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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

American Farm Bureau Federation, Wyoming Farm Bureau Federation, Natrona County Farm & Ranch Bureau, American Exploration & Mining Association, American Forest Resource Council, American Petroleum Institute, American Sheep Industry Association, National Cattlemen's Beef Association, National Mining Association, National Rural Electric Cooperative Association, Public Lands Council, *and* Western Energy Alliance,

Plaintiffs,

v.

United States Department of the Interior; United States Bureau of Land Management; Debra Haaland *in her official capacity as Secretary of the Interior*; Steve Feldgus *in his official capacity as Principal Deputy Assistant Secretary of the Interior*; *and* Tracy Stone-Manning *in her official capacity as the Director of the Bureau of Land Management*,

Defendants.

No. 1:24-cv-_____

Dated: July 12, 2024

COMPLAINT FOR REVIEW OF AN AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT

The American Farm Bureau Federation, Wyoming Farm Bureau Federation, Natrona County Farm & Ranch Bureau, American Exploration & Mining Association, American Forest Resource Council, American Petroleum Institute, American Sheep Industry Association, National Cattlemen's Beef Association, National Mining Association, National Rural Electric Cooperative Association, Public Lands Council, and Western Energy Alliance respectfully submit this complaint against defendants the United States Department of the Interior, the United States Bureau of Land Management, Debra Haaland in her official capacity as Secretary of the Interior, Steve Feldgus in his official capacity as Principal Deputy Assistant Secretary of the Interior, and Tracy Stone-Manning in her official capacity as Director of the Bureau of Land Management, seeking judicial review of the Conservation and Landscape Health Rule (the Rule).

The Rule was published on May 9, 2024, at 89 Fed. Reg. 40308 and became effective on June 10, 2024. It is codified at 43 C.F.R. §§ 1610.72, 6100 *et seq*.

In support of their complaint, plaintiffs allege as follows.

TABLE OF CONTENTS

INTRODUCTION

1. The United States manages 640 million acres of land all across the United States—nearly thirty percent of the Nation's land mass. Americans everywhere benefit from these varied federal landscapes, both for their scenic and historical value as well as the rich resources they provide. Public lands, and those who cultivate them, are the bedrock of American productivity. They include vast tracts of woodlands and mountain forests; grasslands and flat plains; and deserts and rocky mesas. These diverse landscapes supply nearly all the resources essential to American daily life, industry, and security—the food we eat, the energy we use, and the materials with which we build.

2. To ensure the respectful and sustainable management of all that America's public wilderness, rangelands, and forests have to offer, Congress has enacted an array of laws governing both the use and preservation of federally managed public lands. Over the course of more than 150 years, this complex scheme of interlocking statutes has been thoughtfully calibrated to balance important goals of productive land use and environmental protection across the Nation's rich and diverse landscapes.

3. Many of these statutes provide expressly for the sustainable *use* of federal lands. They include the General Mining Law of 1872, Mineral Leasing Act of 1920, Taylor Grazing Act of 1934, and Federal Land Policy Management Act of 1976 (FLPMA). These laws provide for—and empower the Bureau of Land Management (BLM) to place reasonable conditions on—the productive use of federal lands for everything from mining to livestock grazing, from energy development to siting electric power lines.

4. In contrast, other statutes expressly provide for the conservation of federal lands. They include, among others, the Yellowstone National Park Act of 1872, Antiquities Act of 1906, National Park Service Organic Act of 1916, National Wildlife Refuge System Act of 1966, Wilderness Act of 1964, and Parks and Public Lands Management Act of

1996. Unlike land-use laws that govern the use and development of federal lands and their resources, conservation laws expressly set vast tracts of land aside for preservation and enjoyment by the American public.

5. These two categories of laws work hand in hand. First, Congress has empowered BLM through FLPMA and related land-use statutes to "regulate . . . the use, occupancy, and development of the public lands" "through easements, permits, leases, licenses, published rules, or other instruments" according to the principle of "multiple use and sustained yield." 43 U.S.C. § 1732(b). In setting the terms and conditions for the use of federal land, BLM may consider conservation, but only as necessary to maintain, in perpetuity, "a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use." 43 U.S.C. § 1702(h).

6. Second, to promote select conservation goals, Congress may (and often does) set the land aside in a separate statute for conservation. Congress has carefully guarded its authority to set aside public lands. Only in the narrowest of circumstances constrained by strict procedural guardrails has it authorized BLM itself to set aside federally managed lands covered by FLPMA for non-use.

7. This case concerns the Conservation and Landscape Health Rule, which BLM recently promulgated under FLPMA. The Rule establishes two new categories of leases for what BLM has misleadingly called land *use*: mitigation leases and restoration leases (which this complaint sometimes refers to collectively as conservation leases). These are leases for conservation and no more, and they are flatly inconsistent with the statutory scheme that BLM is tasked with implementing. With the Rule, BLM has converted a statute for managing the productive *use* of lands into one of *non*-use, prioritizing conservation values above, and to the exclusion of, the exclusively productive activities that FLPMA has governed for nearly half a century.

8. The Rule is plainly unlawful and must be set aside. Among other things, it interprets the word *use* in FLPMA to include *non*-use; it arrogates to BLM power to set aside land for conservation, which Congress has reserved to itself or elsewhere has granted in tightly limited circumstances; and it authorizes overarching land-use planning determinations—ones that prioritize conservation through mitigation and restoration leases and "areas of critical environmental concern" (ACECs)—without the public involvement that FLPMA expressly requires. The Rule is also arbitrary and capricious, in part because it offers virtually no guidance as to when land can or will be set aside for mitigation or restoration and ACECs. To top it off, the Rule is barred by the Congressional Review Act and was promulgated without complying with the National Environmental Policy Act (NEPA).

9. Plaintiffs and their members take seriously their obligations to minimize the environmental impacts of their operations and to ensure responsible stewardship of federal lands. Their objection is not to conservation, which is an important and admirable goal; the objection, rather, is to the pursuit of conservation by "unauthorized means," in a regulation that flouts the statutory text. *Public Lands Council v. Babbitt*, 167 F.3d 1287 (10th Cir. 2002). Congress has demonstrated that it knows how to set federal lands aside for conservation or other non-use purposes when that is what it intends—but that manifestly is *not* the purpose of FLPMA.

10. Because the Rule is fundamentally at odds with FLPMA's core principles and will arbitrarily upset the statutory and regulatory scheme on which plaintiffs and their members have long depended, it must be set aside.

JURISDICTION AND VENUE

11. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because the case involves questions of federal law.

12. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court may grant declaratory relief, injunctive relief, and other relief under 28 U.S.C. §§ 2201-2202, and 5 U.S.C. §§ 705-706, and the Court's inherent equitable powers.

13. Venue is proper in this District under 28 U.S.C. § 1391(b) and (e) because at least one plaintiff resides in this District.

PARTIES

14. Plaintiffs are a broad coalition of membership organizations representing the myriad interests of those who use and cultivate federal lands and depend on access to those lands for their livelihoods. Plaintiffs' members have long worked cooperatively with BLM to carry out the major uses of federal lands the FLPMA authorizes—from mineral and coal development to livestock grazing, from forestry to electricity access.

15. Plaintiff **American Farm Bureau Federation** (AFBF) is a voluntary general farm organization formed in 1919, representing nearly six million member families through Farm Bureau organizations in all 50 states plus Puerto Rico. Its primary function is to advance and promote the interests of farmers and ranchers and their rural communities. This involves advancing, promoting, and protecting the economic, business, social, and education interests of farmers and ranchers across the United States. AFBF has a dedicated staff and expends substantial resources to advocate on many issues before Congress, the Executive Branch, and federal courts to serve the interests of farmers and ranchers. AFBF seeks to promote the development of reasonable and lawful environmental regulations and regulatory policy that affect the use and development of agricultural land.

16. Plaintiff **Wyoming Farm Bureau Federation** is the state's largest organization of farmers and ranchers with over 2,500 farmer and rancher member families. The primary goals of the Wyoming Farm Bureau Federation are to represent the voices of Wyoming

farmers and ranchers through grassroots policy development and litigation while focusing on protecting private property rights, strengthening agriculture, and supporting farm and ranch families through advocacy, education, and leadership development. The voices of the Federation's members are combined with more than 9,400 associate member families who support agriculture and private property rights and are committed to protecting Wyoming's farms and ranches. The Federation's members live in all 23 Wyoming counties.

17. The **Natrona County Farm & Ranch Bureau** is a member organization of both the Wyoming Farm Bureau Federation and AFBF. Its goal is to represent the voices of its members through grassroots policy development and litigation while focusing on protecting private property rights, strengthening agriculture, and supporting farm and ranch families through advocacy, education, and leadership development.

18. Plaintiff **American Exploration & Mining Association** (AEMA) is a 129-year-old, 1,800-member national trade association representing the mineral development and mining industry, with members residing in 46 states. Its members range from the largest independent, global mine owners to small exploration companies. AEMA is the recognized national representative for the exploration sector, the junior mining sector, and mineral developers interested in maintaining access to state and public lands. More than 80 percent of AEMA's members are small businesses. Its mission includes advancing the interests of its members in litigation when necessary to preserve our members' rights and providing educational materials and programming for its members. Many of AEMA's members develop and produce the critical and strategic minerals essential to achieving the U.S.' national defense, energy, and infrastructure goals and needs.

19. Plaintiff **American Forest Resource Council** (AFRC) is a regional trade association that represents over 50 forest product businesses and forest landowners throughout the West in Oregon, Washington, California, Idaho, Nevada, and Montana. AFRC's pur-

pose is to advocate for sustained-yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. AFRC does this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. AFRC supports sustainable and environmentally responsible management of public lands, sharing the goal of other stakeholders for sustainable forest management and healthy forests that support various species. AFRC also works to improve federal and state laws, regulations, and policies and decisions regarding access to and management of public forest lands and protection of all forest lands. Because many of AFRC's members do not own private timberland, they depend heavily on federal lands to source raw materials for their milling operations and, therefore, are frequent purchasers of timber sales offered by the BLM. The management of federal lands ultimately dictates not only the viability of their businesses, but also the economic health of the communities in which they operate. The ultimate goal of AFRC's work is to advance its members' ability to practice socially and scientifically responsible forestry on both public and private forest lands.

20. Plaintiff **American Petroleum Institute** (API) is the primary national trade association that represents all facets of the oil and natural gas industry, which supports nearly 11 million U.S. jobs and 8 percent of the U.S. economy. API's approximately 600 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine business, and service and supply firms. API's members provide most of the nation's energy and are backed by a growing grassroots movement of millions of Americans. API represents the oil and natural gas industry by advocating for legislation at the federal, state, and local level; educating members of the general public about the benefits that oil and natural gas provide for human health, safety, convenience, and prosperity; engaging with federal and state administrative agencies to

promote policies on behalf of the oil and natural gas industry; and engaging in litigation that impacts the oil and natural gas industry. API also provides educational materials and programming for its members relating to oil and natural gas standards and regulations.

21. Plaintiff **American Sheep Industry** (ASI) is the national trade organization for the American sheep industry. ASI works to protect the interests of all sheep producers, from farm flocks to range operations. ASI represents the interests of more than 80,000 sheep producers throughout the United States, through a federation of 46 state sheep associations as well as individual members. ASI members own and operate their enterprises on lands throughout the United States, relying heavily upon the ability to move livestock between private and federal lands and to use those federal lands. Federal grazing permits are thus critical for sustaining ASI's members' business operations, livelihoods, and way of life. ASI assists its members and the livestock industry more broadly by educating its members and the public on issues related to animal welfare, as well as on government programs and disaster relief, including grazing permits.

22. Plaintiff **National Cattlemen's Beef Association** (NCBA) is a trade association that represents U.S. cattle producers, with more than 30,000 individual members and several industry organization members. In total, NCBA represents more than 175,000 of America's farmers, ranchers, and cattlemen who provide a significant portion of the nation's supply of food. NCBA works to advance the economic, political, and social interests of the U.S. cattle business and to be an advocate for the cattle industry's policy positions and economic interests. To that end, NCBA is committed to assisting its members by disseminating information, meeting with legislators and agencies, drafting and commenting on legislation and agency rules, and, when necessary, participating in litigation in both state and federal courts.

23. Plaintiff **National Mining Association** (NMA) is a national trade association that represents the interests of the mining industry including the producers of most of America's metals, coal, and industrial and agricultural minerals and the hundreds of thousands of workers it employs—before Congress, the administration, federal agencies, the courts, and the media. NMA has more than 250 members, including companies and organizations involved in every aspect of mining in the United States. NMA assists its members and the resource-mining industry more broadly by educating its members and the public. NMA provides educational materials such as statistics, fact sheets, reports, and toolkits to aid in its members' understanding of the complex environmental regulatory scheme governing the mining industry, including the exploration, development, extraction and processing of mineral and energy resources on public lands.

24. Plaintiff **National Rural Electric Cooperative Association** (NRECA) represents nearly 900 local electric cooperatives and other rural electric utilities. America's electric cooperatives operate at cost and without profit incentive, serving as engines of economic development for 42 million Americans across 56 percent of the Nation's landscape and in 92% of the nation's persistent poverty counties. NRECA strives to anticipate, shape, and respond to changes in technology, law, and public policy that affect its members ability to provide reliable, safe, and affordable electricity across the nation, and to secure the stability of our nation's electric grid NRECA provides its members with a broad range of products and services in the areas of outreach and advocacy, workforce development, and business strategies and employee benefits, and education. NRECA also provides professional development services, including courses and conferences touching on important regulatory developments.

25. Plaintiff **Public Lands Council** (PLC) represents ranchers who use public lands and are committed to preserving the natural resources and unique heritage of the West. PLC

works to maintain a stable business environment for ranchers in the West, where roughly half the land is federally owned and many ranching operations have, for generations, depended on public lands for forage. PLC's membership consists of state and national cattle, sheep, and grasslands associations. It is committed to assisting its members by disseminating information to them and the public; meeting with legislators and agencies; drafting and commenting on legislation and rules; and, when necessary, participating in litigation in both state and federal courts. PLC assists its members and the livestock industry more broadly by educating its members and the public. PLC further provides education related to grazing on federal lands, including several fact sheets. PLC specifically provides educational materials designed to help producers advocate for themselves and navigate the bureaucracies necessary to obtain critical grazing permits.

26. Plaintiff **Western Energy Alliance** (the Alliance) is the leader and champion for independent oil and natural gas companies in the West, including Colorado, Montana, Nevada, New Mexico, North Dakota, Utah, and Wyoming. Working with a vibrant membership base for over 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Its expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. Alliance members are independent oil and natural gas producers, the majority of which are small businesses with an average of fourteen employees. The Alliance advocates for access to federal lands for exploration and production of oil and natural gas, and rational, efficient, and effective permitting and leasing processes. It promotes the beneficial use and development of oil and natural gas and represents its membership in federal rulemakings that may affect members' operations on federal, state, and private lands throughout the West. The Alliance assists its members and the resource-mining industry more broadly by educating its members and the public.

27. The Department of the Interior is a Cabinet-level agency of the United States government responsible for administering federal land.

28. BLM is a sub-agency of the Department. The Department's responsibility for administering federal land throughout the West is delegated to BLM. It is principally responsible for administering FLPMA.

29. Defendant Debra Haaland is the Secretary of the United States Department of the Interior. She is sued in her official capacity.

30. Defendant Steve Feldgus is the Principal Deputy Assistant for Land and Minerals Management and oversees BLM. He is sued in his official capacity.

31. Defendant Tracy Stone-Manning is the Director of the Bureau of Land Management. She is sued in her official capacity.

STATUTORY AND REGULATORY BACKGROUND

A. The Federal Land Policy and Management Act of 1976

32. FLPMA embodies a national policy that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands." 43 U.S.C. § 1701(a)(12). To that end, FLPMA assigns responsibility to BLM for administering the productive use of 245 million surface acres and 700 million subsurface acres of United States government land. 43 U.S.C. §§ 1731-1732.

33. BLM's mandate under FLPMA is to "regulate . . . the use, occupancy, and development of the public lands" "through easements, permits, leases, licenses, published rules, or other instruments." *Id.* § 1732(b). For activities not expressly authorized under other statutes, FLPMA's default mechanism for regulating uses on public lands is issuing "long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns." *Id.* In exchange for conferring these rights to use public lands, Congress stated a national policy to "receive

fair market value of the use of the public lands and their resources unless otherwise provided for by statute." *Id.* § 1701(9).

34. FLPMA charges BLM, as a condition of its authority to authorize or issue plans of operation, permits, leases, and rights-of-way, to "manage the public lands under principles of multiple use and sustained yield." 43 U.S.C. § 1732(a). FLPMA authorizes productive and economic use of public lands and ensures environmental protection by preventing unnecessary or undue degradation of federal lands. 43 U.S.C. § 1732(b). These principles are thus a central constraint on BLM's land-management decisions.

35. *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." *Id.* § 1702(c). It requires BLM to "strik[e] a balance among the many competing uses to which land can be put, 'including, but not limited to, recreation range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values.'" *Norton v. South Utah Wilderness Alliance (SUWA)*, 542 U.S. 55, 58 (2004) (quoting 43 U.S.C. § 1702(c)).

36. FLPMA identifies "domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production" as "principal or major uses." 43 U.S.C. § 1702(l).

37. *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 U.S.C. § 1702(h). BLM therefore must "control depleting uses over time, so as to ensure a high level of valuable uses in the future." *SUWA*, 542 U.S. at 58. This is consistent with the Act's direction to BLM "to prevent unnecessary or undue degradation of the [public] lands." 43 U.S.C. § 1732(b).

38. To achieve these goals, FLPMA requires the agency to "develop, maintain, and, when appropriate, revise land use plans" for individual tracts of public land (43 U.S.C. § 1712(a)), known in BLM regulations as "resource management plans." *See* 43 C.F.R. § 1601.0-5(n). In broad strokes, resource management plans establish, "for a particular area, allowable uses, goals for future condition of the land, and specific next steps." *SUWA*, 542 U.S. at 60; *see also* 43 C.F.R. § 1601.0-5(n)(1)-(3).

39. FLPMA places great value on transparency and public participation. Congress thus directed BLM to "allow an opportunity for public involvement and by regulation [to] establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands." 43 U.S.C. § 1712(f); *see also id.* § 1739(e).

40. Any proposed use of federal lands must "conform to the approved [resource management] plan." 43 C.F.R. § 1610.5-3(a). But a resource management plan itself does not directly authorize land uses. *See* 43 C.F.R. § 1601.0-5(n); *Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 504 (D.C. Cir. 2010). Instead, a party seeking to use federal lands must submit to BLM a proposal for a land use authorization under the applicable regulations governing the activity. The plaintiffs' uses of federal lands are primarily authorized by statute—such as grazing under the Taylor Grazing Act, coal, oil, and gas extraction under the Mineral Leasing Act, and mining of locatable minerals under the Mining Law of 1872.

41. Entities additionally may apply to BLM to obtain a right-of-way grant on public lands under FLPMA (43 U.S.C. § 1761) and the Mineral Leasing Act (30 U.S.C. § 185). A right-of-way grant is an authorization to use a specific piece of public land for a certain project, such as roads, pipelines, transmission lines, and communication sites. The

grant authorizes a specific use of the land for a specific period of time. *See generally Rights-of-Way, Principles and Procedures*, 70 Fed. Reg. 20970, 20970 (April 22, 2005). For example, applications for proposed electric utility line projects on BLM-administered public lands are processed as "rights-of-way" under Title V of FLPMA.

42. In issuing rights-of-way, BLM "places a high priority on . . . the protection of resource values." *Id.* Thus, all rights-of-way issued under FLPMA are subject to categorical conditions, including that the holder must "[r]estore, revegetate, and curtail erosion or conduct any other rehabilitation measure BLM determines necessary" within and around the right-of-way; and "[c]ontrol or prevent damage to . . . [s]cenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat." 43 C.F.R. § 2805.12(*i*). All rights-of-way must also comply with any case-specific conditions set by BLM. *Id.*

43. The procedure to obtain a lease, permit, or right-of-way varies depending on use. FLPMA instructs BLM to prioritize "major and principal uses" of public lands, which are defined to include mining, livestock grazing, oil and natural gas production, and utility rights-of-way. 43 U.S.C. § 1702(*l*). For uses not specifically authorized by statute, parties pursue a land use authorization according to the proposal and application procedures under BLM's general land resource management regulations. *See* 43 C.F.R. §§ 2920 *et seq.*

44. FLPMA works in conjunction with several other statutes governing specific land uses, each of which contain their own directives and priorities. Plaintiffs' members' industries operate under the following land use frameworks:

B. Mining & minerals

45. America is home to robust deposits of valuable raw minerals. Mining these and other materials supplies the foundation for American industry and national defense, securing domestic mineral supply chains that reduce the Nation's reliance on foreign mineral trade. Indeed, the political branches have expressly prioritized *increasing* the

domestic mineral supply to combat the dangers of depending on foreign resources for critical American infrastructure. *See, e.g.*, *Biden-Harris Administration Invests $17 Million to Strengthen Nation's Critical Minerals Supply Chain*, Energy.gov (Feb. 15, 2024), https://perma.cc/FE5E-Z3TX.

46. Congressional recognition of mining rights dates to the California Gold Rush in the mid-nineteenth century. Through the Mining Law of 1872, Congress incentivized the discovery and production of American mineral resources on federally owned lands, providing that "all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States." 30 U.S.C. § 22. The Mining Law thus confers the right to explore for and, if discovered, extract minerals from a tract of land—and to use adjacent public lands to support operations on lands subject to the Mining Law.

47. Congress's support for domestic mining has remained steadfast. The Mining and Minerals Policy Act of 1970 declared it is the policy of the United States to "foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, and (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial security and environmental needs." 30 U.S.C. § 21a. And in 1980, Congress enacted the National Materials and Minerals Policy, Research and Development Act because the availability of minerals "is essential for national security, economic well-being, and industrial production." *Id.* § 1601(a). It restated that priority in December 2020, requiring the BLM to "minimize delays in the administration of applicable laws (including regulations) and the issuance of

permits and authorizations necessary to explore for, develop, and produce critical minerals." *Id.* § 1602(8).

48. FLPMA expressly incorporates Mining Law rights, specifying that it does not "in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under the Act, including, but not limited to, rights of ingress and egress." 43 U.S.C. § 1732(b). It further specifies that "public lands be managed in a manner which recognizes . . . implementation of the Mining and Minerals Policy Act of 1970." 43 U.S.C. § 1701(a)(12).

49. BLM's surface management regulations govern mineral mining activities under the Mining Law and require careful attention to environmental considerations. *See* 43 C.F.R. §§ 3809 *et seq*. Operations that are "greater than casual use" and create surface disturbance trigger notice procedures (*id.* § 3809.21) or require BLM's authorization for a plan of operations (*id.* § 3809.11). A plan of operation must include "[a] plan for reclamation," including "regrading and reshaping," "mine reclamation," "riparian mitigation," "wildlife habitat rehabilitation," "topsoil handling," "revegetation," "isolation and control of acid-forming, toxic, or deleterious materials," "removal or stabilization of buildings, structures and support facilities," and "post-closure management." *Id.* § 3809.401(b)(3). All such disturbance activities require posting of a reclamation bond and cannot result in unnecessary or undue degradation. *Id.* § 3809.5.

50. The Mining Law works in parallel with the Mineral Leasing Act of 1920, which removed certain nonmetallic minerals, such as coal, petroleum, and oil shale, from jurisdiction of the Mining Law. The goal of the Mineral Leasing Act is "to promote wise development of . . . natural resources and to obtain for the public a reasonable financial return on assets that 'belong' to the public." *California Co. v. Udall*, 296 F.2d 384, 388 (D.C. Cir. 1961).

51. The Mineral Leasing Act provides that "[d]eposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite . . . , or gas, and lands containing such deposits owned by the United States, . . . shall be subject to disposition" by BLM under the requirements of the Act. 30 U.S.C. § 181. Leasing provisions vary according to the mineral at issue.

52. Comprehensive regulations govern mineral leases. For oil and natural gas development, it assigns rights according to a three-step planning, leasing, and drilling process. Once BLM prepares a resource management plan for a region that includes mineral leasing, it issues leases on a quarterly basis via a competitive bidding process. *See id.*; 43 C.F.R. §§ 3101.1-2, 3120.1-1, 3120.3-1. A successful lessee obtains "the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold." 43 C.F.R. § 3101.1-2.

53. BLM retains discretion to set terms and conditions on any lease, including "reasonable measures . . . to minimize adverse impacts to other resource values" and "land uses or users." 43 C.F.R. § 3101.1-2. Before a lessee may develop oil or natural gas on its lease, it must file an application for a permit to drill. And before granting an application, BLM must ensure it conforms to the resource management plan. *See id.* § 1610.5-3(a).

54. For coal, the lease by application process is initiated by an applicant and requires conformity with land use plans, consultation with states and surface management agencies, public hearings, environmental analysis and payment of fair market value. *See id.* §§ 3420.3, 3425.4. BLM will hold a lease sale for coal mining only if "the lands containing the coal deposits are included in a comprehensive land use plan or land use analysis." 43 C.F.R. § 3420.1-4(a). After BLM completes activity planning and final consultations, it will publish a notice of the proposed lease sale in the Federal Register. *Id.* § 3422.2(a). Before a lease sale can be held, BLM must prepare an environmental analysis pursuant to the National Environmental Policy Act to account for environmental considerations, including

the requirement to prepare an environmental assessment or a detailed environmental impact statement. *Id.* § 3425.3.

55. For solid minerals other than coal and oil shale, the Mineral Leasing Act authorizes BLM to issue prospecting permits in areas where prospecting is needed to determine the existence of a minerals deposit (43 C.F.R. § 3501.10(a)) or an exploration license in areas with known deposits of a leasable mineral (*id.* § 3501.10(b)). A lease for solid minerals may be issued only if it conforms with the terms and conditions of an applicable comprehensive land use plan. *Id.* § 3501.17(a). BLM may impose additional conditions on leases to address environmental impacts. *Id.* § 3501.17(b). BLM has also promulgated a separate set of regulations to ensure environmental protection associated with solid minerals mining activities. *Id.* § 3590 *et. seq*.

C. Livestock grazing

56. From the nation's first westward expansion, livestock grazing has marked the American West. Rangelands alone span nearly two-thirds of the federal lands that BLM manages. Grazing generates enormous economic benefits—for the communities that depend on it as well as the American public generally. All the while, grazing carries its own environmental benefits, improving soil quality and reducing sediment erosion.

57. The Taylor Grazing Act governs the issuance of livestock grazing permits on federal rangelands. It charges BLM with establishing and managing grazing districts, and with issuing grazing permits within those districts; and otherwise with issuing leases on isolated tracts that are not within the bounds of a grazing district. In administering this system, FLMPA directs BLM to prioritize three principal goals: "regulat[ing] occupancy and use" for grazing, "preserv[ing] the land and its resources from destruction and unnecessary injury," and "provid[ing] for the orderly use, improvement, and development of the range." 43 U.S.C. § 315a.

58. "One of the key issues the Taylor Grazing Act was intended to address was the need to stabilize the livestock industry by preserving ranchers' access to the federal lands in a manner that would guard the land against destruction." *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1290 (10th Cir. 1999). To achieve this stability, the Grazing Act authorizes BLM to issue grazing permits within certain districts. 43 U.S.C. § 315b; *see also* 43 C.F.R. § 4130.2(a).

59. Eligible groups or individuals apply for grazing permits with BLM. *See* 43 C.F.R. § 4130.1-1. With limited exceptions, applicants for a grazing permit "must own or control land or water base property." *Id.* § 4110.1(a). Base property is private land that either abuts public land; or "is capable of serving as a base of operation for livestock use of public lands within a grazing district"; or, outside a grazing district where no applicant owns or controls contiguous land, "is capable of being used in conjunction with a livestock operation which would utilize public lands." *See* 43 C.F.R. § 4110.2-1(a)(1)-(2). Ownership of base property entitles an applicant to grazing preference for a specified number of "animal unit months" on public lands. *Id.* § 4110.2-2. A grazing preference entitles a base property owner to priority over others for receiving a grazing permit.

60. Like leases under the Mineral Leasing Act, "[l]ivestock grazing permits and leases shall contain terms and conditions . . . appropriate to achieve management and resource condition objectives for the public lands and other lands administered by (BLM)." 43 C.F.R. § 4130.3(a); *see also* 43 U.S.C. § 1742(a). For every permit or lease, BLM must "specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months." *Id.* § 4130.3-1(a).

61. BLM may also specify other, discretionary conditions designed to "assist in achieving management objectives." *Id.* § 4130.3-2. Conservation objectives are included expressly among conditions that may be imposed or undertaken by a permittee, including a

"[p]rovision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values, . . . or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth." *Id.* § 4130.3-2(f).

62. BLM's grazing regulations directly incorporate FLPMA standards, requiring BLM to "manage livestock grazing on public lands under the principle of multiple use and sustained yield." *Id.*

63. Permit holders must adhere to any terms and conditions BLM imposes to maintain a "satisfactory record of performance," without which the agency may refuse to renew the permit. *See* 43 C.F.R. § 4130.1-1(b).

D. Timber harvesting

64. The public lands under BLM's management include 37.6 million acres of forests, approximately 16% of which is timberland. Congress first authorized BLM to dispose of timber from select regions throughout Oregon and California in 1937. *See* 43 C.F.R. § 5400.0-3(a). That authorization was expanded to include all BLM-managed public timberlands in the Materials Act of 1947. *See* 43 U.S.C. § 601.

65. Consistent with the FLPMA's mandates, BLM must manage timber harvesting "in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities." 43 U.S.C. § 2601.

66. BLM develops plans for timer sales annually, with consideration of "suggestions from prospective purchasers of such timber." 43 C.F.R. § 5410.0-6. It executes

timber sales only after "inviting competitive bids through publication and posting," subject to limited exceptions. 43 C.F.R. § 5401.0-6(a). BLM then executes a sales contract with the highest bidder. *See id.* §§ 5440-5463

E. Areas of Critical Environmental Concern

67. BLM's authority to develop resource management plans under 43 U.S.C. § 1712(a) includes the ability to designate "areas of critical environmental concern," or ACECs. An ACEC is an area "within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

68. A tract's designation as an ACEC takes priority over other land uses, requiring BLM to impose special management prescriptions to protect and prevent irreparable damage to the relevant and important values. 43 C.F.R. § 1610.7-2(d)(3); *see also id.* § 1711(a) ("The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values . . . giving priority to areas of critical environmental concern."). ACEC designations thus significantly impact users of federally managed lands because they proscribe land uses in a resource management plan that would impair the land features that justify the designation. *See* 43 C.F.R. § 1610.7-2(d).

69. Under its prior regulations before the Rule's effective date, BLM had set two criteria to designate an area as an ACEC: *relevance*, meaning the area has "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard"; and *importance*, meaning the area's relevance has "substantial significance and values," generally requiring "qualities of more than local significance and

special worth, consequence, meaning, distinctiveness, or cause for concern." 43 C.F.R. § 1610.7-2(a).

70. Given their impact on other resource interests, ACEC designations historically have required public notice and comment. They have been adopted as an element of resource planning, and "upon approval of a draft resource management plan, plan revision, or plan amendment involving ACECs," BLM must "publish a notice in the Federal Register listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated." *Id.* A 60-day public-comment period must follow.

71. FLPMA further requires notification to Congress where "[a]ny management decision or action . . . excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more." 43 U.S.C. § 1712(e)(2). Lands may be removed from mineral entry under the Mining Law only by withdrawal action pursuant to § 1714. *Id.* § 1712(e)(3).

THE CONSERVATION AND LANDSCAPE HEALTH RULE

72. This case is a challenge to the Conservation and Landscape Health Rule, which BLM promulgated under FLPMA.

73. The Rule "establishes the policy for the BLM to build and maintain the resilience of ecosystems on public lands." 89 Fed. Reg. at 40308. It sets out three ways to do so: "(1) protecting the most intact, functioning landscapes; (2) restoring degraded habitat and ecosystems; and (3) using science and data as the foundation for management decision across all plans and programs." *Id.*

74. At its core, the Rule creates a new "use" for federal lands "on par" with the productive uses subject to FLPMA's multiple use and sustained yield mandate: *conservation*. 89 Fed. Reg. at 40308. Which is to say, non-use.

A. The Rule creates a novel conservation lease program

75. The primary "tool" the Rule establishes for conservation is a novel leasing program, whereby "individuals, businesses, non-governmental organizations, Tribal governments, conservation districts, and State fish and wildlife agencies," can apply for "restoration" or "mitigation" leases on federal lands. *See* 89 Fed. Reg. at 40321-40322.

76. The Rule authorizes BLM to issue leases for either (a) "Restoration of land and resources by passively or actively assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed to a more natural, resilient ecological state;" or (b) "Mitigation to offset impacts to resources resulting from other land use authorizations." 89 Fed. Reg. at 40342 (43 C.F.R. § 6102.4(a)(1)). Both categories of leases are to be issued "for a term consistent with the time required to achieve their objective." *Id.* at 40343 (43 C.F.R. § 6102.4(a)(3)). For mitigation, that means "a term commensurate with the impact it is mitigating," without pre-established limit. *Id.* A restoration lease "may be issued for a maximum term of 10 years," subject to renewal. *Id.*

77. Once BLM issues a restoration or mitigation lease, it "shall not issue new authorizations to use the leased lands if the use would be incompatible with the authorized restoration or mitigation use." *Id.* (43 C.F.R. § 6102.4(a)(4)). The Rule does not define "compatible" or "incompatible." Rather, BLM's "authorized officer retains the discretion to determine compatibility of the renewal of existing authorizations and future land use proposals on lands subject to restoration and mitigation leases." *Id.* (43 C.F.R. § 6102.4(f)). But "[t]he rule does not allow for leases to be issued where an existing, authorized, and incompatible use is [already] occurring." *Id.* at 40321.

78. The Rule provides several factors the officer must consider in making leasing decisions, including "lease outcomes that are consistent with restoration principles established in the rule; lease outcomes tied to desired future conditions that are consistent with

the management objectives and allowable uses in the governing resource management plan, such as an area managed for recreation or degraded land prioritized for development; collaboration with existing permittees, leaseholders, and adjacent land managers or owners; outreach to or support from local communities; and consideration of environmental justice objectives." *Id.*; *see also id.* at 40343 (43 C.F.R. § 6102.4(d)).

79. "Applicants are required to submit detailed restoration or mitigation development plans that include information on outreach with existing permittees, lease holders, adjacent land managers or owners, and other interested parties." *Id.* at 40322. But such outreach is not actually required. Indeed, the Rule's application process lacks any requirement for public involvement of any kind—it does not require that BLM publish preliminary conservation leasing decisions in the Federal Register, hold hearings, or allow for or consider comments. The Rule does not even limit restoration and mitigation leases to lands where the resource management plan includes conservation. 89 Fed. Reg. at 40321-40322. The effect is to preclude public involvement even at the plan-adoption stage. *Cf.* 43 C.F.R. § 1610.2(f) (providing for "[p]ublic notice and opportunity for participation in resource management plan preparation").

B. The Rule prioritizes "intact landscapes" and consideration of "land health" standards across all ecosystems, and it expands the use of ACECs

80. The Rule charges BLM with expressly prioritizing "intact landscapes." *See* 89 Fed. Reg. at 40320-40321. It requires BLM "to identify intact landscapes, evaluate alternatives to manage intact landscapes, and identify which intact landscapes or portions of intact landscapes will be managed for protection." *Id.* at 40320. Once so identified, "BLM must manage [those] landscapes to protect their intactness, including habitat connectivity and old-growth forests." *Id.* at 40341 (43 C.F.R. §§ 6102.1(a), 6102.2(b)(3)).

These provisions affirmatively require BLM to manage the lands "through conservation actions." *Id.* (43 C.F.R. § 6102.1(a)(1)).

81. In addition, "[t]o support conservation actions and decision-making, the rule extends the application of the fundamentals of land health (taken verbatim from the existing fundamentals of rangeland health [applicable to grazing permits]) . . . to all lands managed by the BLM and across all program areas." 89 Fed. Reg. at 40311 (citation omitted); *see* 43 C.F.R. § 4180.1. The fundamentals of land health and related guidelines are "general descriptions of conditions that maintain the health and functionality of watersheds, ecological processes, water quality, and threatened, endangered, and special-status species habitat." *Id.*

82. The agency is to determine "if a [land health] standard is being achieved, or not achieved" so that it may "inform how a land use may be modified or adapted to improve land health conditions consistent with the fundamentals." *Id.* at 40312. If land health standards are not being achieved, BLM "must take appropriate actions to facilitate achievement or significant progress toward achievement of land health standards as soon as practicable." 43 C.F.R. § 6103.1.2(f)(3).

83. Directly related, the Rule also creates a new presumption that all potential ACECs that meet the three criteria—relevance, importance, and special management attention—will be designated as such. It further loosens and expands the agency's standards for identifying and designating ACECs. 89 Fed. Reg. at 40325. Under the "importance" factor, for example, BLM is now to consider whether the area "contribute[s] to ecosystem resilience, landscape intactness, or habitat connectivity, in addition to other importance criteria." *Id.*

84. The Rule also authorizes wide-ranging ACECs without regard to whether attendant land-use restrictions are necessary to protect these important resources. While

ACECs are an important tool allowing BLM to create special management restrictions necessary to protect important, specific resources from irreparable damage, the Rule attempts to sweep them into a mechanism to achieve broad landscape scale general conservation objectives.

85. Ordinarily, ACECs are baked into the resource management process and thus require public notice and comment, as do all land-use designations. "[U]pon approval of a draft resource management plan, plan revision, or plan amendment involving ACECs," BLM must "publish a notice in the Federal Register listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated." *Id.* § 1610.7-2(b). And a 60-day comment period must follow. *See id.*

86. The Rule now allows BLM to circumvent these protections entirely, authorizing BLM to entertain ACEC nominations "outside of the [resource management] planning process." 43 C.F.R. § 1610.7-2(*i*)(1). It assigns the State BLM Director "discretion to determine the appropriate time to evaluate whether [a] nomination meets the relevant, important, and special management criteria" for ACEC designation; and if it does, the State Director may *either* "initiate a land use planning process" *or* implement "temporary management" planning "to protect the relevant and important values from irreparable damages." *Id*; *see also id.* at 40338 (43 C.F.R. § 1610.7-2(*i*)(1)(ii)).

87. If BLM implements "temporary management" planning pursuant to any new ACEC designations, the interim plan can remain in force indefinitely and does not require public participation, as do full resource management plans. All BLM must provide is a "notice" of the interim plan after its adoption. *Id.* § 1610.7-2(i)(1)(ii).

88. The Rule thus effectively grants State BLM Directors the discretion to designate ACECs unilaterally and impose corresponding land-use restrictions without the opportunity for public comment by interested stakeholders. BLM need not obtain comment

on the impacts that designation of an ACEC and resulting restrictions will have on future land uses. Without notice and comment, the public cannot know what areas will be designated ACECs or what restrictions will be imposed under the designations and restrictions are, for all practical purposes, finalized.

C. BLM did not undertake a NEPA analysis

89. The National Environmental Policy Act (NEPA) "forces government agencies to 'consider every significant aspect of the environmental impact of a proposed action.'" *Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87, 97 (1983) (quoting *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551 (1978)). And it "mandates that government agencies inform the public of the potential environmental impacts of proposed actions and explain how their decisions address those impacts." *Citizens' Committee to Save Our Canyons v. U.S. Forest Service*, 297 F.3d 1012, 1021 (10th Cir. 2002).

90. The centerpiece of this effort is a requirement that, for any "major Federal action[] significantly affecting the quality of the human environment," federal agencies prepare "a detailed statement" on "the environmental impact of the proposed action." 42 U.S.C. § 4332(2)(C). This is known as an environmental impact statement, or EIS.

91. The starting point is to determine first whether a particular project is of a type determined categorically to have *no* significant environmental impacts. If it is, the agency is not required to complete an environmental assessment. 40 C.F.R. § 1508.4. Agencies may identify classes of actions that have no significant environmental impacts and are required to list, in their respective NEPA regulations, the categorical exclusions falling within their purview. 40 C.F.R. § 1507.3.

92. For projects not covered by a categorical exclusion, an agency typically begins its environmental review by preparing an environmental assessment (or EA), which determines whether impacts will be "significant" within the meaning of the statute,

triggering an obligation to prepare an EIS. 40 C.F.R. § 1508.9. An EA includes a written description of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

93. If the agency concludes in the EA that a proposed action will not have a significant impact on the environment, it issues a finding of no significant impact (FONSI) and is not required to prepare a more fulsome EIS. 40 C.F.R. §§ 1501.4(e), 1508.13 (2018); 40 C.F.R. § 1501.6(a) (2020). The FONSI must briefly explain the reasons why the agency has determined that the project will not have a significant impact.

94. If an agency determines at any time during the preparation of an EA that the environmental impacts of a "major federal action[]" will be "significant[]," it must prepare an EIS. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4(e). A notice of intent to prepare an EIS is published in the Federal Register, and the public is afforded a period of at least 45 days to comment. 40 C.F.R. § 1508.22. An EIS is then drafted detailing how the project will affect the environment; addressing comments from the public; and listing "all reasonable alternatives" to the proposed action and explaining why the alternatives were not taken. *See* 40 C.F.R. §§ 1502.14-.16, 1502.19.

95. The agency must take additional public comment on the draft EIS. 40 C.F.R. § 1503.1. This is followed by a waiting period before the issuance of a Record of Decision (ROD) describing the agency's decision, the alternatives the agency considered, and the agency's plans for mitigation and monitoring, if necessary. 40 C.F.R. § 1505.2.

96. Congress did not limit NEPA's application to actions that may be harmful to the environment. Rather, its procedural requirements attach to *any* "major Federal actions significantly affecting the quality of the human environment," no matter the nature of the action or its impact. 42 U.S.C. § 4332(2)(C).

97. Here, BLM stated in the proposed rule that it "intend[ed] to apply the Department Categorical Exclusion . . . at 43 CFR 46.210(i) to comply with the [NEPA]." 88 Fed. Reg. at 19596. The agency explained that that exclusion "covers policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." *Id.*

98. Numerous commentors objected to BLM's reliance on the categorical exclusion. The NMA, for example, noted that invocation of the categorical exclusion is "inherently inconsistent with the BLM's prior practice for planning rules, and a violation of its obligations under NEPA." NMA Comment 13; *see also, e.g.,* API Comment 34 n.151 ("The Associations disagree with BLM's proposed use of a categorical exclusion to address these impacts."); AEMA Comment 25-27 (similar).

99. In the Rule, BLM rejected these concerns. The agency explained that the "categorical exemption applies because the rule sets out a framework but is not self-executing in that it does not itself make substantive changes on the ground and will not (absent future decisions that implement the rule) restrict the BLM's discretion to undertake or authorize future on-the-ground action." 89 Fed. Reg. at 40333. It noted that "[a]ny future actions, including both land use planning and individual project level decisions . . . will be subject to the appropriate level of NEPA review at the time of that decision." *Id.* It therefore concluded that the "rule is excluded from review under the National Environmental Policy Act under Department Categorical Exclusion (categorical exclusion) at 43 CFR 46.210(i)." *Id.* at 40337.

PLAINTIFFS' STANDING

100. The Rule is having immediate, concrete effects on plaintiffs' members. See the exhibits attached hereto, which are incorporated herein as if alleged herein.

101. Uses and non-uses of federal lands are ordinarily mutually exclusive. If a parcel of land is leased to a person for mitigation or restoration, or set aside for special protection as an ACEC, the parcel generally cannot also be leased for resource and energy development, permitted for livestock grazing or mining, or permitted as a right-of-way for electric utility lines or access roads.

102. The creation of new categories of land uses introduces new competition for every person that relies on access to and use of federal lands under FLPMA, increasing their operational risks and diminishing their land values. These risks are especially acute in this context because deliberate obstruction and interference is a common tactic for groups that oppose land use and development. Courts have often found competitor standing as sufficient to bring suit under the Administrative Procedure Act (APA). Indeed, "competitor suits are ubiquitous in administrative law." *Corner Post, Inc. v. Board of Governors*, 603 U.S. ___ (July 1, 2024) (Kavanaugh, J., concurring).

103. It is well settled that market participants "suffer an injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition" against them. *Sherley v. Sebelius*, 610 F.3d 69, 72 (D.C. Cir. 2010) (cleaned up). "Because increased competition almost surely injures [market participant] in one form or another, he need not wait until allegedly illegal transactions hurt him competitively before challenging the regulatory (or, for that matter, the deregulatory) governmental decision that increases competition." *Id.* (cleaned up); *cf. National Credit Union Administration. v. First National Bank & Trust Co.*, 522 U.S. 479, 488 (1998) ("competitors of financial institutions have standing to challenge agency action relaxing statutory restric-

tions on the activities of those institutions"); *id.* at 490 (plaintiffs who "alleged that they would be injured by the competition resulting from the [agency] action, had standing under the APA").

104. Competitor standing is all the more evident in this case because the Rule is having an immediate impact on company operations and land values.

105. For ranchers who rely on federal lands for grazing, the Rule has an immediate and concrete effect on the value of base property. Base-property status follows the land and increases its value. When farmers and ranchers seek to purchase or lease new parcels, land that has already been approved as base property is more valuable than land that has not been approved because of the accompanying grazing preference. But the Rule immediately reduces the value of base property by introducing new competition for land use, meaning new risk that grazing permits will not be granted or will be more limited in scope because grazing is incompatible with mitigation and restoration.

106. Companies that engage in coal, oil, and natural gas or other solid minerals development, as well as mineral exploration and mining, likewise face an immediate, concrete impact on their operations. Prior to nominating and obtaining a lease under the Mineral Leasing Act or staking claims or securing a plan of operations under the Mining Law, they must invest significant financial resources in exploratory research to determine which parcels of land have resources that warrant putting capital at risk. This requires devoting considerable time and money identifying where to expand their operations based on geology, infrastructure, and technology.

107. Because of the Rule, however, mining and oil and gas companies are having to divert resources immediately to accommodate the increased risks introduced by new competition for federal land rights. By creating a new category of leases for public land, and by introducing mid-plan ACECs without notice and comment, the Rule brings new parties

into the market for public lands: individuals seeking restoration leases, mitigation leases, or mid-plan ACEC designations to block timber cutting, oil and natural gas development, mineral exploration and mining activities, and other land uses. This new competition has immediately changed the risk profile that companies must consider when deciding whether to devote their limited resources to exploration and development activities.

108. The Rule also immediately increases risk for years-long project planning processes that electric cooperatives undertake to secure the electric grid. This is chilling investment into grid hardening and expansion projects as electric utilities work to meet growing demand, incorporate new and renewable sources of energy into the grid, and harden the grid against threats including wildfire. Further, compliance requirements associated with the Rule result in increased maintenance and operation costs for existing electric infrastructure which can lead to increased consumer-member rates.

109. Moreover, in light of the new competition for resources and increased risks of obstruction and interference by interests opposed to land use or development, plaintiffs' members must expend resources monitoring for applications or nominations for leases proposed for mitigation or restoration or for ACECs on parcels that overlap or threaten to interfere with their existing or intended future leases.

REASONS FOR VACATING THE RULE

110. The Rule is a textbook violation of the APA. First and most fundamentally, it reflects an action in excess of statutory authority. Beyond that, the Rule is arbitrary and capricious. If that were not enough, BLM violated the procedural rules of the road for major rulemakings. By any path or all of them, the Rule must be vacated.

A. The Rule exceeds BLM's statutory authority

i. Conservation is not a "use" under FLPMA

111. FLPMA is fundamentally a land *use* statute. It charges BLM with managing the "use, occupancy, and development of the public lands" (43 U.S.C. § 1732(b)) "under principles of multiple use and sustained yield" (*id.* § 1732(a)). The Act identifies general uses to include "habitation, cultivation, and the development of small trade or manufacturing concerns." *Id.* § 1732(b). It elsewhere defines "principal or major uses" to "include [and be] limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation and timber production." *Id.* § 1702(l). Congress did not identify conservation as a "use."

112. The Rule extra-statutorily designates conservation as a "use" and promotes this new "conservation use" to "a use *on par* with other uses" under FLPMA. 89 Fed. Reg. at 40308 (emphasis added). It defines "restoration" (which is a "tool[] to achieve conservation," 89 Fed. Reg. at 40308 n.2) as "the process or act of conservation by *passively* or actively assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed to a more natural, native ecological state." *Id.* at 40341 (43 C.F.R. § 6101.4(w) (emphasis added)). It defines "protection" or mitigation as "the act or process of conservation by maintaining the existence of resources while preventing degradation, damage, or destruction." *Id.* at 40340 (43 C.F.R. § 6101.4(t)).

113. FLPMA authorizes BLM to issue leases and permits for productive uses of federal lands only. The ordinary meaning of a land "use" compels this conclusion, as does the statute's consistent and exclusive reference to productive uses. Inasmuch as BLM is concerned to ensure responsible and sustainable use of natural resources, its role is, to the extent allowed by law, only to impose reasonable lease or permit conditions to prevent unnecessary or undue degradation. 43 U.S.C. § 1732(b). That is to say, under the scheme

of leases and permits for *uses*, conservation is not a land use in its own right; it is, instead, a value to be considered in the *management of* land uses.

114. Neither restoration nor mitigation, nor conservation more generally, is a "use" within the meaning of Section 1732(b). The Rule's creation of restoration and mitigation "uses" under FLPMA, and its practical elevation of those (non)uses to principal or major uses under the Act, contravenes the statute's text.

115. This conclusion is confirmed by FLMPA's statement of purpose, which specifies that it is the policy of the United States that BLM shall "receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute." 43 U.S.C. § 1701(9). Charging rents for resources makes sense only if the land is being used for productive ends. The Rule flouts this purpose by providing that "BLM may waive or reduce administrative cost recovery, fees, and rent of a restoration lease if the restoration lease is not used to generate revenue or satisfy the requirements of a mitigation program (e.g., selling credits in an established market), and if the restoration lease will enhance ecological or cultural resources or provide a benefit to the general public." 43 C.F.R. § 6102.4(j). This provision expressly conflicts with FLPMA's stated purpose to generate revenue for the American public from federal lands.

116. That conservation is not a "use" within the meaning of Section 1732(b) is confirmed further by other statutes that operate in parallel with FLPMA. These other statutes provide expressly for the conservation of federal lands. They include, among others, the Yellowstone National Park Act of 1872, the Antiquities Act of 1906, National Park Service Organic Act of 1916, National Wildlife Refuge System Act of 1966, Wilderness Act of 1964, and Parks and Public Lands Management Act of 1996. Unlike FLPMA, which is concerned with productive uses of federal land, these other laws set vast tracts of land aside for preservation and conservation. These laws confirm that when Congress

wishes to set land aside for conservation, it says so expressly. And given the substantial economic and social consequences of doing so, it generally reserves that power to itself and does not delegate it to agency bureaucrats.

117. The major questions doctrine lends further support to this conclusion. When an agency "assert[s] highly consequential power beyond what" the legislative text clearly authorizes, "both separation of powers principles and a practical understanding of legislative intent" counsel against "read[ing] into ambiguous statutory text the delegation claimed to be lurking there." *West Virginia v. EPA*, 597 U.S. 697, 723 (2022). Just so here. Given all the textual and structural indications that Congress did not intend to grant BLM far-reaching power to set aside sprawling tracts of federal land for conservation at whim, BLM "must—under the major questions doctrine—point to 'clear congressional authorization' to regulate in that manner." *Id.* at 732. Here, there is none.

118. The Tenth Circuit held as much in *Public Lands Council v. Babbitt*, 167 F.3d 1287 (2002). There, it concluded that "none of th[e] statutes" at issue in that case, including FLPMA, "authorizes permits intended exclusively for 'conservation use.'" *Id.* at 1308. To be sure, conservation is a "permissible end" for BLM to pursue, but "permissible ends . . . do not justify unauthorized means." *Id.* BLM repeats its error in *Babbitt*. BLM may not issue "permits intended exclusively for 'conservation use.'" *Id.*

119. The agency's contrary decision is foreclosed by plain text and is not entitled to deference under any circumstance. *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

ii. Conservation leases conflict with the broader statutory scheme

120. The Rule conflicts with the statutory scheme. When Congress intends to authorize BLM to set land aside so that it cannot be developed or used by agricultural, industrial, mining, or energy interests, it says so expressly. For example, Congress has

expressly established the National Landscape Conservation System, National Wilderness System, National Historic and Scenic Trails System, National Wild and Scenic Rivers System, National Recreation Areas, National Conservation Areas, and National Parks System. It has reserved exclusively to itself the power to add public lands to the tracts protected under those schemes and has never delegated such authority to BLM.

121. By creating a new conservation lease system that authorizes low-level BLM officers unilaterally to set aside large tracts of federal land for long-term restoration and mitigation, BLM has arrogated to itself a power that Congress has reserved for itself: the power to set aside public lands for conservation.

122. FLPMA empowers BLM to issue resource management plans that exclude one or more principal or major uses from covered tracts. *See* 43 U.S.C. § 1712(e). But if a resource management plan excludes "one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more," it must be reported to Congress, which may reject the plan by simple resolution. *Id.* § 1712(e)(2).

123. By expanding the concept of "use" under FLPMA to include conservation (*i.e.*, the withdrawal of lands from "incompatible" active uses), BLM has arrogated to itself a power that Congress expressly withheld: the power to exclude one or more principle or major uses for longer than two years, without reporting to Congress.

124. At bottom, BLM lacks free-floating authority to issue leases for conservation set-asides, which is a power that Congress has guarded as its own. When Congress does intend for BLM to exclude productive uses of land, it does so expressly and subject to strict procedural safeguards. The Rule is thus incompatible with the statutory scheme. The Court must therefore "greet [BLM's] assertions of extravagant statutory power" with extreme skepticism. *West Virginia*, 597 U.S. at 724.

iii. In practice, the Rule authorizes BLM to withdraw public lands from use without complying with 43 U.S.C. § 1702

125. FLPMA allows the Secretary to withdraw federal lands from public use and to reserve them for another purpose. A "withdrawal" is the "withholding [of] an area of Federal land from settlement, sale, location, *or entry*, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program." 43 U.S.C. § 1702(j) (emphasis added).

126. The Secretary may effectuate withdrawals "only in accordance with the provisions and limitations of" Section 1714(a). If BLM receives an application for withdrawal, or seeks to withdraw lands on its own initiative, it must "publish a notice in the Federal Register" (42 U.S.C. § 1714(b)(1)) and hold a public hearing (*id.* § 1714(h)). Withdrawals aggregating five thousand acres or more require congressional notification, and the statute authorizes Congress to reject the withdrawal by concurrent resolution. *Id.* § 1714(c)(1). Additionally, the Secretary may not delegate his withdrawal authority; he may so delegate "only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate." *Id.* § 1714(a).

127. With these restrictions on approval authority and requirements for public notice, opportunity for a hearing, and Congressional review, Congress strictly circumscribed the Secretary's authority to set aside lands otherwise available for use.

128. The restoration and mitigation leasing program under the Rule would circumvent these carefully delineated procedures, allowing low-level BLM bureaucrats to effectuate effective withdrawals for most, if not all, productive uses of federal lands without any of FLPMA's procedural protections for formal withdrawals. The Rule is clear that once a restoration and mitigation lease is issued, BLM is "preclud[ed] from issuing

new authorizations to use the leased lands if the use would be incompatible with the authorized restoration or mitigation use set forth in the lease." 89 Fed. Reg. at 40322; *see also id.* at 40343 (43 C.F.R. § 6102.4(a)(4)).

129. These are withdrawals by another name. All mineral, coal, and oil, and gas development would be precluded, as would be rights-of-way for critical infrastructure such as transmission lines and pipelines. *See* 89 Fed. Reg. at 40310 (suggesting that "sustainable recreation, grazing, and habitat management" are likely compatible with "conservation use" but not resource development); *cf. Richardson v. BLM,* 565 F.3d 683, 710 (10th Cir. 2009) ("A parcel of land cannot both be preserved in its natural character and mined.").

130. This Court has previously held that BLM cannot suspend principal uses such as mineral resource development or utility rights-of-way over swaths of federal land without adhering to Section 1714's withdrawal procedures. In *Mountain States Legal Foundation v. Hodel*, 668 F. Supp. 1466 (D. Wyo. 1987), BLM had suspended mineral leasing in certain national forests and delayed processing pending lease applications based on the land's "environmental sensitivity and the pending completion of further environmental documentation." *Id.* at 1469. The Court held that the Secretary's "mineral leasing discretion is not so broad as to allow [him] to refuse to act upon lease applications and . . . thereby effectively removing the lands from the operation of the Mineral Leasing Act without following the proper procedural requirements of the withdrawal provisions." *Id.* at 1474.

131. Considering the text of Section 1714, the Court emphasized that a "withdrawal" under FLPMA includes "withholding an area of Federal land from . . . entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public value in the area." *Mountain States Legal Foundation,* 668

F. Supp. at 1473 (quoting 43 U.S.C. § 1702(j)). The Court held that "the acts of suspension of mineral leasing and the unreasonable delay in mineral leasing in [designated national forests] fall squarely within the definition of withdrawal for purposes of the [FLPMA]." *Id.*

132. Granting a lease for a conservation use would "withhold [that] area of Federal land" from "entry" under the general land laws to "limit activities under those laws in order to maintain other public value"—that is, conservation. For the reasons this Court gave in *Mountain States*, that scheme effectuates an extra-statutory withdrawal of federal lands, and it thus exceeds the agency's authority.

iv. The Rule's new approach to ACECs violates FLPMA

133. Through FLPMA, Congress authorized BLM to designate ACECs as "areas within the public lands where special management attention" is needed "to protect and prevent" harm to important resources. 43 U.S.C. § 1702(a). BLM's resource management plans must prioritize and protect ACECs. *Id.* § 1712(c)(3). But recognizing the disruptive effect of setting aside tracts of land for special protection, Congress required BLM to use notice-and-comment rulemaking to establish ACECs through the resource management planning process itself. *Id.* §§ 1712(f), 1739(e).

134. By authorizing ACECs separate from the resource management planning process, the Rule flouts the system of public participation required by the statute. The temporary ACEC designation process, which is purely at the discretion of the State BLM Director, allows for the institution of ACECs without notice and comment, until a new land management planning process is initiated. 89 Fed. Reg. 40330. But the initiation of new land management planning process often takes *decades*, effectively allowing for procedurally invalid ACECs to remain in place indefinitely.

135. This is especially problematic because (1) the Rule allows for the adoption of "temporary" ACECs without the environmental analyses required under the resource

management planning process; (2) lowers the substantive threshold for granting ACECs; and (3) authorizes the removal of an ACEC in the resource management planning process only if the original conditions warranting its initial adoption are "no longer present" 89 Fed. Reg. 40338 (43 C.F.R. § 1610.7–2(d), (*i*), (k)). The net result is to allow the adoption of temporary ACECs with almost no procedural protections, and subsequently to place the burden on commenters to disprove the need for the ACEC—despite that the ACEC was initially adopted without the proper environmental analysis. This new process in effect turns the ACEC process upside down.

v. The Rule's failure to provide for public participation in conservation leasing is contrary to FLPMA's requirements

136. Closely related, the Rule's scheme for issuing conservation leases is unlawful because it omits a critical feature that FLPMA requires: public participation in land use planning. FLPMA requires "public input on long-range issues . . . as well as on day-to-day issues" and "promotes early public participation at the 'formulation' stage, before the decision is made." *Western Watersheds Project v. Zinke*, 441 F. Supp. 3d 1042, 1072 (D. Idaho 2020).

137. By including this provision in the FLPMA, Congress "expect[ed] [BLM] to provide means for input by the interested public before decisions are made" and "respond to public opinion." H. R. Rep. No. 94-1163 at § 202 (1976). And while the "extent of public participation" required may vary case to case, "some expenditures will always be justified to insure public exposure of proposed decisions." *Id.*

138. BLM must and does provide public-participation opportunities for all major leasing and permitting decisions. *See, e.g.*, 43 C.F.R. § 4130.2(b) (grazing); *id.* § 3420.3-1(d) (coal); *id.* § 3809.411(c) (mine plan of operations); *id.* § 5040.2 (sustained-yield forest

unit decisions); *Western Watersheds*, 441 F. Supp. 3d at 1072 (describing public-participation in oil and natural gas leasing).

139. The Rule details a start-to-finish application process that omits public involvement. *See* 89 Fed. Reg. at 40342-40343 (43 C.F.R. § 6102.4(b)-(d)). This failure to provide for public involvement violates FLPMA. *See* 43 U.S.C. §§ 1712(f), 1739(e).

140. Public notice to the interested public—particularly plaintiffs' members, who hold competing interests in federal lands—is especially important when the authorizing officer's decision to issue a restoration or mitigation lease has the effect of precluding "incompatible" uses. 89 Fed. Reg. at 40322, 40343 (43 C.F.R. § 6102.4(a)(4)). Without a regulatory definition of "incompatible" or an explanation of how BLM officers will determine compatibility, plaintiffs' members' only opportunity to understand how a proposed conservation use will impact their prospective interests in lands would be through public participation in BLM's decision-making process—an opportunity which is not provided for under the Rule.

vi. The Rule is barred by the Congressional Review Act

141. The Congressional Review Act (CRA) "creates an expedited process through which Congress can repeal rules promulgated by federal agencies." *Citizens for Constitutional Integrity v. United States*, 57 F.4th 750, 754 (10th Cir. 2023). Before a rule becomes effective, the promulgating agency must present to each House of Congress a copy of the rule and "a concise general statement relating to the rule, including whether it is a major rule." 5 U.S.C. § 801(a)(1)(A). If Congress enacts a joint resolution of disapproval and the President either does not veto the joint resolution or Congress overcomes the veto, the rule "shall not take effect (or continue)." *Id.* § 801(b)(1).

142. If Congress disapproves a rule under the CRA, the rule "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule

may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." *Id.* § 801(b)(2). A CRA disapproval thus operates as a "withdrawal of statutory grant[]" or a limitation on the agency's authority to act. *Citizens for Constitutional Integrity*, 57 F.4th at 764.

143. In 2016, BLM promulgated a rule titled Resource Management Planning, which was colloquially referred to as "Planning 2.0." *See Final Rule: Resource Management Planning*, 81 Fed. Reg. 89670 (Dec. 12, 2016). The Planning 2.0 Rule made a number of changes to BLM's regulations that are substantially the same as the Rule here:

(a.) The Planning 2.0 Rule adopted a "landscape-scale approach to resource management," calling for resource management plans to be "applied at a broader regional context." 81 Fed. Reg. at 89585-89586. It defined "landscape" as "an area of land encompassing an interacting mosaic of ecosystems and human systems characterized by a set of common management concerns" that "is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context." *Id.* at 89662. And it directed BLM officers, in preparing resource management plans, to "consider and document . . . areas of large and intact habitat." *Id.* at 89667.

(b.) The Planning 2.0 Rule adopted a new "mitigation" requirement, which is nowhere contained in FLPMA itself. 81 Fed. Reg. at 89585, 89594. Under Planning 2.0, "[m]itigation means the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts." *Id.* at 89962. BLM explained that it would "support effective implementation of the regional mitigation policy by ensuring that . . . the mitigation hierarchy process is applied in the development and implementation of a resource management plan." *Id.* at 89586.

144. On March 27, 2017, Congress passed a joint resolution disapproving the Planning 2.0 Rule. Pub. L. No. 115-12, 131 Stat. 76 (Mar. 27, 2017). Introducing the

disapproval resolution in the Senate, Senator Murkowski explained that "it is important to always remember that" FLPMA "mandates a multiple-use mission for BLM lands." 163 Cong. Rec. S1609 (daily ed. Mar. 7, 2017). She noted that "BLM lands are not national parks or wildlife refuges," or "wild and scenic rivers or wilderness." *Id.* Instead, "BLM lands are working lands," which "are valuable—not because they might contain a Mount Denali . . . or the Grand Canyon—but rather because these lands contain energy and minerals and they can be used." *Id.* Congress thus rejected the Planning 2.0 Rule.

145. Core elements of the Rule are "substantially the same" (5 U.S.C. § 801(b)(2)) as corresponding elements of the Planning 2.0 Rule.

(a.) Both rules prioritize landscape-level planning and mitigation, which are otherwise foreign to BLM's resource management regulations. The Rule's approach to mitigation mirrors the Planning 2.0 concepts of avoidance, minimization, and compensation. And the Rule's focus on landscape-level needs, intactness, and connectivity mirrors the Planning 2.0 concept of a landscape-scale approach to resource management. More generally, both rules prioritize non-use over use and result in de facto withdrawal of public lands from productive use, in violation of BLM's multiple-use mandate.

(b.) In the same substantive way as Planning 2.0, the Rule here tasks BLM with "identifying and managing areas for landscape intactness" and directs the agency to consider the "fundamentals of land health" as they bear on vast ecosystems and habitats. *Id*. 89 Fed. Reg. at 40308, 40311. The Rule defines "landscape" nearly identically as Planning 2.0, as "an area that is spatially heterogeneous in at least one factor of interest which may include common management concerns or conditions" that "is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context." *Id*. at 40340.

(c.) The Rule further defines both "intact landscape" and "intactness" (89 Fed. Reg. at 40340 (43 C.F.R. § 6101.4)), elevates "landscape intactness, or habitat connectivity" as a central consideration in the identification of ACECs (89 Fed. Reg. at 40338 (43 C.F.R. § 1610.7-2(d)(2))), and directs BLM officers, in preparing resource management plans, to identify and consider "intact landscapes within the planning area, taking into consideration habitat connectivity" (89 Fed. Reg. at 40341 (43 C.F.R. § 6102.2)). *See also, e.g.*, 89 Fed. Reg. at 40313 (the Rule requires "BLM to consider ecosystem resilience, landscape-level needs, and rapidly changing landscape conditions in designating and managing ACECs").

(d.) The Rule here restores the Planning 2.0 Rule's focus on mitigation by authorizing mitigation leases. In particular, it directs BLM officers to "apply [a] mitigation hierarchy to avoid, minimize, and compensate . . . for adverse impacts to resources when authorizing uses of public lands." 89 Fed. Reg. 40346 (43 C.F.R. § 6102.5.1). *See also id.* at 40311 ("the rule requires the BLM to apply a mitigation hierarchy").

146. At bottom, the Rule rewraps the essential elements of Planning 2.0 in new paper. Congress wrote the CRA broadly to prevent such evasions by agencies, requiring only substantial similarity rather than identity. Because the Rule is substantially the same as a rule Congress has rejected under the CRA, BLM's readoption of substantially the same regulations Congress has already disapproved is contrary to law and must be set aside.

B. The Rule is arbitrary and capricious

147. The Rule is arbitrary and capricious in at least four ways.

148. ***First,*** the Rule's seismic change in land-use policy goes unacknowledged and unexplained. Although the Rule sharply departs from nearly 50 years of settled practice and policy, BLM repeatedly describes the Rule as merely "clarifying" that conservation is a land-use on par with FLPMA's principal or major uses. *E.g.*, 89 Fed. Reg. at 40313.

149. While BLM has always, and properly, considered conservation in establishing limits on authorized land uses, it has never designated "conservation" as a "use" itself, "on par" with productive, major and principal uses. Conservation has never had a preclusive effect on other land uses, where a wholly independent lease for a conservation use can effectively preclude any "incompatible" principal use for years at a time. *See* 89 Fed. Reg. at 40322; *see also id.* at 40343 (43 C.F.R. § 6102.4 (a)(4)).

150. To be sure, agencies are free to change their policy positions, consistent with the terms of any governing statute. *See Exxon Corp. v. Lujan*, 970 F.2d 757, 762 n.4 (10th Cir. 1992) ("The law does not require an agency to stand by its initial policy decisions in all circumstances."). But for an agency to act reasonably in doing so, it must "display awareness that it *is* changing position" and "show that there are good reasons for the new policy." *FCC v. Fox Television Station*, 556 U.S. 502, 515 (2009). BLM does not show this awareness, instead disguising the titanic changes that the Rule implements as mere "clarifications" of existing policy.

151. BLM says that its "ability to manage for multiple use and sustained yield of public lands depends on the resilience of ecosystems across those lands—that is, the ability of the ecosystems to withstand disturbance." 89 Fed. Reg. at 40308. And "[e]stablishing and safeguarding resilient ecosystems has become imperative as the public lands experience adverse impacts from climate change." *Id.* That is nothing new at all, and it does not address the supposed insufficiency of permit or lease conditions—including mitigation, protection, or reclamation efforts under the plans themselves. BLM thus does not explain why its existing tools for promoting conservation and addressing threats such as climate change are inadequate to reach its stated goals. And the Supreme Court has held that "climate change," however legitimate a concern, does not excuse unlawful rulemakings. *See generally West Virginia*, *supra*.

152. Nor did the agency address "serious reliance interests [on its prior policy] that must be taken into account." *Fox Television*, 556 U.S. at 515. Introduction of major new administrative obstacles to obtaining leases and permits will have devastating impacts on entities that have long relied on BLM's prior policies concerning federal land use. The agency did not address those reliance interests, as it was required to do. On the contrary, it brushed them aside, certifying simply that "[t]he rule does not affect any existing use of public lands, nor does it impose restrictions on future use." 89 Fed. Reg. at 40334. And although the agency acknowledged in its economic analysis that the Rule will "increase restoration and mitigation activity on public lands and could affect other land uses if they are incompatible with the restoration or mitigation activity or may otherwise cause non-attainment of land health standards," it ultimately declined to consider the impact of that consideration in the rulemaking. *Economic Analysis* 27.

153. Because the agency neither acknowledged its shift in policy nor explained why it is necessary, and it failed to meaningfully address reliance interests on the status quo ante, the Rule is arbitrary and capricious. *See Fox Television*, 556 U.S. at 515.

154. ***Second,*** the Rule is arbitrary and capricious because BLM did not respond to major comments. For instance, many comments asserted that the Rule would violate FLPMA by allowing BLM to withdraw public lands from use by unauthorized means and without undergoing the withdrawal process as specified by Congress in FLPMA. *E.g.*, API Comment 20; AEMA Comment 13; NMA Comment 9; NRECA Comment 5-6, 9, 12-13; Alliance Comment 6. BLM offers no response. In fact, it does not so much as acknowledge the issue. This failure alone is additionally unlawful. *See Perez v. Mortgage Bankers Association*, 575 U.S. 92, 96 (2015) (agencies must "consider and respond to significant comments received during the period for public comment").

155. ***Third***, BLM's creation of a restoration and mitigation leasing program that omits public participation is arbitrary and capricious for treating conservation leases differently from leases or permits for land use. BLM has promulgated regulations providing for public involvement in leasing and permitting decision for all other land uses, consistent with 43 U.S.C. §§ 1712(f), 1739(e). Its unexplained departure from that practice here, treating its new conservation leases unlike all other land uses without acknowledgement or explanation, is arbitrary and capricious. *In re FCC 11-161*, 753 F.3d 1015, 1142 (10th Cir. 2014) ("The arbitrary-and-capricious standard requires an agency to 'provide an adequate explanation to justify treating similarly situated parties differently.'").

156. ***Fourth,*** the Rule's leasing program is arbitrary and capricious because it does not offer meaningful guidance for affected parties. "Administrative action is arbitrary and capricious if it fails to articulate a comprehensible standard" and "offers no meaningful guidance to affected parties." *ACA International v. FCC*, 885 F.3d 687, 700 (D.C. Cir. 2018) (quotation marks omitted). That is the case here. The Rule does not define "incompatible." Nor does it offer any guidance as to what standards BLM officers will exercise in deciding whether a proposed land use is "incompatible" with a conservation lease.

157. The preamble to the Rule is itself inconsistent on this point. First BLM says that "[m]any uses are compatible with different types of conservation use," including "grazing." 89 Fed. Reg. at 40310. Later, BLM says that "proposed activities in a restoration or mitigation lease [may] not be compatible with grazing." 89 Fed. Reg. at 40327.

158. The Rule offers the regulated public no guidance as to how they might predict whether land under a conservation lease is "compatible" with a proposed actual use. A rule that leaves affected parties in the dark as to how it will operate in practice is invariably arbitrary and capricious. *Hikvision USA v. FCC*, 97 F.4th 938, 950 (D.C. Cir. 2024)

(agency's definition of a critical term was arbitrary and capricious because it "fail[ed] to provide comprehensible guidance about what [fell] within [its] bounds").

C. The Rule violates NEPA

159. NEPA and its implementing regulations require agencies to prepare an EIS for all "major federal actions." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.4. NEPA's procedural requirements are mandatory, and "ensure that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." *Winter v. NRDC, Inc.*, 541 U.S. 752, 757 (2004).

160. The Rule easily qualifies as a "major federal action" requiring an EIS. CEQ regulations specify that "major federal actions" include "new or revised agency rules, regulations, *plans*, *policies*, or *procedures*." 40 C.F.R. § 1508.1(q)(2) (emphasis added). The same regulations specify that major federal actions "tend to" be "formal documents establishing an agency's policies which will result in or substantially alter agency programs" or "plans . . . which prescribe alternative uses of Federal resources, upon which future agency actions will be based." *Id.* § 1508.1(q)(3)(i), (ii).

161. "As required by Section 102(2)(C) of NEPA, [EISs] are to be included in every . . . Federal action[] significantly affecting the quality of the human environment." 40 C.F.R. § 1502.3. NEPA's implementing regulations explain that an EIS "may be prepared for programmatic Federal actions, such as the adoption of new agency programs." 40 C.F.R. § 1502.4(b).

162. BLM invokes a categorical exclusion to avoid a NEPA analysis. 89 Fed. Reg. at 40337 (citing 43 C.F.R. § 46.210(i)). In the relevant regulation, the Department has specified that rules "that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either

collectively or case-by-case" are excluded from NEPA's requirements." Here BLM concluded that the Rule is "administrative and procedural in nature" and that it therefore will not "directly result in any environmental effects." categorical exclusion Documentation, at 1.

163. "Once an agency establishes categorical exclusions," the Court must still set aside "its decision to classify a proposed action as falling within a particular categorical exclusion . . . if a court determines that the decision was arbitrary and capricious." *Citizens' Committee*, 297 F.3dat 1023.

164. BLM's reliance on the categorical exclusion was arbitrary and capricious, as it is inconsistent with the regulatory language and context.

165. ***First,*** the Rule is not "procedural in nature." categorical exclusion Doc 1. These categories within the exclusion mirror the APA's exemption of "rules of agency organization, procedure, or practice" from the requirements of notice-and-comment rulemaking. 5 U.S.C. § 553(b)(4)(A); *see also* Implementation of the National Environmental Policy Act (NEPA) of 1969, 73 Fed. Reg. 61292, 61304 (Oct. 15, 2008) (describing "procedural rules" as emblematic of the actions covered by the categorical exclusion). Procedural rules are at bottom "internal house-keeping measures." *AFL-CIO v. NLRB*, 57 F.4th 1023, 1035 (D.C. Cir. 2023).

166. ***Second,*** the Rule is not "administrative." *See Administrative*, Merriam-Webster (2024) ("relating to the management of a company, school, or other organization"). The Rule here is substantive—it establishes information BLM must consider, the ways it will consider it, and creates entirely new land management categories establishing property interests for which a host of entities and individuals may now apply to remove public lands from congressionally authorized uses for decades. And it has direct and immediate impacts on regulated parties, including by modifying the requirements of resource management

plans. Rules like this one that implement a change to a regulatory framework "qualify as 'substantive' action" and "meet the relatively low threshold to trigger some level of environmental analysis under [NEPA]." *California ex rel. Lockyer v. Department of Agriculture*, 575 F.3d 999, 1013 (9th Cir. 2009).

167. BLM's invocation of the categorical exemption is arbitrary and capricious inasmuch as it is conclusory and unreasoned. It makes no sense to interpret a categorical exclusion that covers regulations "of an administrative, financial, legal, technical or procedural nature" to cover a rule that revises BLM's substantive land-management priorities and "provides an overarching framework for multiple BLM programs." 89 Fed. Reg. at 40308.

168. BLM's invocation of the categorical exclusion is arbitrary and capricious because it is inconsistent with its past practice. In both 1978 and 1983, BLM prepared an EA to evaluate its planning rules' potential environmental effects. *See Public Lands and Resources; Planning, Programming, and Budgeting*, 44 Fed. Reg. 46386 (Aug. 7, 1979); *Planning Programming, Budgeting; Amendments to the Planning Regulations; Elimination of Unneeded Provisions*, 48 Fed. Reg. 20364 (May 5, 1983).

169. ***Finally***, BLM's invocation of the categorical exclusion is arbitrary and capricious because "extraordinary circumstances" apply. 43 C.F.R. § 46.210. In the categorical exclusion documentation, BLM provided cursory analysis in a tabular format for each circumstance. *See* CX Documentation, at 2-4. But many of BLM's analyses misdescribe the Rule and ignore its real-world impacts. The categorical exclusion does not apply because the Rule will:

(a.) "[h]ave highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources" (43 C.F.R. § 46.215(c));

(b.) "[h]ave highly uncertain and potentially significant environmental effects" (*id.* § 46.215(d));

(c.) "[e]stablish a precedent for future action or represent[s] a decision in principle about future actions with potentially significant environmental effects" (*id.* § 46.215(e)).

170. Because BLM's invocation of the categorical exclusion was arbitrary and capricious, and because it failed to conduct an EA or prepare an EIS, the Rule violates NEPA.

CLAIMS FOR RELIEF

Count I – Agency Action in Excess of Statutory Authority

171. Plaintiffs incorporate and re-allege the foregoing paragraphs in full.

172. Under the APA, courts must set aside agency action that is in excess of statutory authority. 5 U.S.C. § 706.

173. The Rule exceeds BLM's statutory authority and is contrary to law under FLPMA by, among other things:

(a.) interpreting "uses" under FLPMA to include non-uses such as conservation, mitigation, and restoration;

(b.) elevating the "uses" of conservation, mitigation, and restoration to the status of a "principal or major use" under the Act;

(c.) arrogating to BLM the power to set aside land for non-use through both leases and ACECs, despite that Congress has reserved that power to itself or otherwise granted it expressly and in limited circumstances, subject to strict procedural checks that the Rule does not observe;

(d.) arrogating to BLM power to adopt ACECs outside the resource management planning process, without notice and comment;

(e.) authorizing low-level BLM officers in effect to "withdraw" public lands from productive use without observing the procedural requirements established by law;

(f.) promulgating a regulation substantially the same as the Planning 2.0 Rule, which was disapproved by Congress under the Congressional Review Act.

174. For these reasons and all others to be developed in plaintiffs' opening brief, the Rule exceeds BLM's statutory authority and must be set aside.

Count II –
Arbitrary and Capricious Agency Action

175. Plaintiffs incorporate and re-allege the foregoing paragraphs in full.

176. Under the APA, courts must set aside agency action that is arbitrary or capricious. 5 U.S.C. § 706.

177. The Rule is arbitrary and capricious in that it:

(a.) does not adequately explain substantial changes in agency policy, including impacts on the status quo ante and reliance interests;

(b.) fails to provide affected parties with meaningful guidance on how the Rule will operate in practice;

(c.) deprives the public an opportunity to participate in or otherwise comment on conservation leasing decisions and "temporary" resource management plans that may remain in place for indefinite periods of time;

(d.) failed to respond to significant comments made during the public comment period relating to matters of central relevance to the Rule and genuinely casting doubt on the reasonableness of its position; and

(e.) relied on a categorical exclusion to avoid a NEPA review, despite that the categorical exclusion does not apply as a matter of fact or law.

178. For these reasons and all others to be developed in plaintiffs' opening brief, the Rule is arbitrary and capricious and must be set aside.

Count III –
Procedural Violations of the Administrative Procedure Act

179. Plaintiffs incorporate and re-allege the foregoing paragraphs in full.

180. Under the APA, courts must set aside agency action that is undertaken without observance of procedure required by law. 5 U.S.C. § 706(2).

181. The Rule was promulgated without observance of procedures required by law in that BLM failed to conduct a required environmental analysis or prepare an EIS, as required by NEPA.

182. For this reason and all others to be developed in plaintiffs' opening brief, the Rule was adopted without observance of procedure required by law and must be set aside.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs ask the Court to enter judgment in their favor and:

(a.) set aside the Rule;

(b.) declare the Rule to be unlawful and void;

(c.) enjoin defendants from enforcing, implementing, or otherwise carrying out the Rule;

(d.) award plaintiff its attorney's fees and costs; and

(e.) award such other and further relief as the Court may deem just and proper.

Dated: July 12, 2024

Respectfully submitted,

/s/ *Billie L.M. Addleman*

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