



July 5, 2023

Re: Proposed Conservation and Landscape Health Rule, RIN 1004–AE–92

Dear Director Stone-Manning,

In 2020, the Property and Environment Research Center (PERC) convened a group of leading scholars to explore how federal and state governments discourage voluntary conservation through “use it or lose it” policies. The result of that workshop was an article published in the journal *Science* advocating the recognition of conservation as a valid use of public lands and resources, elimination of “use it or lose it” policies, and expanded opportunities for market mechanisms to allocate resources between conservation and competing uses.<sup>1</sup> As coauthors of that article, we appreciate the Bureau of Land Management’s proposal to recognize conservation as a valid use of public lands, to put that use on an equal footing with other uses, and to establish an innovative conservation leasing program to facilitate conservation uses.

If properly amended and implemented, the BLM’s conservation leasing proposal could substantially reduce conflict while empowering states, conservation organizations, and others to create incentives for voluntary conservation on federal lands. This would benefit wildlife, watersheds, and other environmental values on public land while providing conservationists, ranchers, and other users with greater options and flexibility.

As the BLM revises its proposed rule, we urge it to keep three key principles in mind. First the BLM must honor valid existing rights and privileges. If conservation leasing is perceived as a political or administrative tool for imposing costs on existing rights-holders without their consent, it will simply provoke more conflict. Moreover, any erosion in the security of grazing privileges and other existing rights may provoke future efforts to erode any rights or privileges created by conservation leases.

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<sup>1</sup> See Bryan Leonard, Shawn Regan, Christopher Costello, Suzi Kerr, Dominic P. Parker, Andrew J. Plantinga, James Salzman, V. Kerry Smith & Temple Stoellinger, *Allow “Nonuse Rights” to Conserve Natural Resources: “Use-it-or-lose-it” Requirements Should be Reconsidered*, 373 *Science* 958 (2021). See also Shawn Regan, Temple Stoellinger & Jonathan Wood, *Opening the Range: Reforms to Allow Markets for Voluntary Conservation on Federal Grazing Lands*, 2023 *Utah L. Rev.* 197 (2023); Temple Stoellinger, *Valuing conservation of state trust lands*, American Bar Association (March 3, 2023); Bryan Leonard & Shawn Regan, *Legal and Institutional Barriers to Establishing Non-Use Rights to Natural Resources*, 59 *Nat. Resources J.* 135 (2019). Each of these articles is attached to this comment.

Second, markets, not politics, must set the price for conservation leases. In our research, we've identified auctions in which different users directly bid against each other as the best means to set the price for conservation and other uses. We recognize that the BLM could not do that for many of the resources it manages because federal statutes allocate rights to those resources through different mechanisms. However, in setting prices for conservation leases, the BLM should seek to mimic the results that would occur under a fair auction as closely as possible. If conservation is a valid "use" of federal lands, and we agree with the BLM that it is, then the Federal Land Policy and Management Act requires the BLM to secure "fair market value" to the United States for that use. Operating under a similar duty in managing trust lands, states price conservation leases at least equal to the revenue that would have been generated by any other uses the conservation lease would preempt. The BLM should administer any conservation leasing program under the same principle.

Third, the BLM should establish mechanisms for the voluntary, market-based resolution of conflicts between conservation leases and other uses. Conservation lessees should be allowed to compensate existing rights-holders who perform voluntary conservation. A conservation group might, for instance, negotiate with a rancher to graze fewer animals, change the location, duration, or timing of grazing, or otherwise alter grazing practices to benefit migratory wildlife, reduce predator conflicts, or restore riparian areas. Such win-win agreements between ranchers and conservation groups occur routinely on private land and hold tremendous potential if expanded to public land. Indeed, in a recent congressional hearing, Principal Deputy Director Nada Culver referred to conservation organizations "providing funding" for the voluntary conservation work ranchers are already doing on federal lands and generating "a source of additional income" for those ranchers as "key to the success" of conservation leasing.<sup>2</sup> We agree. Conservation leases should be a mechanism for formalizing agreements and shielding ranchers and other existing users from "use it or lose it" rules that would otherwise penalize voluntary conservation efforts.

We appreciate the opportunity to comment on the BLM's proposed Conservation and Landscape Health Rule. We hope the principles described here, and in the detailed comment accompanying this letter, will guide the BLM to finalize a conservation leasing rule that reduces conflict, puts conservation on par with other uses, and facilitates markets for voluntary conservation on public land.

Sincerely,

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<sup>2</sup> See Legislative Hearing on H.R. 3397, House Committee on Natural Resources 3:44:03–3:44:30 (June 15, 2023), <https://www.youtube.com/live/BPfxR86Ubes?feature=share&t=13443>.

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