

Representative Judy Boyle, CoChair
Representative Wendy Horman
Representative Sage Dixon
Representative Jason Monks
Representative Chris Mathias



Senator Van Burtenshaw, CoChair
Senator Todd Lakey
Senator Mark Harris
Senator Cindy Carlson
Senator Rick Just

Idaho Legislature Committee on Federalism

May 23, 2023

U.S. Department of the Interior
Director (630)
Bureau of Land Management
1849 C St. NW
Room 5646
Washington, DC 20240

Attention: 1004-AE92

The following comments on the Bureau of Land Management's proposed rule entitled "Conservation and Landscape Health," 43 CFR Parts 1600 and 6100, have been approved by and are submitted on behalf of the Idaho Senators and Representatives serving on the Idaho Legislature's Committee on Federalism.

Chapter 93, Title 67, Idaho Code, charges the Idaho Legislative Committee on Federalism to monitor and review federal acts, laws, and regulations that may impact the jurisdiction, governance, and sovereignty of the state of Idaho. The committee is to evaluate whether such federal acts, laws, regulations are authorized by the United States Constitution or if they violate the principles of Federalism. In this light, the Committee voted unanimously to send comments regarding the Bureau of Land Management's (BLM) proposed regulations entitled "Conservation and Landscape Health" 43 CFR Parts 1600 and 6100 found in the Monday, April 3, 2023, Federal Register pages 19583 – 19604.

The state of Idaho contains 62% federal land with the BLM controlling 22% or 12 million acres. Of those 12 million acres, over 3,500,000 are already in a special designation that includes over half a million acres of wilderness, 40 wilderness study areas, 108 Areas of Critical Environmental Concern, 3/4 million acres of a National Monument, 487,000 acres of a National Conservation Area, and hundreds of miles of National Scenic and Historic Trails. All of these designations are for specific purposes and given the highest priority. Multiple use has a lower priority on specifically designated BLM managed lands with serious restrictions or complete elimination of BLM's organic multiple use management mandate.

Idaho has a rich history and culture with multiple use of the current BLM managed lands. Originally, those lands were held by the United States General Land Office to be released for

homesteading and other private uses. The majority of those lands became the private property of Idaho's ranching and farming families. Today, there are approximately 1,900 grazing permittees using BLM managed lands mostly due to the severe lack of private land available for grazing. BLM also contains 320,000 acres of commercial forest lands which are vital to our forest industry and the consumers who use their products. Agriculture is Idaho's economic engine and our state is the 5th largest agricultural economy state in the U.S. The state's agriculture export market in 2021 was nearly \$2.7 billion. Idaho's 2020 Agriculture cash receipts were \$8.1 billion with \$5 billion in livestock.

The proposed regulations state they are issued pursuant to the Federal Land Policy and Management Act (FLPMA) of 1976. However, these proposals appear in direct violation of the U.S. Constitution and Congressionally authorized laws of FLPMA and the Multiple Use Sustained Yield Act of 1960 (MUSYA). The U.S. Constitution granted Congress the sole authority to write federal law. Congress has only granted federal agencies the ability to write regulations which fall within federal law. Federal agencies are not authorized to write or change federal law through regulation.

FLPMA requires the Secretary of Interior, through BLM, to manage federal lands on the basis of multiple use and sustained yield principles and to balance environmental protection against the vital needs of our nation for minerals, food, timber, and fiber. The use of our natural resources are a large piece of our national security needs and requirements. Thus, only a small percentage of BLM managed lands should be in a restricted status.

MUSYA defines multiple use as the management of all the various renewable surface resources to best meet the needs of the American people. Sustained yield is to achieve and maintain in perpetuity a high level annually or a regular periodic output of the various renewable resources.

The proposed regulations are elevating conservation or restricted use above any of the multiple uses granted by Congressional laws. The proposal is reinterpreting FLPMA through regulation and bypassing Congress. This is a direct violation of the U.S. Constitution.

Neither FLPMA nor MUSYA provide for conservation leases by third parties nor compensatory mitigation found in the proposed regulations. This change is a clear violation of the U.S. Constitution. If BLM wants to use this type of management, they must first convince Congress to authorize such a law and the President to sign it. This cannot be legitimately accomplished through bureaucratic wishes.

Congress did grant BLM a limited ability to use Areas of Critical Environmental Concern (ACEC) to designate specific areas for preservation which receive the highest priority over and above other multiple uses. The proposed regulations will inappropriately and greatly expand the use of ACECs across the BLM managed lands.

The proposed regulations will also eliminate the existing requirements under FLPMA that the BLM must publish a Federal Register notice for proposed ACECs and remove the 60-day notice. This denies the public access to information and harms transparency. Again, federal agencies cannot change federal law through regulation.

A particularly important issue for Idaho is that the proposed rule states it will “prioritize acquisition of inholdings within ACECs and adjacent or connecting lands identified as holding related relevant and important resources, values, systems, processes and hazards as the designated ACEC.” Those “inholdings” are either private property or state lands. Both are vital and necessary to the Idaho economy.

BLM managed lands are largely found in Idaho’s rural counties. Federally managed lands nearly always contain more than a majority of the land within rural counties. Rural counties struggle with budgets to maintain basic services such as law enforcement, fire, ambulance, and roads. School budgets are limited by what the few property owners can afford in property taxes. Payment In Lieu of Taxes (PILT) has never lived up to the federal government’s promise of money to equal private property taxes. Losing even an acre of private land creates additional strain on county budgets. Losing a ranching, farming, mining, or forest products business creates serious economic issues for our state. Additional federal agency land acquisitions of private property are detrimental to Idaho.

The proposed regulations are an attempt to unlawfully put into place “conservation leases.” The regulation gives no clear direction of how the leases would affect all valid, existing rights already authorized under numerous federal laws and regulations. These valid, existing rights are considered property rights and would fall under the U.S. Constitution’s Fifth Amendment for just compensation. Nowhere in the proposed regulation is this analyzed nor even discussed.

Another issue is new “compensatory mitigation” with “third party mitigation fund holders.” “Mitigation” by regulation for Americans who are, or wish to lawfully use, federal lands under federal law smells of bribery and coercion between the federal agency and the unknown and unregulated third parties. If the purpose of this third-party mitigation is to substantially reduce or completely stop natural resource industries who, out of necessity, must use federal land in the Western United States, then BLM should go to Congress to pass a law and be totally transparent to the American people as to the real intent.

Idaho contains vast critical mineral and rare earth element deposits. These are vital to maintaining our national security. Most U.S. mineral deposits are on federally managed lands, including BLM. The U.S. Department of Defense uses 750 tons of minerals annually. Over 50% of our nation’s imported minerals are from unstable or unfriendly countries. China produces 67% of the rare earth minerals and controls the 69% of cobalt produced in the Congo. China also processes 65% of the world’s cobalt and 87% of the rare earth minerals. Idaho contains 30 of the 50 critical minerals and 15 of the rare earth elements. We have the largest cobalt deposits in North America. Mining is already heavily regulated by numerous federal agencies. It currently takes 10 years to bring a mine into production. The proposed BLM regulations will increase that burdensome timeline or eliminate mining completely.

Recreation on BLM managed lands are also important to Idaho. Recreationists put millions of dollars into maintenance of federal lands and act to police their own with signage, cooperative trails, fencing, parking lots, and repair of damaged areas. Recreation is a large part of the quality of life for many Idahoans. Their activities contribute millions of dollars each year to both rural

and urban local economies. Additional restricted areas will harm our recreational opportunities in Idaho.

Idaho also has state, county, and road district road systems that cross BLM managed lands. We are very concerned how new restrictive land designations, conservation leasing, and mitigation will negatively impact those roads and their maintenance.

The same is true for Idaho's numerous irrigation systems which cross BLM managed lands. Water is the life blood of the entire Western U.S. and especially to Idaho agriculture, cities, businesses, and parks. We cannot tolerate any threat to our irrigation and water rights.

The Federal Register notice states this proposed rule "is not a major rule as it will not have an annual effect of \$100 million or more and does not have adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprise to compete with foreign-based enterprises" under the Congressional Review Act. This is an inaccurate statement for Idaho for the reasons given above. This is a major rule and must be treated as such. For the same reasons, this regulation does fall under the Unfunded Mandates Reform Act. BLM is violating both the Unfunded Mandates Reform Act and the Congressional Review Act with this proposed rule.

The Federal Register notice also states the proposed rule "does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required." The Idaho State Legislative Committee on Federalism begs to differ with that statement. BLM controls nearly a quarter of the land mass in Idaho making any change in land management regulations have a substantial direct effect on our citizens, on the relationship between the state and federal government, and the distribution of power and responsibilities. BLM cannot ignore E.O. 13132 on Federalism.

For all of these reasons, we strongly oppose the proposed BLM "Conservation and Landscape Health" regulations and ask that they be withdrawn.

Thank you for reading and considering our comments.

Senator Van Burtenshaw, CoChair

Representative Judy Boyle, CoChair