core and important principle of mitigation is durability, and mitigation measures should be designed to be in place for at least as long as the duration of the impact. Simply put, if BLM plans to mitigate impacts on public lands, it must have a tool like a conservation lease to ensure durability.

Again, the proposed rule specifies that conservation leases may be issued either for “restoration or land enhancement” or “mitigation.” This should allow for the following types of projects:

- Generation of mitigation credits by conserving or improving specific values on BLM land to offset for impact on BLM land;
- Restoration work to improve specific values on BLM lands;
- Improved management of BLM lands (i.e. long-term, annual monitoring);
- Mitigation or restoration that supports wildlife or other resources used for traditional, cultural or subsistence purposes.

We note that these types of tools are not new. Current and envisioned uses of conservation lease-type mechanisms include habitat exchanges, developed by states and stakeholders, and mitigation leases on state lands. Audubon catalogued a comprehensive list of current and proposed conservation leases and similar measures which can be found in an Appendix to this document.

Of note, the recent federal dollars made available by the Infrastructure Investment and Jobs Act and the Inflation Reduction Act provide important resources that can be directed towards restoration and mitigation efforts. We encourage the BLM to work with a wide range of stakeholders, Tribes and States to identify areas for mitigation and restoration and to implement durable conservation actions such as conservation leases.

**Recommendation: BLM should provide additional clarity on how conservation leases relate to land use plans, land health, land uses and authorizations.**

As stated in the proposed rule, conservation leases and lease activities should be issued consistent with the governing BLM land use plan (i.e. land health standards, allowable uses). While a conservation lease could be appropriate and compatible with many uses of BLM lands, it would not be appropriate to use a conservation lease in a place where siting or designations in a BLM land use plan are inconsistent. For example, a conservation lease should not be used to block a renewable energy project planned in an area specifically identified for renewable energy development such as a Solar Energy Zone or Designated Leasing Area. Similarly, a conservation lease would be inappropriate within an area specifically designated for oil and gas development such as zones marked for extractive development within a Master Leasing Plan.
We understand, as stated in the proposed Public Lands Rule, that conservation leases would not disturb existing authorizations, valid existing rights, or state or Tribal land use management. NEPA documentation could be used to analyze impacts to existing authorized uses and future potential uses. BLM should also undertake public comment for conservation leases as part of the NEPA process.

The rule should make clear what types of lands will be prioritized for conservation leases. As currently written, the proposed rule does not provide this clarity or criteria. Conservation leases should be prioritized in areas identified as falling below land health standards, as well as lands inventoried as intact lands per § 6102.2 of the rule. The BLM should also provide a separate prioritization of lands requiring restoration when updating land use plans.

The proposed rule states that the terms of a conservation lease will be subject to valid and existing rights, and that once a lease is issued the BLM will consider whether future uses are compatible. Casual use does not require an authorization and thus would be allowable. As has been discussed at public meetings and described in outreach material, we are supportive of the final rule including definition of the term “casual use” to include low-impact activities such as access for hiking, birdwatching, hunting or fishing.

**Recommendation: BLM should further clarify what types of activities are appropriate for a conservation lease, and should put in place standards to guide the consistent application of conservation leases.**

The rule could be improved by making clear what activities are allowable to meet the definitions of “restoration and land enhancement” and “mitigation”.

Restoration and enhancement activities are discrete actions for a less-than-permanent length of time that provide measurable improvements to the quality of the land for specific resources, such as wildlife habitat, public water supply, watersheds, or cultural resources.

The following key features of mitigation programs are also relevant for restoration and enhancement activities, and standards for restoration and enhancement leases should be further detailed through guidance:

- **Goal:** Restoration and enhancement leases should result in conservation benefit.

- **Site selection, scale-appropriate decision making, and appropriate actions:** Restoration and enhancement leases should be guided by appropriate criteria for selecting sites including the types of lands that will be prioritized and the types of activities that are appropriate.

- **Performance standards:** Restoration and enhancement leases should have in place performance standards that are clear, science-based, measurable, and designed to track effectiveness and inform any needed adjustments for improvement. They should also clearly specify the conservation outcomes that are expected and, if appropriate, include a methodology for determining and quantifying the change in land health or habitat value.

- **Durability:** The purpose of establishing a restoration and enhancement lease is to ensure that conservation gains are durable.
• **Additionality**: A restoration and enhancement lease should provide a new contribution to conservation, additional to what would have occurred otherwise.

• **Monitoring and adaptive management**: Monitoring and adaptive management are essential to ensure restoration and enhancement delivers the intended result.

• **Certainty and transparency to regulators and the public**: Conservation leases should strive to maximize consistency in implementation and provide predictability for the BLM and the public.

**Mitigation** activities appropriate for a conservation lease could take the form of either avoidance (in which an ecologically important area is avoided in planning for an authorized action and made durable using a conservation lease) or compensatory mitigation (where resource values that are impacted by an authorized action must be replaced or durably conserved). If the resource impact is permanent then the replacement of resources must also be permanent. If the resource impact is for a term-limited duration then the replacement of resources could be for a term commensurate with the impact – as stated in § 6102.4(a)(3)(ii) of the rule. Mitigation projects must follow standards for mitigation as outlined in the “mitigation” section above in our comments and as detailed in the BLM Mitigation Manual (1794-M) and Handbook (H-1794-1).

Providing clarity on what constitutes restoration, enhancement, and mitigation activities in the context of conservation leases will also assist the agency in developing a strategy to develop appropriate programmatic and site-specific NEPA documentation to facilitate conservation leases for specific purposes to achieve the objectives in stated in § 6101.2.

**Recommendation**: BLM should acknowledge in the rule that managed grazing, active management and land enhancement may be compatible with the purpose of a conservation lease.

Properly managed grazing can support land health and resilience, and can be a form of conservation. Grazing has been discussed at public meetings on the Public Lands Rule and clarity around this has been provided in BLM’s outreach materials. Audubon appreciates that the BLM recognizes and supports the role of ongoing, active land management through activities such as grazing and forest stewardship. The rule should explicitly acknowledge that active management and stewardship could help the agency achieve the stated purpose of conservation leases. We also note again as stated in the rule that conservation leases would not disturb existing authorizations, valid existing rights, or state or Tribal land use management.

The rule should explicitly state that 1. Stewardship or active management such as grazing may be consistent and compatible with the purpose of a conservation lease. In addition, 2. A conservation lease may be issued to support stewardship, active management and land enhancement where consistent with the purpose of the conservation lease e.g. restoration or mitigation to ensure ecosystem resilience.

A grazing lease holder could be issued a conservation lease on top of a grazing lease for additional actions that create uplift or additional conservation benefit. This would only be appropriate when the terms and conditions of the conservation lease meet the standard for additionality e.g. provide a new
contribution to conservation, additional to what is required under the terms of the existing grazing lease. The grazing lease holder could then be compensated for these additional actions.

Take the Nevada Conservation Credit System (CCS) for example, which is a mitigation program for impacts to Greater-sage grouse habitat. The crediting rules for the CCS state that “Landowners can continue agricultural and livestock operations compatible with greater sage-grouse habitat needs throughout the contract term.” Agricultural operations could seek to provide credits under the CCS as credits are defined as “the result of credit projects that have:

- Preserved/enhanced/restored and willing to commit to protect high quality greater sage grouse (GRSG) habitat for at least 30 years upon sale of credits.
- Interest in selling credits to a mitigation buyer or transferring credits to offset a debit project and fulfilling the durability requirements of the Conservation Credit System (CCS).

And have worked with partners to:

- Quantify the habitat function on their project site using the CCS Habitat Quantification Tool (HQT) and verify the credits available for sale or transfer.
- Develop an approved management plan to be implemented upon sale or transfer of credits.”

**Recommendation: BLM should provide additional clarity on which entities are eligible to hold a conservation lease and should include state and local governments.**

BLM should provide additional clarity on the requirements to hold a conservation lease, including a requirement that an applicant provide evidence that the applicant has, or prior to commencement of conservation activities will have, the technical and financial capability to operate, maintain, and terminate the authorized conservation use.

In addition, BLM should make state and local governments, including state wildlife management agencies, eligible to hold conservation leases. Such entities could serve as ready and willing partners to accomplish restoration and land enhancement work on BLM lands. State and local agencies are often already engaged in restoration efforts on state and private lands and, with a conservation lease, could extend their efforts to BLM lands as a way to accomplish restoration on a landscape-scale. States and local governments are regular partners in conservation and can add expertise, capacity, and understanding to such efforts. With this in mind, we encourage the BLM to include states and local governments as entities eligible to hold a conservation lease.

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6 State of Nevada Sagebrush Ecosystem Program. Credit Development. Accessed online from: [https://sagebrusheco.nv.gov/CCS/Credit_Development/](https://sagebrusheco.nv.gov/CCS/Credit_Development/)

7 Ibid.
**Recommendation: BLM should provide clarity on how the cost of a conservation lease will be determined.**

Any rental charge should be determined by including a public benefit component into the rent calculation to account for the benefits of ecosystem services and subsistence use rights/values.

In addition, conservation leases should not be required for all restoration and enhancement activities occurring on BLM lands, unless there is a mechanism to ensure that the fees associated with conservation leases won’t be cost prohibitive for non-migration efforts to improve habitat quality. Habitat-oriented conservation organizations voluntarily invest significant resources to facilitate restoration and enhancement activities on BLM lands. Adding additional costs in the form of pre-application preparation costs and requirements (pre-application studies or environmental data as described in § 6102.4 (c)(v)), application fees (application processing cost recovery as outlined in 43 CFR § 2920.6), “fair market value” rental fees as outlined in 43 CFR § 2920.8, and increased monitoring requirements may be cost prohibitive to these organizations and result in an unintended reduction in the amount of restoration and enhancement activities occurring on BLM lands. The fact that BLM can now issue conservation leases should not preclude, or disincentivize, this voluntary conservation work on public lands.

**V. Areas of Critical Environmental Concern (§ 1610.7−2)**

Where there are existing intact landscapes, the use of conservation management tools should be encouraged. Areas of Critical Environmental Concern (ACECs) are an existing administrative tool available to the BLM which has historically been underutilized and inconsistently applied. The proposed rule provides clarification and expansion of the use of ACECs. With the adoption of the rule, ACECs can play a critical role in protecting important natural, cultural, and scenic resources, intact landscapes, habitat connectivity, and ecosystem resilience.

**Recommendation: BLM must clarify how it will prioritize the identification, designation, and protection of ACECs.**

FLPMA requires BLM to give “priority” to the identification, designation, and protection of ACECs. 43 U.S.C. §§ 1711(a), 1712(c)(3). The proposed rule elevates ACECs as “the principal BLM designation for public lands where special management is required to protect important natural, cultural, and scenic resources, systems, or processes, or to protect life and safety from natural hazards.” (§1610.7-2 (a)).

The proposed rule provides further direction in §1610.7−2 (b):

> In the land use planning process, authorized officers must identify, evaluate, and give priority to areas that have potential for designation and management as ACECs. Identification, evaluation, and priority management of ACECs shall be considered during the development and revision of Resource Management Plans and during amendments to Resource Management Plans when such action falls within the scope of the amendment (see §§ 1610.4–1 through 1610.4–9) (emphasis added).
However, the draft rule falls short on defining how BLM will prioritize ACECs. We recommend that BLM be required to designate an ACEC if it meets the relevance and importance criteria and the area requires special management. As it stands in the rule, there is no presumption of designation, thereby allowing lands that BLM has deemed to meet the relevance and importance criteria to potentially go unprotected. Giving “priority” to designation should mean that there is a presumption of designation; that designation will be the default once the criteria are met, unless there is a compelling reason not to designate (for instance, if management for the relevant and important resources would be unreasonably difficult for BLM). Without this requirement, the word “priority” has no real meaning.

Further, it should be noted that Audubon supports BLM having multiple conservation designations (including ACECs), areas, and allocations in the resource management toolbox to most appropriately and completely address resource management needs. Doing so provides the agency with needed flexibility to successfully navigate completion of an RMP revision or amendment in a way that best conserves natural resources, including wildlife habitat. There may be times when an area has been identified as meeting the relevance and importance criteria, and where that area might also meet the criteria for a different land use designation or area, or where the agency does not have social or political license to designate an ACEC in a particular place. In those circumstances, § 1610.7–2 should afford BLM the discretion to apply a different conservation designation, area, or allocation as long as the other legally enforceable mechanism provides an equal or greater level of protection. Examples of companion tools that could serve this need include but are not limited to Backcountry Conservation Areas, Habitat Management Areas, and Special Recreation Management Areas.

While this section addresses designation – in that BLM must prioritize designation of areas that have potential as ACECs, and requires that “priority management of ACECs” be considered during RMP revisions, the term “priority management” is not explained or defined here. BLM must go further to ensure adequate protection of ACECs by establishing a non-degradation standard as part of the management of designated ACECs. A new management standard for ACECs would fall firmly within the FLPMA authority to prioritize the designation and protection of ACECs. With the exception of ACECs established to protect life and safety from natural hazards, the rule should require the authorized officer to administer an ACEC in a manner that conserves, protects, and enhances the resources, systems, or processes of the ACEC and only allow uses of the ACEC that the authorized officer determines would further the protection of such.

The authorized officer in decision documents affecting ACEC management should also be required to document how the proposed ACEC management is consistent with (i) using best available scientific information and/or Indigenous Knowledge.

**Recommendation: Update the eligibility criteria for ACECs.**

We support the proposed rule’s update of the eligibility criteria by striking the “more than locally significant” from the Importance criterion. The Importance criteria is further expanded in 1610.7-2(d)(2) by enabling BLM to consider “the national or local importance, subsistence value, or regional contribution of a resource, value, system, or process” and “resources, values, systems, or processes may have substantial importance if they contribute to ecosystem resilience, including by protecting intact landscapes, and habitat connectivity.”
As part of updating this eligibility criteria, BLM should interpret the “natural systems or processes” provision in FLPMA to protect landscapes or ecosystems from drought, climate change and other threats. BLM should also add habitat connectivity and biodiversity to the importance criteria.

**Recommendation: Provide direction for interim management of proposed ACECs.**

The Public Lands Rule should include specific direction to provide for interim management of proposed ACECs which have been found by BLM to have relevance and importance criteria. The proposed rule only briefly mentions interim management, but BLM’s ACEC Manual includes specific direction. Section 1613.21E of the ACEC Manual currently states:

“Provide Temporary Management of Potential ACEC, if Necessary. If an area is identified for consideration as an ACEC and a planning effort is not underway or imminent, the District Manager or Area Manager must make a preliminary evaluation on a timely basis to determine if the relevance and importance criteria are met. If so, the District Manager must initiate either a plan amendment to further evaluate the potential ACEC, or provide temporary management until an evaluation is completed through resource management planning. Temporary management includes those reasonable measures necessary to protect human life and safety or significant resources values from degradation until the area is fully evaluated through the resource management planning process” (emphasis added).

Temporary management of proposed ACECs which BLM has found meets the relevance and importance criteria should be included in the Public Lands Rule. Because Resource Management Plans often take so long to complete that without requiring temporary management, proposed ACECs may become so degraded by the time the RMP is finalized that they no longer qualify for designation. This defeats the purpose of allowing BLM to wait until an RMP process is underway to analyze proposed ACECs.

**Carlsbad, a case study**

In 2010, BLM began scoping for the revision of the Carlsbad RMP. At the end of that year, the New Mexico Wilderness Alliance submitted a nomination for an ACEC south of Carlsbad Caverns National Park at the confluence of the Pecos, Black, and Delaware Rivers; a critical watering spot for migrating birds and an Audubon-designated Important Bird Area. It was called the Chihuahuan Desert Rivers ACEC. Shortly thereafter, New Mexico Wilderness Alliance submitted three more ACEC proposals for the field office: the Birds of Prey ACEC, the Salt Playas ACEC, and the Desert Heronries ACEC.

In 2012, shortly before BLM held public meetings on Special Designations, Travel Management, and Visual Resource Management, BLM determined that all four ACEC nominations met the relevance and importance criteria, and would be considered in the Draft RMP. All four were in fact considered in the Draft RMP revision which was released in 2018, but the RMP has not yet been finalized. BLM has never implemented any temporary management for these nominations.

When the ACECs were first nominated, the Permian basin was just beginning to pick up steam, and oil and gas lease sales were only held for Carlsbad once per year. During the Trump Administration, as development in the Permian exploded, BLM policy changed and lease sales were held for the Carlsbad Field Office every quarter. Approximately 25 lease sales have been held for the Carlsbad office since the ACECs were designated, and very often have included parcels within the nominations.
Nearly every time a lease sale has offered a parcel inside the proposed ACECs, New Mexico Wilderness Alliance, and in recent years the Audubon Society, has submitted comments requesting that parcels within the ACEC nominations be withdrawn, and for BLM to utilize the provision for temporary management in the ACEC Manual. BLM has consistently declined to do so. This has resulted in at least five lease sale protests and at least two IBLA appeals where the Wilderness Alliance and Audubon tried to save the proposed ACECs. None of those protests or appeals has been successful, largely because there is no enforceable requirement that interim management take place. Unfortunately, we suspect that significant portions of the ACEC nominations no longer qualify for designation because they have been too degraded by oil and gas development during the thirteen years that have now passed (so far). BLM has perhaps missed an opportunity to preserve a rare and critical intact riparian area in the Permian basin.

The Public Lands Rule should require that when ACEC nominations have been found by BLM to meet the relevance and importance criteria, temporary management must occur. At the very least, no permits should be granted by BLM which could lead to long-term degradation of the nomination to the point where it may no longer qualify for designation. Or to put it affirmatively, BLM must ensure the relevant and important criteria within a proposed ACEC are preserved until a final RMP is issued which either designates it or declines to designate it.

Without this requirement, there is no guarantee (as we know from experience) that the nomination will still contain relevant and important resources when the time for designation comes. That severely diminishes and undermines the value of a public nomination process and should be remedied here.

**Recommendation: Require justification to remove an ACEC.**

We support the inclusion of required justification to remove an ACEC. The proposed rule rightly lays out a thorough process whereby the State Director may only remove the designation of an ACEC if they find that the special management attention is no longer needed because another legally enforceable mechanism provides equal or greater protection or they find that the resources, values, systems, or processes are no longer present, cannot be recovered, or have recovered to the point of no longer needing special management. Most importantly, these findings must be supported by data or documented changes on the ground.

These requirements are important but must be improved to prevent the large-scale removal of ACECs in resource management plans with little to no justification as we saw during a previous administration. We recommend several improvements to ensure ACECs are not improperly removed in the future:

- The authority to remove an ACEC designation under (1) and (2) should be non-delegable.
- Section (j)(1) should be removed as it would give a State Director too broad an authority to determine that special management is no longer needed.

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8 As BLM stated in a lease sale protest denial in 2020, “Nor does the BLM Manual 1613 part 21.E require the BLM to treat nominated ACEC lands as if the lands had been designated...the BLM has the discretion to use its interim management authority; however the Protest Party provides no authority to support its assertions that the BLM must do so”. Bureau of Land Management, August 26, 2020 Competitive Oil and Gas Lease Sale Protest of Nine Parcels: Protest Denied, September 30, 2020.
**Recommendation: Advance Indigenous cultural resource protection and co-stewardship opportunities.**

The proposed rule contains a series of things that the Field Manager must consider when evaluating the need for special management attention, including whether “highlighting the resources with the designation will protect or increase the vulnerability of the resources, and if so, how to tailor a designation to maximize protection and minimize unintended impacts.” This provision may be in response to documented vandalism at Indigenous cultural sites following the sites appearing on publicly available BLM maps. We support this provision, particularly the requirement to maximize protection and minimize unintended impacts. BLM has existing tools and strategies to keep cultural sites out of the public information systems, and should use them where appropriate.

The draft rule requires that field managers must seek ACEC nominations from a variety of entities, including Tribes. Proactively seeking and considering Indigenous nations’ ACEC nominations is one important way to ensure that the interests of Tribes are carried forward in land use planning decisions. In addition to seeking nominations from Tribes, BLM should also be required to explore opportunities for co-stewardship of ACECs with Indigenous nations.

In some cases, the values for which an ACEC is designated may also qualify the areas for consideration as a Traditional Cultural Property (TCP). Section 101(6)(d) of the National Historic Preservation Act makes clear that historic properties “of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register” (54 U.S.C. 302706(a)).

“Historic properties” under the National Historic Preservation Act and its implementing regulations are defined as “districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture” (54 U.S.C. 302101). Any such property is eligible for listing in the NRHP; potential impacts on such places must be considered under Section 106. ACECs should be considered federal undertakings subject to the National Historic Preservation Act’s consultation requirements. When deciding to designate an ACEC, BLM should meaningfully engage with the State Historic Preservation Officer, all relevant Tribal Historic Preservation Officers, and other interested parties, including Tribal leaders.

**Recommendation: Use data inventories to inform management decisions.**

We support the provision in §1610.7-2 (i)(1) that requires BLM State Directors to keep inventories on relevance and important criteria current, including monitoring and carrying forward data into plan evaluations. However, BLM should have a mechanism for data from these required inventories to inform management decisions. The inventory requirement should be expanded to require BLM to inventory lands for ACEC qualities and make a determination prior to approving any ground disturbing activities. Similar to our comments above regarding temporary or interim management for ACECs, because of the significant backlog of resource management plan revisions, enabling a path for protection of ACEC-worthy lands outside a plan revision is necessary to prevent degradation of these resources.
VI. Tribal Consultation & Co-Stewardship

BLM should consult with Native American Tribes to further develop the regulatory language and ensure it fully advances opportunities for co-stewardship, incorporation of Indigenous Knowledge, respect for Tribal sovereignty and treaty rights, protection of Tribal cultural sites, and carrying out Tribal consultation in ways that honor the unique historic and current connections of Native American Tribes and Indigenous peoples to public lands encompassed by this proposed rule.

VII. Native Seed Planning & Use

As the BLM works towards ecological restoration and resilience in this rulemaking, we encourage inclusion of provisions related to native seed planning and use. Effectively combating invasive annual grasses such as cheatgrass, red brome, medusahead, fountain grass, and ventenata — which have collectively increased the risk of wildfire, outcompeted native grasses, and diminished soil and water quality — will require adequate supply of genetically appropriate native seed and plants. Recovery on rangelands will require seed mixes that take into account native seeds for understory grasses and forbs.

We encourage the BLM to consider the findings and recommendations of the National Academy of Science’s 2023 final report: An Assessment of Native Seed Needs and the Capacity for Their Supply. The authors note that substantial commitment by BLM and other agencies to planning for, using, and developing native seed, is necessary for successful ecological restoration. The Infrastructure Investment and Jobs Act has included funds to establish and implement a national revegetation effort, including the National Seed Strategy for Rehabilitation and Restoration. BLM can, and should be a leader, in this effort to create an expanded and stable market for native seeds. By incorporating the above considerations in the rulemaking, and pursuing interagency cooperation to realize stable native seed supply, more durable ecological restoration actions can be realized. And by working with States and Tribal Nations in these endeavors, jobs can be created and rural economies diversified.

VIII. Grazing

Audubon supports the BLM’s recognition that properly managed grazing and active management can be consistent with conservation and land health, as has been discussed in regards to this proposed rule. While we describe this in detail in our comments above on Conservation Leasing (“Recommendation: BLM should acknowledge in the rule that managed grazing and other active management may be compatible with the purpose of a conservation lease”), we note that the rule its entirety and follow-up guidance should consistently reflect how properly managed grazing, active management, and stewardship can be used to advance conservation.

We underscore that the BLM continue to work closely with public land grazers on finalizing the rule and developing detailed guidance for implementation.

**IX. Renewable Energy**

The final rule should work in concert with renewable energy policy and landscape-scale planning as components of a comprehensive climate plan for public lands.

**Recommendation: BLM should directly consider and address how the Public Lands Rule works in concert with other components of a comprehensive climate plan for public lands.**

The Public Lands Rule, alongside BLM’s proposed Renewable Energy Rule and forthcoming updates to the Solar Programmatic Environmental Impact Statement (PEIS), as well as agency and Administration efforts to reduce greenhouse gas emissions and to store carbon in forests and lands, are a necessary suite of policy improvements that should work as a package and part of a comprehensive climate plan for public lands. Together, they will assist BLM in appropriately balancing the rapid development of renewable energy to meet climate concerns with the need to maintain healthy biodiversity on our public lands.

BLM’s proposed Renewable Energy Rule should serve to incentivize renewable energy development in areas that are at the lowest conflicts with wildlife habitat, recreational use, cultural resources, and other important values. In the face of very real and devastating impacts of climate change, a rapid transition to a renewable energy economy is necessary, and public lands have a huge role to play in facilitating that transition. A critical component of this effort, as the Administration ramps up renewable energy projects on public lands to meet or even exceed the President’s goal of permitting 25 gigawatts on federal public lands by 2025, must be the thoughtful engagement and consideration of community voices, State and Tribal consultation, and conservation of wildlife, cultural resources, and critical habitats – all of which would be supported by successful completion of a strong Public Lands Rule.

The success of the Renewable Energy Rule, in turn, requires a robust and well-designed revision to the 2012 Western Solar Plan / Solar PEIS that includes substantial community involvement, sound science, and balancing deployment with minimized impacts on ecosystems and communities. This necessary approach helps ensure that projects and areas identified for renewable energy have community support and do not result in adverse impacts on wildlife habitat, or hinder community resilience to climate change.

Renewable energy deployment under the updated Solar PEIS and Renewable Energy Rule will require that there are opportunities for durable mitigation through conservation leasing, and that the lands surrounding these areas are resilient in the face of climate change through land health standards and other tools facilitated by the Public Lands Rule. Designating new ACECs, managing for ecological resilience, and providing clear management direction to ensure intact landscapes can better protect cultural and natural resources, wildlife habitat, and clean air and water.
X. Recommendations on Implementation

While the proposed Public Lands Rule includes much needed direction on a range of conservation uses and tools, we recommend the final rule be strengthened and clarified in various ways, as outlined in this letter.

We recognize that BLM has received a variety of feedback through public comment, public meetings and outreach efforts, which provided meaningful opportunities for interested parties and members of the public to learn about this proposal. BLM’s website for the Public Lands Rule provided continually updated resources that addressed many of the questions that have arisen. We expect that the BLM’s final rule will clearly address the sideboards of the framework.

We respectfully ask that the BLM provide clear direction on how implementation will occur. It is not sufficient to wait to implement the rule until each field office revises their resource management plan—a process that is likely to take several decades. Many elements of the proposed rule—including but not necessarily limited to identification and protection of intact landscapes, consideration of potential ACECs, prevention of unnecessary or undue degradation, application of the mitigation hierarchy, and land health assessments, evaluations, and determinations—should be implemented more immediately and any time BLM takes a discretionary action. And certain elements can and should be implemented in a cohesive fashion through nationwide or regional efforts that include public input and may result in plan amendments.

BLM should consider ways to simplify and clarify the regulatory text and provide additional direction on when and how the various and sometimes overlapping tools will be implemented at the programmatic, plan, and project levels. Specifically, we ask BLM to clarify how these provisions will be implemented consistently and evaluated at a scale appropriate to ensure landscape-scale health. It would be inappropriate, for example, to independently evaluate landscape intactness at the level of a field office or individual Resource Management Plan. BLM should detail either in the rule or step-down guidance how these provisions will be consistently and comprehensively implemented across landscapes.

In developing guidance and instruction, BLM should continue to engage directly with the public including industry, public land grazers, conservation NGOs and subject matter experts. This is necessary to ensure the rules work as intended in practice. We recognize the efforts to do so to date and welcome future engagement opportunities.

Finally, we note that actions implementing the final rule will subject to future public process and environmental review under the National Environmental Policy Act (NEPA) and other applicable laws, as well as consultation with Native American Tribes.

In closing, this rulemaking is an important opportunity for BLM to bring balance to its land management priorities and to encourage an inclusive approach to conservation that includes co-management with Tribal nations, partnership opportunities with the States, and the broader consideration of land health in all decision-making. Given the breadth of lands managed by the BLM and their value to so many
Americans, current and future generations, we appreciate the forward-thinking approach that BLM leadership has taken by pursuing this important process.

Sincerely,

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Audubon Rockies (CO, UT, WY) | National Audubon Society

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Interim Executive Director
Audubon Alaska | National Audubon Society
Appendix: Conservation leases in practice and in concept

California

DRECP Durability Agreement

Durability agreement between BLM and the California Department of Fish and Wildlife to conserve BLM Conservation Lands for the purpose of mitigation


Colorado

Colorado Habitat Exchange

Conservation credits in the context of Colorado's Greater sage-grouse mitigation program

https://www.blm.gov/sites/blm.gov/files/Programs_FishandWildlifeCOGrSGFactSheet.pdf

Colorado State Lands

Ecosystem service leases for mitigation banks on state lands

https://slb.colorado.gov/lease/ecosystem-services

Nevada

Nevada Sagebrush Ecosystem Program - Conservation Credit System

Conservation credits from restoration projects are part of the Nevada Conservation Credit System, the state's mitigation program for Greater sage-grouse

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10 Colorado's governor issued an Executive Order in 2015 to strengthen the state plan. Under the order, the state oil and gas permitting agency will evaluate its existing wildlife siting rules for potential improvement and develop a comprehensive tracking system for development in sensitive wildlife habitat. The order also prioritizes the completion of the Colorado Habitat Exchange, the first voluntary compensatory mitigation program to be initiated for greater sage-grouse.

https://www.blm.gov/sites/blm.gov/files/Programs_FishandWildlifeCOGrSGFactSheet.pdf

11 See for example:

2.3.5 DEVELOPING CREDITS ON PUBLIC LANDS AND OTHER DESIGNATIONS

The CCS allows for credits to be generated on public lands or other lands already under permanent conservation restrictions (e.g. existing conservation easements) for mitigation purposes if the proposed credit project would add additional benefit above and beyond what would be achieved under the existing land designation or planned and funded conservation actions. Credit projects on public land are able to meet additionality requirements of the CCS if the Credit Project Proponent can demonstrate that verifiable benefit using the HQT can be attained by the credit project. Credits will be determined based on the measurable habitat uplift achieved, as opposed to for preservation of the project area.
Barrick Gold

This agreement between the Department of the Interior, the BLM, the USFWS, and Barrick Gold of North America allows Barrick Gold to generate compensatory mitigation credits on private lands it owns and BLM lands on which it holds grazing rights to offset the impacts of mining activities.

New Mexico

Conservation lease arrangements on state lands in New Mexico include Melrose Woods, a restoration project supported by an agricultural lessee, the Central New Mexico Audubon Society and the New Mexico State Land Office.

Montana

Montana Sage Grouse Conservation Strategy

Conservation leases on federal public lands are allowable under the Montana Sage Grouse Habitat Conservation Program. The program also provides for term leases on private lands.

“Public land” in this context refers to land owned by governments and managed for public benefit. The SETT anticipates that a majority of credit development on public land will occur on BLM and Forest Service managed land. Credit projects on other public lands (e.g., state, county, etc.) may be possible depending on authorizations.

See for example:

2.1 Proposing a Crediting Project

Crediting projects may occur on private or public lands. MSGOT and the Program will coordinate with applicable land management agencies for credit sites on federal or State Trust Lands, respectively.

2.1.2 Project Duration and Durability
Legal Protection: Legal protection may be demonstrated through term or permanent conservation easements, term leases, or deed restrictions, all of which must be filed with the appropriate county. Land purchase or conveyance to a public or non-profit conservation manager may also meet the State’s legal protection standard, provided other elements of durability are demonstrated.

At the discretion of the Program, and with MSGOT approval, alternative methods for legal protection may be allowed if the supply of mitigation credit projects is insufficient to meet demand or to spend available Stewardship Account funds in a timely fashion. These alternative methods could include agricultural leases, multiparty agreements, or conservation land use agreements. If allowed, the Program should identify a suitable method for discounting the value of credits produced to address the greater uncertainty associated with these instruments. An easily reversible voluntary agreement such as a candidate conservation agreement (with or without assurances) is not sufficient to demonstrate legal durability since an owner of non-federal lands can withdraw at any time.

Crediting projects on state and federal lands must also demonstrate durability as defined above, although the legal instruments available to meet that standard may differ from those on private lands. On state lands, credits may be created through conservation actions authorized and implemented directly by the Trust Lands Management Division or other state entities and offered for sale to project developers, or through an agreement with a third-party credit provider. For example, Trust Lands Management Division could enter into a conservation agreement with a third party, who then compensates the state for some portion of the value of credits generated by the third party.

On federal lands, legal instruments for demonstrating legal durability are determined by federal laws and policy (such as the Federal Land Policy and Management Act and BLM mitigation policies). The most durable compensatory mitigation sites are those located on BLM national conservation lands due to these lands’ protected status in law; however, it may be difficult or impossible to demonstrate additionality on these lands. Other durability provisions on public lands may include, but are not limited to, (1) secretarial withdrawals under the authority of FLPMA; (2) leases or conveyances of public land under the authority of the Recreation and Public Purposes Act; (3) protective land use plan allocations, including land use restrictions; (4) issuance of a land use authorization (e.g., leases or easements) to a member of the public for purposes of conservation; or (5) modification or relinquishment of an existing lease (with consent of the lessee) to remove potential incompatible uses from the site for the duration of the impact. [emphasis added]

13 In 2015, the Montana Legislature found that it was in Montana’s best interests to enact the Montana Greater Sage-Grouse Stewardship Act to “provide competitive grant funding and establish ongoing free-market mechanisms for voluntary, incentive-based conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations on private lands, and public lands as needed that lie within Core Areas, General Habitat or Connectivity areas.

Habitat conservation leases

Habitat conservation leases are offered by Montana Fish Wildlife and Parks to provide incentives to private landowners for grassland conservation.

https://fwp.mt.gov/conservation/habitat/habitat-conservation/lease-program#:~:text=A%20habitat%20conservation%20lease%20is,acre%20fee%20for%20the%20lease.

South Dakota

The BLM negotiated a draft conservation lease with the State of South Dakota for the purpose of mitigation.

Wyoming

Wyoming Greater Sage-grouse Mitigation Framework

Conservation leases on federal public lands are allowable under the state’s Greater sage-grouse Conservation Program.

Authorities:


WLCI Habitat Lease

BLM provided support to a habitat lease that advanced conservation (private lands) https://wgfd.wyo.gov/wgfd/media/content/pdf/about%20us/commission/wgfd_annualreport_2014.pdf

14 Durability - Potential Credit Adjustment - For non-private lands, this would require a conservation credit lease term of not less than 50 years, with a renewal option at the end of the term. [emphasis added]

15 Durability - Potential Credit Adjustment - The credit has permanent protection. For state and federal lands, this would require a conservation credit lease term of not less than fifty (50) years, with a renewal option at the end of the term. The credit does not have permanent protection = deduction in an amount determined by actuarial analysis that reflects the comparative value of credits for different durations. [emphasis added]

16 Story Behind the Performance: The WLCI, working with partners, funded seven new projects and 21 continuing projects in FY 14. Both the new and continuing funded projects include aspen restoration efforts, wetland enhancements, wildlife friendly fencing, invasive weed control, and a habitat lease. [emphasis added]
State of Wyoming & USDA Habitat lease
Habitat leases that support big game migration (private lands)

https://westernlandowners.org/policy/habitat-lease/

Office of State Lands Conservation Lease
Lease for recreation and habitat management on state lands for the Pilot Hill Project outside Laramie

Lesser Prairie Chicken
The CHEMM Candidate Conservation Agreement (CCA), the WAFWA Range-wide Conservation Plan, and the Common Ground Capital Habitat Conservation Plan (HCP) are all fully executed programs that allow for term credit / restoration / dynamic mitigation in some form. So while not the same as a conservation lease, there are some parallels in concept in those mitigation programs – to which states, industry, BLM and FWS are parties.

https://wafwa.org/initiative-programs/lesser-prairie-chicken/