THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Law

OFFICE OF THE ATTORNEY GENERAL

1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
Main: 907-269-5100
Fax: 907-276-3697

July 5, 2023

Secretary Deb Haaland
U.S. Department of the Interior
Bureau of Land Management
1849 C Street NW, Room 5646
Washington, D.C. 20240
Attention: 1004-AE92

Re: *Proposed Conservation and Landscape Health Rule*

Dear Secretary Haaland:

We, the Attorneys General of 17 states, write in opposition to the recently proposed "Conservation and Landscape Health" rule by the Bureau of Land Management ("BLM"). Published on April 3, 2023, the proposed rule carries much farther-reaching impacts than what may be discerned at first blush. BLM contends that this new rule is permissible under the Federal Land Policy and Management Act of 1976 ("FLMPA"); this is a misleading assertion. Ostensibly, the rule seeks to:

> [P]rovide[] a framework to protect intact landscapes, restore degraded habitat, and ensure wise decisionmaking [*sic*] in planning, permitting, and programs, by identifying best practices to manage lands and waters to achieve desired conditions. . . . the proposed rule applies the fundamentals of land health and related standards and guidelines to *all BLM-managed public lands and uses*. Fed.[1]

Through this language, BLM attempts to rewrite FLMPA to elevate conservation to be on par with statutorily authorized and historically important multiple uses. While the legal analysis here is subtle, FLMPA does not allow BLM to pursue this proposed course.

Many states, including Alaska, value the breadth and beauty of their public lands. As such, thoughtful conservation is a key principle in our land management policies. However, we recognize that responsible multi-use of these lands is essential to the economic and social health of society. Wise uses of public land provide energy to power our economies, food to feed our people, recreation for much-needed respite, scientific

[1] 88 Fed. Reg. 19584 (Apr. 3, 2023) (emphasis added).

advancement, and, often, serve numerous national security interests. These uses are just a few of many. Indeed, given the millions of acres of public land in our states, this issue goes to the core of our existence. In this newly proposed rule BLM not only rejects our commitment to wise multi-use land management, but the agency also misconstrues the law. Make no mistake, the proposed Conservation and Landscape Health rule twists the language FLPMA to undermine a variety of vital uses. This is an audacious assertion of power by BLM that it does not possess, and Congress did not authorize.

Conservation is naturally a non-use of land. Non-use is neither inherently good nor bad. However, lands set aside for conservation are often prohibited from industrial, recreational, habitable, and other practical uses. As such, some of the most hard-fought and heartfelt political disputes turn on the use versus non-use of land. Lands managed by BLM have historically, and by function of law, been managed to promote multiple uses and multiple goals. This approach has been immeasurably beneficial to the United States and its citizens.

Distinct from multi-use lands, our nation sets aside millions of acres of public land to remain undisturbed. When we think about this country's national parks, its wildlife refuges, designated Wilderness areas, and, in many cases, our national monuments, we imagine breathtaking environments that have been deliberately preserved from extensive, multiple use. Yet, it is important to remember that these landscapes were created in the name of conservation because they balance against lands where multiple use is permitted. Conversely, allowing multiple use on some public land is the counterbalance to our nation's strident conservation efforts elsewhere. Striking a balance between conserved landscapes, like Alaska's Denali National Park and Wyoming's and Montana's Yellowstone National Park, and utilized landscapes, like the National Petroleum Reserve, illustrates the deliberate marriage of aspirational conservation and practical resource use. BLM's proposed rule shatters this balance. The power BLM seeks in its proposed rule is the power to create national-park levels of conservation on land where multiple use is permitted and envisioned by law. For over a century, Congress has managed this balance, at times strictly preserving some lands while opening other lands to important uses, and yet BLM, through its proposed rule, attempts to demote Congress' authority so that it can expand its own power and put a thumb on the scale in favor of conservation. This proposed rule must be challenged for the overreach it represents.

In FLPMA, Congress declared, "[T]hat it is the policy of the United States that goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield *unless otherwise specified by law*."[2] In fact, Congress made its intentions clear in FLPMA when it authorized BLM to promote multiple uses:

---

[2] 43 U.S.C. § 1701(a)(7) (emphasis added).

> '[M]ultiple 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 historical 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 . . .[3]

In other words, Congress specified that land managed by BLM should be available for mining operations, motorized recreation, natural gas leases, guide concessions, hunting and fishing, tourism, scientific study, just to name a few of the many uses Congress envisioned and authorized. Notably, Congress did not add conservation to FLPMA's multiple-use framework because conservation is not a form of use. Congress, on the other hand, did foresee land management practices that do not permanently impair the productivity of public land. To this end, BLM is not prohibited from conserving lands. However, this point is very distinct from the notions put forth in BLM's proposed rule. Conserving lands in certain instances may be a tool to fulfill the multi-pronged purposes of the law, but conservation is not the purpose in and of itself. It is a means to ensure sustained yield and to support the multiple-uses envisioned by the statute.

Contrary to the proposed rule, Congress did not expressly elevate conservation to be commensurate with other uses. Moreover, Congress did not authorize BLM to act as a *de facto* conservation lessor, as the proposed rule would allow. Instead, Congress ensured that its multiple use mandate as written would prevail "unless otherwise specified by law."[4] Yet, the proposed rule states, "[e]nsuring resilient ecosystems has become imperative, as public lands are increasingly degraded and fragmented due to adverse impacts from climate change and a significant increase in authorized use."[5] This belief, and the proposed rule that encompasses it, is not the byproduct of a change in the law as would be required by Congress, rather it is the latest in a series of bureaucratic power grabs that exceed statutory authorization. The "authorized use" that BLM references so

---

3 43 U.S.C. § 1702(c) (emphasis added).

4 43 U.S.C. § 1701(a)(7).

5 88 Fed. Reg. 19584 (Apr. 3, 2023).

derisively here is precisely the forms of multiple use that Congress specified in FLPMA as essential to "best meet the present and future needs of the American people." In sum, BLM's proposed rule is in direct conflict with legislation that passed both the U.S. House and U.S. Senate with bipartisan support and President Ford signed into law.

By shoehorning conservation into the multiple-use section of FLPMA through this proposed rule, BLM would grant itself the authority to crush statutorily-mandated multiple use by declaring conservation to be an equal footing management directive. In Alaska, this will create de facto conservation system units ("CSUs") on BLM-managed lands and attempt to close those Alaska lands to the kinds of uses that promote economic and cultural vitality.[6] Other states, as illustrated by the signatures below, will be as profoundly impacted as Alaska. If BLM has its way, then it will use this proposed rule to eliminate a wide range of activities. This conservation-or-nothing attitude will significantly reduce the wellbeing of millions of people who derive benefit from the multiple uses that Congress granted. In sum, this proposed action will upend the history and legal framework of BLM-managed lands.

Conservation is important to our states, which is why we exercise forethought in developing and using our states' resources carefully and wisely. We all want these remarkable lands to remain productive and inspiring for future generations, and we can achieve this goal without BLM's proposed rule. Speaking from my current role, I can say without fear of contradiction that Alaska is one of the best places in the world to observe

---

[6] Beyond the fact that BLM is reaching beyond the plain language of FLPMA, the proposed rule is also inconsistent with the Alaska National Interest Lands Conservation Act ("ANILCA") "no more" clause and thereby poses a direct threat to approximately 77 million surface acres and approximately 220 million subsurface acres of Alaska land. Additionally, the proposed rule ignores that Alaska is an "intact landscape" and is afforded, under ANILCA, wider discretion to use our lands than BLM may otherwise deem permissible under the proposed rule. Numerous statutory exceptions in ANILCA, which apply to conservation system units—including designated wilderness—do not apply to BLM multiple-use lands being managed to protect wilderness character. In light of the proposed rule, this could result in BLM multiple-use lands being managed more restrictively than existing ANILCA conservation system units (for example, implementation of access restrictions otherwise allowable under ANILCA), or being managed inappropriately to the non-impairment standard in FLPMA Section 603 in the event BLM promotes wilderness recommendations in the future, pursuant to ANILCA Section 1320. More generally, FLMPA section 302(s) provides that "where a tract of … public land has been dedicated to specific uses according to any other provision of law it shall be managed in accordance with such law." In Alaska, statutes such as ANILCA, the Naval Petroleum Reserves Production Act of 1976 ("NPRPA"), and the Alaska Native Claims Settlement Act ("ANCSA"), *inter alia,* will conflict with and prevail over BLM's proposed rule.

harmony between utilizing and caring for land. As shown below, many of my fellow Attorney Generals echo this sentiment regarding their home states. The proposed Conservation and Landscape Health rule mocks our diligent stewardship by suggesting that multiple use is neither careful nor wise, and that the only appropriate use of public land is to lock it up and throw away the key. This attitude, made tangible by the proposed rule, carries a severe and costly impact to the American people. This is not the solution to the challenge of balancing competing interests in land management policy. BLM's proposed rule is harmful policy, it is unlawful, and it will be challenged for the brash overreach that it presents.

Sincerely,

Treg Taylor
Alaska Attorney General

Tim Griffin
Arkansas Attorney General

Raul R. Labrador
Idaho Attorney General

Todd Rokita
Indiana Attorney General

Brenna Bird
Iowa Attorney General

Daniel Cameron
Kentucky Attorney General

Jeff Landry
Louisiana Attorney General

Lynn Fitch
Mississippi Attorney General

Austin Knudsen
Montana Attorney General

Mike Hilgers
Nebraska Attorney General

Drew Wrigley
North Dakota Attorney General

Gentner Drummond
Oklahoma Attorney General

Alan Wilson
South Carolina Attorney General

Marty Jackley
South Dakota Attorney General

Sean Reyes
Utah Attorney General

Patrick Morrisey
West Virginia Attorney General

Bridget Hill
Wyoming Attorney General