



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Subcommittee on Oversight and Investigations Republican Members
From: Subcommittee on Oversight and Investigations Staff – Michelle Lane (michelle.lane@mail.house.gov, X6-4137); Thomas Knecht (Thomas.knecht@mail.house.gov, X6-8747)
Date: Wednesday, May 24, 2023
Subject: Oversight Hearing titled “*Examining the Biden Administration’s Efforts to Limit Access to Public Lands*”

The Subcommittee on Oversight and Investigations will hold an oversight hearing titled, “*Examining the Biden Administration’s Efforts to Limit Access to Public Lands*” on **Wednesday, May 24, 2023, at 10:00 a.m.** in room 1324 Longworth House Office Building.

Member offices are requested to notify Sophia Varnasidis (sophia@mail.house.gov) by 4:30 p.m. on May 22, 2023, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- Congress has primacy of power over federal lands.
- The Bureau of Land Management’s (BLM) multiple use and sustained yield mandate is determined by Congress, not unelected bureaucrats.
- BLM’s proposed *Conservation and Landscape Health* rule is unnecessary and circumvents Congressional authority, threatening the American public’s access and use of federal lands.
- Recent actions taken by the BLM and other federal land management agencies, including the designation of monuments through the Antiquities Act, illustrates the Biden Administration’s lack of interest in stakeholders on the ground as they advance and promote a radical environmental justice agenda above all else.

II. WITNESSES

- **The Hon. Todd Devlin**, Prairie County Commissioner, Terry, MT
- **Dr. J.J. Goicoechea**, DVM, Director, Nevada Department of Agriculture, Sparks, NV
- **The Hon. Travis Lingenfelter**, Chairman, Mohave County Board of Supervisors, Kingman, AZ
- **Ms. Stephanie Garcia Richard**, New Mexico Commissioner of Public Lands Santa Fe, NM [minority witness]

III. BACKGROUND

A. Congress's Primacy of Power over Federal Lands and the History of U.S. Federal Lands

The Property Clause of the U.S. Constitution grants Congress authority over the lands, territories, and other property of the United States.¹ Congress's power over federal lands is "without limitation."²

Federal land ownership began when the original 13 states ceded title to some of their land to the newly formed central government.³ As the United States expanded and formed new states, more lands were brought into federal ownership, generally as a condition of statehood.⁴ Until the late 1800s, federal policy was to dispose of federal land to generate revenue and encourage western settlement and development.⁵ As priorities shifted at the turn of the century, Congress began to withdraw, reserve, and protect federal land through the creation of national parks and forest reserves.⁶ Notably, the Antiquities Act of 1906 (the "Antiquities Act") authorized the President to proclaim national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of natural, historic, or scientific interest.⁷ Under the Antiquities Act, the President may reserve land as part of designating national monuments so long as it is "the smallest area compatible with the proper care and management of the objects to be protected."⁸ Over the last few decades, abuse of this authority has led some recent administrations, notably President Obama, to set records for expanding the federal estate with the use of the Antiquities Act.

As the 20th century progressed, emphasis was increasingly placed on the retention and management of federal lands.⁹ This emphasis continues into the 21st century. Today, the federal government manages roughly 640 million acres of surface land, approximately 28% of the 2.4 billion acres of land in the United States.¹⁰ Although federal lands are managed for many purposes, they are "primarily" managed for "preservation, recreation, and development of natural resources."¹¹

B. BLM's Multiple-Use & Sustained Yield Mandate

¹ U.S. Const. Article IV, Section 3, cl. 2 ("Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States").

² *United States v. San Francisco*, 310 U.S. 16, 29 (1940); *Kleppe v. New Mexico*, 426 U.S. 529, 542-43 (1976).

³ Katie Hoover et al., CONG. RESEARCH SERV., R43429, *Federal Lands and Related Resources: Overview and Selected Issues for the 118th Congress* 4 (Feb. 24, 2023), <https://crsreports.congress.gov/product/pdf/R/R43429>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ 22, 54 U.S.C. §320301.

⁸ 54 U.S.C. §320301(b).

⁹ Carol Hardy Vincent et al., CONG. RESEARCH SERV., R423463, *Federal Land Ownership: Overview and Data* 3 (Mar. 3, 2017), <https://crsreports.congress.gov/product/pdf/R/R42346/15>.

¹⁰ Hoover, *supra* note 3.

¹¹ Vincent, *supra* note 9.

The Bureau of Land Management (“BLM”) is a Department of the Interior (“DOI”) agency that manages 244 million acres of public lands,¹² which, according to their own testimony, includes one in every ten acres of the United States.¹³ BLM manages more federal lands than any other agency in the United States.¹⁴ The BLM also manages the 714 million acres of the federal subsurface, onshore mineral estate.¹⁵

The BLM was created in 1946 with the merger of the General Land Office and the Grazing Service.¹⁶ In 1976, Congress enacted the Federal Land Policy and Management Act (“FLPMA”), which established BLM’s multiple-use and sustained yield mandate in the stewardship of public lands.¹⁷ Under FLPMA The term “multiple use” is defined as:

the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.¹⁸

The term “sustained yield” is defined as “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.”¹⁹ Generally speaking, the BLM is mandated to manage public lands and their various resources to “best meet the present and future needs of the American people.”²⁰

As Congress provided the BLM with its multiple use and sustained yield authority, any new broadened authorities would require an Act of Congress, or, at a minimum, be subject to judicial review.²¹

¹² Hoover, *supra* note 3 at 4.

¹³ *Examining the President’s FY 2024 Budget Request for the Bureau of Land Management and the Office of Surface Mining Reclamation and Enforcement: Hearing Before the Sub. Comm. on Energy and Mineral Resources of the H. Comm. on Natural Resources*, 118TH CONG. (May 16, 2023) (Statement of Tracey Stone Manning, Director, Bureau of Land Management) [Hereinafter EMR Hearing on May 16, 2023]. <https://docs.house.gov/meetings/II/II06/20230516/115930/HMTG-118-II06-Wstate-Stone-ManningT-20230516.pdf>

¹⁴ Vincent, *supra* note 9 at 4.

¹⁵ Hoover, *supra* note 3 at 1.

¹⁶ BUREAU OF LAND MANAGEMENT, *BLM History*, <https://www.blm.gov/about/history> (last visited May 18, 2023).

¹⁷ 90 Stat. 2743 (Oct. 21, 1976), <https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg2743.pdf#page=1>.

¹⁸ 43 U.S.C. 1702(c).

¹⁹ 43 U.S.C.1702(h).

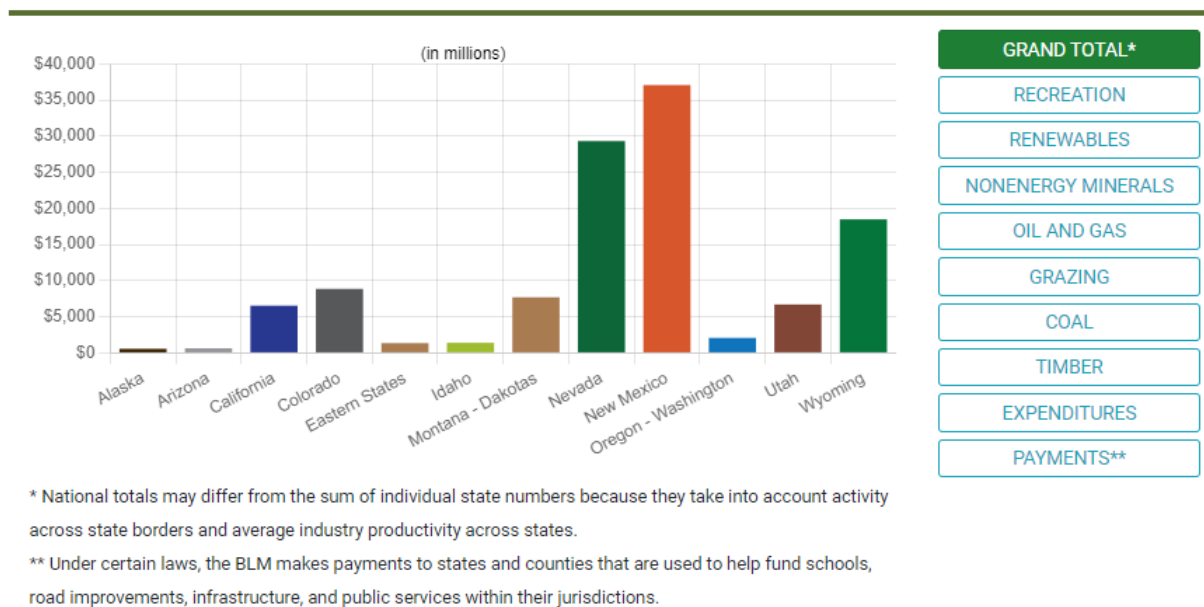
²⁰ *Id.*

²¹ See *West Virginia v. Environmental Protection Agency*, 597 U.S. ___ (2022) (“Agencies have only those powers given to them by Congress”).

C. Current Economic Output on BLM Lands

Last year, the BLM created a *Sound Investment for America 2022* document, which outlined a number of key data points for the agency, including economic contributions (according to the agency itself) from BLM-managed lands. According to the document, the BLM contributed \$201 billion in economic output to the U.S. economy in fiscal year 2021 and supported 783,000 jobs.²² The majority of the economic output and jobs (\$113.8 billion, 397,000 jobs) were from the oil and gas industry, followed by nonenergy minerals (\$48.8 billion, 162,000 jobs).²³ Other permitted activities contributing to economic output include coal, geothermal, wind, solar energy, recreation, grazing, timber, BLM expenditures, and payments to states and counties.²⁴

\$201 BILLION IN TOTAL ECONOMIC OUTPUT



Source: BLM, Socioeconomic Impact Report 2022²⁵

D. Current Conservation Practices on BLM Lands

Given FLPMA’s directive for the BLM to ensure the “quality of the environment,” it is understandable that the BLM interprets its multiple-use mandate to include conservation. Indeed, the BLM currently “prioritizes conservation efforts”²⁶ and claims to address “conservation in all we do.”²⁷ During her testimony in an Energy and Mineral Resources Subcommittee Hearing on May 16, 2023, Director Stone-Manning acknowledged that the BLM currently practices

²² BUREAU OF LAND MANAGEMENT, *The BLM: A Sound Investment for America 2022* (Nov. 2022), <https://www.blm.gov/sites/default/files/docs/2022-12/2022-SoundInvestment.pdf>.

²³ *Id.*

²⁴ *Id.*

²⁵ BUREAU OF LAND MANAGEMENT, *Socioeconomic Impact Report 2022*, <https://www.blm.gov/about/data/socioeconomic-impact-report-2022> (last visited May 18, 2023).

²⁶ BUREAU OF LAND MANAGEMENT, *Shared Conservation Strategies*, <https://www.blm.gov/about/how-we-manage/shared-conservation-strategies> (last visited May 18, 2023).

²⁷ BUREAU OF LAND MANAGEMENT, *Our Mission*, <https://www.blm.gov/about/our-mission> (last visited May 18, 2023).

conservation on its lands along with permitted activities, and that these activities are not mutually exclusive.²⁸

Much of the ongoing work in the conservation space at the BLM is currently under the BLM Rangeland Management and Public Domain Forestry Management accounts. The BLM continually fails to prioritize these accounts, rather focusing on expanding its definition of conservation and scope of work outside its original mission. These accounts are vital to sustaining the BLM's multiple use mandate, promoting rangeland and forest health, and promoting economic opportunities such as grazing. Instead of focusing on locking up new lands, the BLM should focus on carrying out its multiple use and sustained yield mission.

E. BLM Proposed Conservation and Landscape Health Rule

On April 3, 2023, the BLM published in the Federal Register a proposed rule, *Conservation and Landscape Health* with a 75-day comment period.²⁹ The proposed rule elevates conservation as a “use” within FLPMA’s multiple-use framework without Congressional authority.³⁰ The BLM intends to pursue this through so-called conservation leases for both protection and restoration activities.³¹ This proposed rule would fundamentally change the way the BLM carries out its multiple use and sustained yield mandates. Numerous stakeholders have expressed concern that the Biden Administration will use this rulemaking to determine currently permitted activities on BLM lands, such as grazing, energy production, and recreation are incompatible with a conservation lease or areas identified as “intact landscapes.”³²

Despite multiple briefings from BLM to House Committee on Natural Resources staff, numerous unanswered questions remain regarding the implementation of the proposed rule. Notably, BLM staff could neither provide clear answers as to how conservation leases would be developed or if other multiple uses could occur on conservation leases, nor could they provide direction on how conservation leases would impact Resource Management Plans (“RMPs”) or interact with current leases and leaseholders.³³

Clear answers are needed from the BLM regarding the intent and implementation of the proposed rule as drafted and more time is needed to comment on this rule given the extensive number of stakeholders that will be impacted by it.

In the 45+ days since the initial publication in the Federal Register, a number of stakeholder groups – ranging from those representing the recreation community³⁴ to more traditional BLM

²⁸ EMR Hearing on May 16, 2023, *supra* note 13.

²⁹ BUREAU OF LAND MANAGEMENT, *Conservation and Landscape Health*, 88 Fed. Reg. 19583 (proposed Apr. 3, 2023) (to be codified 43 C.F.R. 1600, 43 C.F.R. 6100) <https://www.federalregister.gov/documents/2023/04/03/2023-06310/conservation-and-landscape-health> [hereinafter Proposed BLM Rule].

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Bureau of Land Management Staff Briefings provided to H. Comm. on Natural Resources Staff, (Apr. 12, 2023 & May 5, 2023) (notes on file with Committee).

³⁴ Ruth Brown, *Proposed BLM rule change sees criticism in Federalism Committee*, IDAHO REPORTS (May 9, 2023) <https://blog.idahoreports.idahoptv.org/2023/05/09/proposed-blm-rule-change-sees-criticism-in-federalism-committee/>

permittees, such as public lands ranchers³⁵ – have spoken out with their concerns regarding the proposed rule.

Concerns regarding the proposed rule include, but are not limited to:

- The elevation of “conservation” as a multiple use under FLPMA through the use of regulatory authority, rather than Congressional authority;
- General lack of stakeholder engagement in the development of the proposed rule;
- Potential economic impacts of the proposed rule, including but not limited to, the economic analysis of the rule itself, which aided in the determination of a finding in its significance level;
- The potential restrictions or limitations for existing permittees and users (including occasional recreational users) of BLM lands should the rule be finalized, particularly on BLM lands that would be identified for conservation leases;
- The method by which BLM would identify lands for conservation leases;
- The potential economic impact of conservation leases on existing BLM permittees and conflicts that may create with the multiple use and sustained yield mandate; and
- The ability of BLM to adequately manage conservation leases while it is unable to manage existing lands on its own.

On May 3, 2023, Senator John Barrasso (R-WY), along with 9 other Senators, introduced S. 1435, a bill to require the BLM to withdraw the Proposed Rule.³⁶ On May 17, 2023, Rep. John Curtis (R-UT-3) introduced H.R. 3397, similar legislation in the House of Representatives.³⁷ In addition to introducing legislation calling for the withdrawal of the proposed rule, a number of members and stakeholder groups have written to Secretary Haaland calling for an extension of the comment period in early May 2023.

F. Biden Administration Land Grab through Executive Action

Since his first day in office, President Biden has prioritized the power of executive authority to expand the scope of the federal estate.³⁸ This includes a review of the boundaries of Grand Staircase-Escalante National Monument, Bears Ears National Monument, and Northeast Canyons and Seamounts Marine National Monument. Ultimately, this review led to President Biden

³⁵ PUBLIC LANDS COUNCIL, *NCBA and PLC Denounce BLM’s New Public Lands Rule* (Mar. 30, 2023) <https://publiclandscouncil.org/2023/03/31/ncba-and-plc-denounce-blms-new-public-lands-rule/>.

³⁶ S. 1435 (May 3, 2023), <https://www.congress.gov/bill/118th-congress/senate-bill/1435?s=1&r=1>.

³⁷ H.R. 3397 (May 17, 2023), <https://www.congress.gov/bill/118th-congress/house-bill/3397?q=%7B%22search%22%3A%22hr+3397%22%7D&s=2&r=1>

³⁸ Carol Hardy Vincent, CONG. RESEARCH SERV., R41330, *National Monuments and the Antiquities Act* 13 (May 3, 2023), <https://crsreports.congress.gov/product/pdf/R/R41330/43>.

increasing the size of and scope of these monuments.³⁹ In addition to these monuments, President Biden utilized the Antiquities Act to designate three new national monuments: Camp Hale-Continental Divide National Monument in Colorado (53,804 acres), the Avi Kwa Ame National Monument in Nevada (506,814 acres), and the Castner Range National Monument in Texas (6,672 acres).⁴⁰

During the tenure of his administration, President Trump utilized the Antiquities Act a total of four times, including utilizing the tool to reduce the size and scope of existing national monuments. Conversely, President Biden has exercised this authority six times, only for the purpose of adding large swaths of acreage to the federal estate.⁴¹

Alarming, the Biden Administration's propensity to expand the scope of the federal estate through executive action shows no signs of slowing down. The BLM budget requests a \$3.0 million increase for the *Increasing Representation in our Public Lands* initiative, which will support recent or potential new designations that preserve important places."⁴² Left-leaning groups, such as the Center for American Progress, have proposed lists of additional national monuments and marine sanctuaries that President Biden should create or expand.⁴³ Unfortunately, local and state governments are left in fear of future designations, and the impact such designations may have on their communities.⁴⁴

IV. CONCLUSION

The BLM's attempt to unlawfully circumvent Congress to rewrite FLPMA, expand its mandate, and restrict the American public's access and use of federal lands with the proposed *Conservation and Landscape Health* rule is the latest example of the Biden Administration's abuse of executive authority to promote President Biden's radical eco-agenda. Whether it is the ever-expanding war on domestic energy production, hostility to domestic mining, prohibition of gas stoves, draconian mandates on what cars Americans can drive, or restricting the public's access and use of federal lands, the Biden Administration will stop at nothing to inject President Biden's radical eco-agenda in every aspect of American life.

³⁹ *Id.*

⁴⁰ *Id.* at 27.

⁴¹ Vincent, *supra* note 34.

⁴² DEPARTMENT OF THE INTERIOR, *The Interior Budget in Brief, Bureau of Land Management from FY 2024* (Mar. 2023), <https://www.doi.gov/sites/doi.gov/files/fy2024-bib-blm-508.pdf.pdf>.

⁴³ Drew McConville et al., *16 National Monuments and Marine Sanctuaries Biden Should Create or Expand*, THE CENTER FOR AMERICAN PROGRESS (Nov. 22, 2022) <https://www.americanprogress.org/article/16-national-monuments-and-marine-sanctuaries-biden-should-create-or-expand/>.

⁴⁴ Brandon Messick, *Mohave County to vote on possible opposition to Grand Canyon monument*, THE MINER (Apr. 25, 2023), <https://kadminer.com/news/2023/apr/25/mohave-county-vote-possible-opposition-grand-canyo/>.