

# A Legal Analysis of BLM's Public Lands Rule

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The Bureau of Land Management (“BLM”), in the U.S. Department of the Interior, oversees more than 245 million acres of federal public land, or one-tenth of the total land base in the United States. BLM lands provide important benefits to the American people, including clean water, wildlife habitat, renewable and nonrenewable energy resources, grazing, timber, and outdoor recreation. In managing these public lands, BLM must balance this wide variety of uses to benefit current and future generations.

On April 18, 2024, BLM finalized a new rule— “the Public Lands Rule,” to advance the BLM’s stewardship mission by focusing on the health and resilience of ecosystems across public lands managed for multiple use and sustained yield. The Public Lands Rule implements the existing “multiple use and sustained yield” statutory framework adopted by Congress in the Federal Lands Policy and Management Act of 1976 (“FLPMA”). Consistent with the duty BLM was assigned by Congress almost fifty years ago, the new rule updates BLM planning and management regulations “to conform to changing needs and conditions” on public lands and to achieve the right “combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources.”<sup>1</sup>

Since FLPMA’s passage in 1976, BLM has been tasked with managing “recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values” in a “harmonious and coordinated” balance that avoids “permanent impairment of the productivity of the land and the quality of the environment.”<sup>2</sup> The new rule recognizes that “BLM’s ability to manage for multiple use and sustained yield of public lands depends on the resilience of ecosystems across those lands.”<sup>3</sup> Without resilient ecosystems that can withstand disturbance, the productivity of public lands and the quality of the environment face the risk of permanent impairment. The new rule clarifies and formalizes regulatory tools for protecting intact, functioning landscapes, restoring degraded habitats and ecosystems, and making wise management decisions based on science and data.<sup>4</sup> The new rule provides predictability, expands transparency, and formalizes pre-existing policies as BLM manages public lands in a new era of challenges.

BLM provided for extensive public involvement in the preparation of the Public Lands Rule. The rule was subject to a 90-day public comment period, during which a total of 216,403 people voiced their opinion.<sup>5</sup> BLM received over 152,673 comment letter from Tribes, state and local governments, industry groups, conservation organizations, and citizens across the country. BLM also held three in-person meetings and two virtual meetings during the comment period to better engage the public on the proposed rule. BLM actively engaged in government-to-government consultation with Tribes, and received over 20 formal comment letters from Tribal Governments, Alaska Native Corporations, and tribal entities.<sup>6</sup> The final rule includes thoughtful adjustments demonstrating that it benefited from this robust and inclusive public participation process, and the level of engagement indicates the degree to which BLM lands provide important public benefits that must be thoughtfully managed for the long-term benefit of current and future generations.<sup>7</sup>

This white paper provides detailed information on the Public Lands Rule, including: (1) summaries of the policy tools and initiatives included in the rule; (2) the legal foundation for the rule with a focus on the multiple use and sustained yield mandate in FLPMA; and (3) a discussion of the conditions of BLM land that warrant the management approaches embodied in the rule.

## 1. What Management Tools Are Included in the Public Lands Rule?

In formulating the Public Lands Rule, BLM starts from the foundational policy statement provided by Congress in FLPMA. Congress has plenary power over the 245 million acres of land managed by BLM, and in FLPMA Congress set forth the policy of the United States that:

the public lands be managed in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archaeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.<sup>8</sup>

As BLM recognizes in the rule, “[m]any of these resources and values that FLPMA authorizes the BLM to safeguard emanate from functioning and productive native ecosystems that supply food, water, habitat, and other ecological necessities.”<sup>9</sup> BLM has therefore developed the Public Lands Rule with the understanding that prudently managing the ecological health of public lands is necessary to achieve the important policies set forth by Congress in FLPMA. As the preamble observes, “widespread degradation of land health significantly limits the ability of public lands and their ecosystems to provide such resources and values and is inconsistent with the management direction and responsibility conferred to the BLM through FLPMA.”<sup>10</sup>

BLM recognizes that “degradation of the health of public lands threatens the BLM’s ability to manage public lands as directed by FLPMA.”<sup>11</sup> Invasive species, wildfire, drought, and fragmented wildlife habitat threaten the health and resilience of these lands and undermine their ability to support multiple uses and provide for a sustained yield of resources for the public. To address these threats, and to advance the national policy as set forth in FLPMA, BLM focuses on the *resilience of ecosystems*, that is the ability of ecosystems to recover from the threats of disturbances and environmental change.<sup>12</sup> “Ecosystems that collapse due to disturbance cannot deliver ecosystem services, such as clean air and water, food and fiber, wildlife habitat, natural carbon storage, and more.”<sup>13</sup>

The Public Lands Rule recognizes that BLM has three primary ways to build and maintain the resilience of ecosystems on public lands: “(1) protecting the most intact, functioning landscapes; (2) restoring degraded habitat and ecosystems; and (3) using science and data as the foundation for management decisions across all plans and programs.”<sup>14</sup>

The rule defines “conservation” as “the management of natural resources to promote protection and restoration” in order to build resilient lands or reach desired land use conditions through planning, permitting, and decision-making.<sup>15</sup> In this sense, “conservation is a use” while “protection and restoration are tools to achieve conservation.”<sup>16</sup> The preamble and discussion emphasize that “conservation takes many forms on public lands” and is not necessarily exclusive of other multiple uses. In fact, it may support other uses like sustainable grazing, recreation, or wildlife and fisheries management.<sup>17</sup> The preamble also emphasizes that conservation is not a landscape designation, nor is it a permanent use. Instead, it is a deliberate use of land for specific ecological values, particularly ecological health and resilience. “Conservation is both a land use and also an investment in the landscape intended to increase the yield of certain other benefits elsewhere or later in time.”<sup>18</sup> Within this context, conservation is treated as a use on par with other multiple uses.

Commenters identified potential confusion between the terms “conservation,” “preservation,” and “protection” and requested clarification.<sup>19</sup> The final rule addresses this concern directly and updates the definition of “protection,” clarifying that it “is not synonymous with preservation.” For example, it “allows for active management of other uses consistent with multiple use and sustained yield principles.”<sup>20</sup> In the final definition, “‘protection’ means the act or process of conservation by maintaining the existence of resources while preventing degradation, damage, or destruction.”<sup>21</sup>

Within this broader framework, the Public Lands Rule clarifies or expands upon five primary regulatory tools the BLM will use to advance resilience of BLM lands and to achieve the objectives of multiple use and sustained yield management. Clearly articulating these management priorities promotes transparency, predictability, and consistent policy application across field offices.

- A. **Fundamentals of Land Health** – The rule provides a framework to manage for resilient public lands by applying the fundamentals of land health and related standards and guidelines to all BLM-managed lands.<sup>22</sup> The four fundamentals include: (1) watershed function; (2) ecological processes; (3) water quality; and (4) wildlife habitat. The framework and standards have applied to grazing activities and rangeland management since the 1990s and are consistent with BLM’s existing legal authorities.<sup>23</sup> The fundamentals and standards will facilitate informed and science-based decision-making by providing a consistent, predictable methodology for identifying baseline environmental conditions, assessing ecological conditions and trends, implementing adaptive strategies, authorizing uses, and making long-term management decisions.
- B. **Protection of Landscape Intactness** – The rule focuses attention on landscape intactness, which “is the resource value that the BLM is seeking to identify and protect.”<sup>24</sup> Intact landscapes promote resilience across public lands, and for that reason are a resource to be inventoried, monitored, and deliberately managed.<sup>25</sup> The rule offers a thorough definition of “intact landscapes,” that can be summarized as an “unfragmented ecosystem” that is large enough to maintain native biological diversity, including viable populations of wide-ranging species. For example, “an intact landscape would have minimal fragmentation from roads, fences, and dams; low densities of agricultural, urban, and industrial development; and minimal pollution levels.”<sup>26</sup> In order to properly manage this resource value, BLM will maintain an inventory of landscape intactness and incorporate that value into planning and management decisions.<sup>27</sup>
- C. **Restoration and Mitigation Leasing** – The rule authorizes restoration leases and mitigation leases as tools to advance ecosystem resilience.<sup>28</sup> Referred to as “conservation leases” in the proposed rule, the final rule adopted two more clearly defined categories to clarify the uses that would be authorized. “These leases will be available to entities seeking to restore public lands or mitigate reasonably foreseeable impacts from an authorized activity.”<sup>29</sup> Contrary to fears that these leases would “lock up federal lands,” the preamble clarifies that these leases “will not override valid existing rights or preclude other, subsequent authorizations so long as those authorizations are compatible with the restoration or mitigation use.”<sup>30</sup> In response to public comments, the discussion specified that these leases “will not preclude access to or across leased areas for recreation use, research use, or other authorized use that is compatible with the restoration or mitigation

activities.”<sup>31</sup> Depending on implementation, these leases have the potential to streamline permitting by establishing a formal and predictable mechanism to achieve mitigation when necessary.

**D. Areas of Critical Environmental Concern (“ACECs”)** – The rule clarifies and standardizes the process for designation and management of ACECs to protect unique ecological, historic, scenic, or cultural values. Congress created ACECs and directed BLM to prioritize their identification and protection when it passed FLPMA almost 50 years ago. Until now, procedures for considering and designating ACECs had been partially described in regulations and partially described in BLM policies.

**E. Mitigation Hierarchy** – The rule promotes consistency and predictability in mitigation by adopting the definition of mitigation provided by Council on Environmental Quality Regulations,<sup>32</sup> and clarifying that “BLM will generally apply a mitigation hierarchy to address impacts to public land resources, seeking to avoid, then minimize, and then compensate for any residual impacts.”<sup>33</sup> The rule supplements existing DOI policies, which among other things provide boundaries to ensure that compensatory mitigation is durable and effective.<sup>34</sup> Consistent with that approach, it clarifies how permittees may use third-parties to achieve mitigation through multiple strategies including “mitigation banks,” “in-lieu fee programs” and “third-party mitigation fund holders.”<sup>35</sup> These mechanisms can be an important tool for simplifying and streamlining permitting while achieving ecological outcomes required by mitigation standards.

## **2. Is the Public Lands Rule Authorized by Law?**

Yes. The Public Lands Rule and the associated management tools are consistent with the broad, flexible authority granted by Congress to BLM under FLPMA, the BLM’s organic act, which authorizes and requires BLM to manage its lands for the purposes of “multiple use and sustained yield.”<sup>36</sup> The implementation of the multiple use and sustained yield mandate has long been entrusted to the discretion of BLM, within certain limitations, recognizing that the agency must strike a balance between competing uses within a system of complex resource needs and conditions.<sup>37</sup> Congress charged BLM with protecting public resources for the benefit of current and future generations over the long-term, and the Public Lands Rule faithfully builds upon and adheres to this statutory structure by standardizing the use of land health standards, confirming conservation as a use, and implementing a variety of management tools to ensure long-term ecosystem resilience and sustainability of natural, cultural, historic and scenic resources found on public lands.

Congress defined the terms “multiple use” and “sustained yield” to provide both direction and discretion to BLM, and those definitions are essential in understanding how the Public Lands Rule builds on the statute that was passed by Congress in 1976.<sup>38</sup>

**First, FLPMA’s definition of “multiple use” contains many explicit references to conservation considerations and values.**

The term “multiple use” means the 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 historic values; and harmonious and coordinated management of the various resources *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.*<sup>39</sup>

In this definition, Congress provided a multigenerational management requirement in its layered definition of multiple use.<sup>40</sup> This includes: (1) a conservation directive to avoid “permanent impairment of the productivity of the land and the quality of the environment”;<sup>41</sup> (2) enumeration of several environmental and ecological resources, including watersheds, wildlife and fish, natural scenic places, forests, rangelands, that should be managed for the long-term needs of future generations; (3) recognition of natural, scenic, scientific, and historic values that should be considered in land management decisions; (4) recognition that “changing needs and conditions” may require “periodic adjustments in use;” and (5) an acknowledgement that prioritizing short-term benefits may not always be the best way to manage the relative values of resources.<sup>42</sup>

Based on the plain language of the statute, the Public Lands Rule represents a sound (and overdue) interpretation of the mandates provided by Congress to BLM. In particular, Congress defined the term “balanced and diverse uses” to include considerations like watershed, wildlife, natural, scenic, and scientific values. Those same values are prioritized within the conservation use set forth in the Public Lands Rule. Other portions of the rule also reflect the need to balance multiple uses as required by FLPMA. For example, FLPMA prohibits unnecessary or undue degradation (“UUD”) across all BLM-managed public lands<sup>43</sup> and the Public Lands Rule defines the term and applies that prohibition through regulation to BLM land management activities. Additionally, by expanding the fundamentals of land health to consider, in part, watershed health and compliance with legal water quality standards in management decisions, BLM maintains “watershed” and “fish and wildlife” values—one of FLPMA’s specific directives.<sup>44</sup>

Thus, the Public Lands Rule is consistent with the statutory definition of “multiple use” and translates those requirements into regulations governing resource planning and day-to-day management of the public lands. The rule recognizes modern resource planning realities, wherein activities like grazing, timber harvests, oil and gas drilling, and renewable energy projects, are planned in coordination with long-term resource conservation objectives that include watershed functions, wildlife habitat, and soil health. Conservation does not displace multiple use, but rather helps achieve the important policy objectives set forth in FLPMA.

**Second, FLPMA’s “sustained yield” requirement enshrined in FLPMA also provides for conservation focused management.**

The term “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.<sup>45</sup>

Like multiple use, the definition of sustained yield also imposes a multigenerational management requirement. The definition articulates a management horizon “in perpetuity” with periodic “output of the various renewable resources of the public lands consistent with multiple use.”<sup>46</sup> “Various renewable resources” is not statutorily defined, but its meaning is informed by FLPMA’s declaration of policy to protect “scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values” as well as food and habitat for animals and outdoor recreation opportunities.<sup>47</sup>

BLM clarifies that the Public Lands Rule is intended to protect resilience of the public lands to absorb and recover from disturbances and environmental change. By focusing on resilience, the new rule is designed to ensure that public lands can continue to support multiple uses including timber, minerals, and renewable and nonrenewable energy projects, as well as environmental services like water supplies and wildlife habitat over the long-term. Again, the rule is premised upon the policy set by Congress and the statutory definitions, and BLM has adapted those concepts into clear and predictable management direction.

Opponents of the Public Lands Rule suggest that its conservation emphasis is contrary to BLM’s mission and statutory authority. But a close analysis of the rule and FLPMA do not bear this out. Those objections are premised either on an incorrect reading of the statute or a misunderstanding of the rule.<sup>48</sup>

First, in addition to the plain language of the statute discussed above, FLPMA’s legislative history reveals that its drafters saw the Act as a vehicle to give BLM a clearer mandate for management of public lands—one that expressly included conservation.<sup>49</sup> Prior to passing FLPMA, Congress established the Public Land Law Review Commission and tasked it with studying the existing laws governing public land management and recommending improvements. The opening statement of the final 1970 Report emphasized that conservation must be a central tenet of BLM’s land management duties.

We . . . have looked in vain to find assurance in the public land laws that the United States, as a landowner, had made adequate provision to assure that the quality of life would not be endangered by reason of activities on federally owned lands. We find to the contrary that . . . there is an absence of statutory guidelines by which land management agencies can provide uniform, equitable, and economically sound provision for environmental control over lands retained in Federal ownership.<sup>50</sup>

The Commission emphasized that BLM should, in some cases, emphasize what it called “nonmarket values” like protecting fish, wildlife and watersheds.<sup>51</sup> It also recommended the development of statutory guidelines for land management that “will not endanger the quality of the environment, but will, where feasible, enhance the quality of the environment, both on and off public lands.”<sup>52</sup>

Following the 1970 Report, Congress passed FLPMA, which implemented many of the recommendations. For example, FLPMA’s opening statement of policy directs that “public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values . . . .”<sup>53</sup> In other words, conservation was a motivating justification for the passage of FLPMA, and it has always been a part of multiple use.

Comparing FLPMA’s definition of multiple use to the Multiple Use, Sustained Yield Act of 1960, which applied to the U.S. Forest Service, demonstrates that Congress deliberately included conservation of ecological values in FLPMA. In FLPMA, Congress evolved the terms and defined “multiple use” to include the “long-term needs of future generations” for resources such as “natural, scenic, scientific and historical values”—language that was not included in the earlier 1960 statute. Congress also called for BLM to manage “without *permanent* impairment of the productivity of the land *and the quality of the environment*.”<sup>54</sup>

Based on this language in FLPMA, federal courts have repeatedly held that the multiple use and sustained yield mandate provides BLM with broad discretion in how to achieve the appropriate balance of uses. The D.C. Circuit Court of Appeals clarified in 2010 that BLM “has substantial discretion to decide how to achieve the multiple use and sustained yield objectives.”<sup>55</sup> The Tenth Circuit Court of Appeals has provided similar guidance, holding that it “is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses.”<sup>56</sup> “Development is a *possible* use, which BLM must weigh against other possible uses—including conservation to protect environmental values.”<sup>57</sup> The Public Lands Rule, which provides a framework for maintaining critical ecological functions on public lands by formalizing the practice of conservation along with other uses, falls well within the discretion that rests with BLM under the statute, as recognized by federal courts.

Second, opponents of the Public Land Rule have suggested that by designating conservation as a use, BLM will manage entire landscapes to exclude other uses such as grazing, timber, mining, and oil and gas activities, thereby running afoul of the multiple use mandate. This argument misreads the rule. BLM is clear that conservation is a use that is “on par with” but not dominant over other uses across the public lands.<sup>58</sup> “The rule does not prioritize conservation above other uses; instead, it provides for considering and, where appropriate, implementing or authorizing conservation as one of the many uses managed under FLPMA, consistent with the statute’s plain language.”<sup>59</sup>

Mitigation leases, as an example, would be issued subject to valid existing rights—*i.e.*, other uses—and those leases may not be appropriate in places where other existing uses preclude the mitigation or restoration activities to be achieved through the leases. In addition, those leases are specifically designed as a tool to offset the impacts from other uses of public lands like degradation of wildlife habitat. Similarly, the mitigation hierarchy has long been used to address potential adverse impacts to resources from other uses of BLM lands.<sup>60</sup> Standardizing these practices will provide more predictability, efficiency, and consistency for land users during the permitting process. Thus, both mitigation leases and the mitigation hierarchy are intended to be tools of multiple use management that will standardize and improve land management decisions that may result in adverse resource impacts without strategic and wise management. The purpose of these management tools is to incorporate principles of conservation throughout public lands management to ensure that potential adverse impacts do not result in permanent impairment or unnecessary or undue degradation of resource values. This is a modern approach to land management and decision-making—an allocation of scarce resources among competing uses where development activities and conservation are considered together in a multiple use framework.

In sum, the Public Lands Rule flows from the direction provided by Congress to BLM to manage for multiple uses, to ensure a sustained yield for the benefit of current and future generations, and to avoid permanent impairment or unnecessary or undue degradation of public



resources. While the rule has been characterized as a shift from BLM's historic emphasis on resource extraction, Congress in fact directed BLM to move in this direction when FLPMA was passed in 1976. The Public Lands Rule is well supported by FLPMA, and it updates and modernizes BLM's land management framework to align with current best practices.

### 3. Are BLM Lands Facing Significant Threats?

Yes. BLM has made clear in preparing the Public Lands Rule that the 245 million acres under its control are facing serious threats as a result of natural and human causes that undermine their health and natural functions. For decades, BLM has emphasized traditional extractive uses like oil and gas, mining, grazing, and timber over conservation values, an approach that has historically and continues to cause ongoing negative environmental impacts like degradation of watersheds, fragmentation of wildlife habitat, and impairment of soil resources.<sup>61</sup>

Oil and gas leases abound. Nearly 37 million acres of federal land have been leased for oil and gas production, while less than half of those acres are currently producing oil and gas.<sup>62</sup> This has two implications: first, that a large amount of land has already been leased but has yet to go into production; and second that there is a legacy of idled, orphaned and abandoned wells resulting in further degradation of public lands. In 2018, EPA estimated the population of unplugged abandoned wells to be around 2.1 million. A legacy of hard-rock mining and oil and gas drilling have left many BLM-managed lands in need of mitigation to restore the land to functioning condition.<sup>63</sup> The BLM also allows grazing on over 60% of its lands, which has resulted in well-documented impacts on resource values.<sup>64</sup> Meanwhile, only roughly 15% of BLM's lands are protected as National Conservation Lands.<sup>65</sup>

Climate change is also a major concern, as its effects are likely to exacerbate existing threats and lead to more significant and detrimental changes into the future. Landscape degradation, habitat fragmentation, and biodiversity loss are all likely to accelerate as a result of climate change. These changes threaten not only natural landscapes, but also human health and livelihoods that depend on the natural resources these landscapes support.<sup>66</sup> Additionally, future conditions will not mimic the past, resulting in potential volatility and uncertainty in planning and resource management.<sup>67</sup> Working to address the threat of climate change on public lands is imperative to provide for their health into the future.

In 2021, the Department of the Interior released their *Climate Action Plan*, acknowledging that "climate change is widely impacting the people the Department serves, the lands, waters, and natural and cultural resources the Department manages, and the mission-critical and mission-dependent infrastructure managed by the Department."<sup>68</sup> Yet, a study published just the year before found that BLM had no comprehensive plan to adjust management strategies or provide guidance to land managers on how to respond to the effects of climate change.<sup>69</sup> The Public Lands Rule provides direction for how BLM will respond to the impacts of climate change, directing management of public lands for ecological resilience within the multiple use and sustained yield framework of FLPMA.

Development pressures and population growth adjacent to public lands puts added pressure on the connectivity and functionality of public lands. Population in the West has exploded in the previous half-century,<sup>70</sup> resulting in growth of urban development and habitat fragmentation. Along with this development comes physical impacts to the landscape and resulting negative implications for biodiversity.<sup>71</sup> Many of the largest threats to biodiversity—including land use changes, natural resource exploitation, pollution, and invasive species—either result from, or are

worsened by, growing population and development.<sup>72</sup> If BLM does not have a plan and ability to address these negative impacts, present and future generations will not enjoy the same quality of natural values as earlier generations.

In sum, there is a pressing need for BLM to modernize its approach to managing the 245 million acres of land entrusted to its care. Climate change, a history of extractive uses, population growth, and other forces are all putting pressure on the ability of these lands to provide the many important ecosystem services and values that Congress recognized in FLPMA. The Public Lands Rule acknowledges these threats and seeks to establish a management framework that ensures the long-term sustainability of these public resources for current and future generations.

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<sup>1</sup> 43 U.S.C. § 1702(c) (defining “multiple use”).

<sup>2</sup> *Id.*

<sup>3</sup> Unofficial pre-publication version of the BLM’s Final Conservation and Landscape Health Rule 3 (Apr. 18, 2024), to be codified at 43 C.F.R. Part 6000 and 1600 *available at* <https://www.blm.gov/public-lands-rule> (last visited Apr. 18, 2024) [*hereinafter* Conservation and Landscape Health Rule, PDF]

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 34.

<sup>6</sup> *Id.* at 33.

<sup>7</sup> *Compare* 43 U.S.C. § 1702(c) (defining “multiple use” to include a “combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources”).

<sup>8</sup> 43 U.S.C. § 1702(a)(8).

<sup>9</sup> Conservation and Landscape Health Rule, PDF *supra* note 3, at 9.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 4, 38, 134–35 (to be codified at 43 C.F.R. § 6101.4(b)).

<sup>16</sup> *Id.* at 4 n.2.

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *Id.* at 10–11.

<sup>19</sup> *Id.* at 47.

<sup>20</sup> *Id.* at 139 (to be codified at 43 C.F.R. § 6101.4(t)).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 168 (to be codified at 43 C.F.R. § 6103.1); *id.* at 5–6 (providing explanation).

<sup>23</sup> *Rangeland Health*, BLM, <https://www.blm.gov/programs/natural-resources/rangelands-and-grazing/rangeland-health> (last visited Apr. 18, 2024).

<sup>24</sup> *Id.* at 53–54 (providing discussion of revised rule in response to comments).

<sup>25</sup> *Id.* at 95–96 (describing clarifications made between the proposed and final rule); *id.* at 137 (to be codified at 43 C.F.R. § 6101.4(j)).

<sup>26</sup> *Id.* at 137 (to be codified at 43 C.F.R. § 6101.4(j)).

<sup>27</sup> *Id.* at 144 (to be codified at 43 C.F.R. § 6102.2(a)).

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<sup>28</sup> *Id.* at 149–55 (to be codified at 43 C.F.R. § 6102.4); *id.* at 14–15 (discussing the leases).

<sup>29</sup> *Id.* at 15.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 57.

<sup>32</sup> 40 C.F.R. §1508.20.

<sup>33</sup> *Id.* at 44–45; *id.* at 164 (to be codified at 43 C.F.R. § 6102.5.1).

<sup>34</sup> *Id.* at 45.

<sup>35</sup> *Id.* at 66–67.

<sup>36</sup> 43 U.S.C. § 1732(a).

<sup>37</sup> *See, e.g.*, Theodore Roosevelt P’ship v. Salazar, 616 F.3d 497, 518 (D.C. Cir. 2010) (evaluating natural gas mandate according to the multiple use mandate and noting BLM “has wide discretion to determine how those principles should be applied”); New Mexico *ex rel.* Richardson v. BLM, 565 F.3d 683, 710 (10th Cir. 2009) (“It is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses.”); Nat’l Mining Ass’n v. Zinke, 877 F.3d 845, 872 (9th Cir. 2017) (noting withdrawal of lands from mining satisfies multiple use as it “does not . . . require the agency to promote one use above others” but to “weigh competing interests and, where necessary, make judgments about incompatible uses”). *See also* George Cameron Coggins, *Of Succotash Syndromes and Vacuous Platitudes: The Meaning of “Multiple Use, Sustained Yield” for Public Land Management*, 53 U. COLO. L. REV. 229, 230, 280 (1982) (stating that “[m]any managers believe that the management authority delegated to the agencies by Congress amounts to little more than a request to them to ‘go forth and make wise, balanced decisions,’ but finding provisions that afford effective judicial review, which in turn means “more protection for users, less reliance on questionable economic theory, and more conservatism in management practice”).

<sup>38</sup> 43 U.S.C. § 1732.

<sup>39</sup> *Id.* § 1702(c) (emphasis added).

<sup>40</sup> *Id.* (noting public lands are to be managed to “best meet the present and future needs of the American people” and uses balanced to take “into account the long-term needs of future generations” in balancing resource use).

<sup>41</sup> *Id.* (providing BLM should avoid “permanent impairment of the productivity of the land and the quality of the environment”).

<sup>42</sup> *Id.* (noting coordinated management should be done 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”).

<sup>43</sup> *Id.* § 1732(b).

<sup>44</sup> Conservation and Landscape Health Rule, PDF *supra* note 3, at 17–18, 169 (to be codified at 43 C.F.R. § 6103.1(b)); 43 U.S.C. § 1702(c).

<sup>45</sup> 43 U.S.C. § 1702(h) (emphasis added).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* § 1701(8).

<sup>48</sup> For more detailed treatment of this legal question, see Jamie Pleune, *BLM’s Conservation Rule and Conservation as a “Use,”* 53 ENV. L. REP. 10824 (2023); Sandra B. Zellmer, *Conservation as Multiple Use*, 66 ARIZ. L. REV. 1 (2024).

<sup>49</sup> *See* PLLRC, ONE THIRD OF THE NATION’S LAND: A REPORT TO THE PRESIDENT AND TO THE CONGRESS BY THE PUBLIC LAND LAW REVIEW COMMISSION 1–7 (1970) (providing recommendations to reform public land law and include environmental considerations pre-FLPMA); Pleune, *supra* note 49 at 10828 (noting the words of the Senate Committee on Energy and Natural Resources Chairman after FLPMA’s passage: “The policies contained in the Federal Land Policy and Management Act will shape the future development and conservation of a valuable national asset, our public lands.”) (quoting S. COMM. ON ENERGY & NAT. RES., 95TH CONG., LEGISLATIVE HISTORY OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976, at vi (Comm. Print 1978)).

<sup>50</sup> PLLRC, *supra* note 50, at 3.

<sup>51</sup> JOHN D. LESHY, OUR COMMON GROUND: A HISTORY OF AMERICA’S PUBLIC LANDS 492–93 (2022).

<sup>52</sup> PLLRC, *supra* note 50, at 3.

<sup>53</sup> 43 U.S.C. § 1701.

<sup>54</sup> *Id.* § 1702(c).

<sup>55</sup> Theodore Roosevelt P’ship v. Salazar, 616 F.3d 497, 518 (D.C. Cir. 2010).

<sup>56</sup> New Mexico *ex rel.* Richardson v. BLM, 565 F.3d 683, 710 (10th Cir. 2009).

<sup>57</sup> *Id.*

<sup>58</sup> Conservation and Landscape Health Rule, PDF *supra* note 3, at 4, 24, 52.

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<sup>59</sup> *Id.* at 4.

<sup>60</sup> *Id.* at 44–45, 86–88.

<sup>61</sup> See Pleune, *supra* note 49 at 10830.

<sup>62</sup> Robert B. Keiter & Matthew McKinney, *Public Land and Resources Law in the American West: Time for Another Comprehensive Review?*, 49 ENV'T L. 1, 11 (2019); Pleune, *supra* note 49 at 10830.

<sup>63</sup> There are at least 22,500 identified abandoned hard-rock mines on public lands that threaten human health and wildlife through pollution. A total of 140,000 abandoned hard-rock mining features have been identified, with an estimated additional 399,000 abandoned hard-rock features yet to be identified on public lands. U.S. GOVERNMENT ACCOUNTABILITY OFFICE (GAO), GAO-20-238, ABANDONED HARDROCK MINES: INFORMATION ON NUMBER OF MINES, EXPENDITURES, AND FACTORS THAT LIMIT EFFORTS TO ADDRESS HAZARDS 1, 16–17 (2020). In 2019, the Government Accountability Office also found identified 2,294 idle wells that have not been plugged or reclaimed. GAO, GAO-19-615, OIL AND GAS: BUREAU OF LAND MANAGEMENT SHOULD ADDRESS RISKS FROM INSUFFICIENT BONDS TO RECLAIM WELLS 17 (2019).

<sup>64</sup> BLM, *Livestock Grazing on Public Lands*, <https://www.blm.gov/programs/natural-resources/rangelands-and-grazing/livestock-grazing> (stating 155 million acres of BLM's over 245 million are leased for livestock grazing); PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, *Agency Field Data Paints Bleak Picture of Western Lands*, <https://storymaps.arcgis.com/stories/d199635585f741e3afe875e72dd84263> (finding of the 54 million acres that fail BLM rangeland health standards, 72% list grazing as a cause).

<sup>65</sup> See BLM, *National Conservation Lands*, <https://www.blm.gov/programs/national-conservation-lands> (stating over 37 million acres of BLM's over 245 million are protected under National Conservation Land designation).

<sup>66</sup> See NATIONAL SECURITY, MILITARY, AND INTELLIGENCE PANEL ON CLIMATE CHANGE, A SECURITY THREAT ASSESSMENT OF GLOBAL CLIMATE CHANGE 19 (2020) (“Human health and livelihoods depend directly on the stability of the natural world, from the renewable resources that we consume daily, to the habitats in which we build settlements.”).

<sup>67</sup> U.S. GLOBAL CHANGE RESEARCH PROGRAM, IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II: REPORT IN BRIEF 26 (David Reidmiller et al. eds., 2019), [https://nca2018.globalchange.gov/downloads/NCA4\\_Report-in-Brief.pdf](https://nca2018.globalchange.gov/downloads/NCA4_Report-in-Brief.pdf).

<sup>68</sup> CLIMATE ACTION PLAN, DEP'T OF THE INTERIOR 4 (2021), <https://www.doi.gov/sites/default/files/department-of-interior-climate-action-plan-final-signed-508-9.14.21.pdf>.

<sup>69</sup> Pleune, *supra* note 49 at 10832 (citing Elaine M. Brice et al., *Impacts of Climate Change on Multiple Use Management of Bureau of Land Management Land in the Intermountain West, USA*, 11 ECOSPHERE 1, 2 (2020)).

<sup>70</sup> Keiter & McKinney, *supra* note 63, at 7.

<sup>71</sup> Pleune, *supra* note 49 at 10830.

<sup>72</sup> See generally *id.* at 10829–31 (discussing threats to biodiversity); see also LANDSCOPE, *Development Pressure*, <http://www.landscape.org/explore/threats/sprawl/> (describing impacts of human development on climate change).