HNR Letter to OMB on Natural Capital AccountingStatement before the House Committee on Natural Resources
Subcommittee on Oversight and Investigations

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Chairman Gosar, Ranking Member Stansbury, and Members of the Subcommittee, thank you for inviting me to testify.

On Sept. 27, the New York Stock Exchange ("NYSE") submitted a proposal to the Securities and Exchange Commission to allow for the listing of a new type of company for public investment. The purpose of a Natural Asset Company ("NAC") is to manage land not for economic activity but to maximize "ecological services." The proposal posed a significant risk by creating a mechanism for public and private lands to be permanently removed from productive use to address a laundry list of ill-defined resource values, such as climate regulation, ornamental resources, and visual amenity resources.[1] Guised under the facade of free-market capitalism and bolstered by the support of one of its most esteemed institutions, the NYSE, NACs would lock up America's natural resources. While this would be bad for all Americans, local and state economies and tax bases in resource-rich western states like Utah with dominant federal land holdings would be hardest hit.

If a NAC proposal were allowed to go forward, an investment group would file to list a NAC on the NYSE. The NAC would raise money from investors globally, including from sovereign wealth funds, perhaps from China, Russia, and other nations. The NAC would then turn around and acquire the rights to manage the ecosystem services of land in the United States. The owner of the land or a land trust would enroll the "ecological performance rights" into the NAC, giving the NAC the management authority over those rights and therefore every activity that occurs on the land. The NAC could manage federal, state, and private land, including conservation leases on public lands and conservation easements on private lands. NACs could enroll conservation easements through a land trust without the landowners' consent.

Economically essential activities that NACs would consider unsustainable include energy production, grazing, logging, mining, hunting, and industrial agriculture (meaning the use of synthetic fertilizer and machinery). These activities would be prohibited on NAC-managed land. Recreating on public lands could also face significant curtailment. In states like Utah, where the federal government owns 67% of the land and is pushing for more conservation easements, placing lands under the control of private investors, including foreign actors, who may not have our best interest at heart, would be devastating.

The NYSE proposal had serious and far-reaching ramifications, yet it was initially only assigned a 21-day comment period and almost flew under the radar. I learned of it a day after the

[1] See p. 19-24 of IEG. "Ecological Performance Reporting Framework," available at https://www.sec.gov/files/rules/sro/nyse/2023/34-98665-ex3.pdf.

comment period closed. Due to significant outcry about the proposal, including from members of this subcommittee, state and local governments, and other public and private organizations from across the country, the SEC extended the decision twice and reopened public comments. The NYSE ultimately withdrew the proposal on January 17, the day before the comment period closed. This had the effect of excluding from the record many commenters who were on the verge of filing–another reason why continued congressional oversight is so important.

Although the proposal was withdrawn, efforts to leverage backdoor land-use regulation to address climate change and biodiversity issues continue. The Biden Administration's approach includes creating Natural Capital Accounts ("NCAs") and conservation leases on public lands, both of which are based on valuing "ecological services" or "ecological performance rights," the core concepts undergirding the NAC proposal. Unfortunately, this likely is not the last we will see of this proposal and others like it.

Valuing Natural Processes

Measuring ecological services simply means fixing a value to natural processes (e.g., clean air, water supply, flood protection, productive soils for agriculture, climate stability, and habitat for wildlife). NCAs attempt to identify and capture these values that would end up on public and even corporate balance sheets.[2] Importantly, this is not possible under U.S. accounting standards, as many ecological services do not generate traditional economic activity. For that reason, NCA-boosters contemplate an alternative accounting system based on United Nations standards of assigning an arbitrary value to natural processes. However, that system can't be squared with GAAP accounting.

Even organizations in support of the effort like Ernst & Young (EY) highlight some of the associated challenges in their comments on the NAC rule. As EY points out, accounting firms that audit the yearly financial statements and other disclosures required of publicly traded companies do not have the expertise to assess "biophysical measures for different types of ecosystems" without "rely[ing] heavily on external specialists."[3] This would allow the accounting firms to essentially outsource their audit of natural asset accounting on company books to unknown actors outside the financial statement audit process. Audits would presumably require the involvement of scientists who are not registered with the Public Company Accounting Oversight Board and are not experienced with GAAP. Consistent with the increasing government-sponsored censorship on scientific matters around issues like climate change and COVID, presumably these outside experts would have carte blanche to drive valuations as they see fit, while remaining above reproach and immune from challenge.

With that said, the goal was to create not just a new kind of company, but also a new asset class. A new company might attract millions or billions of investment dollars. A new asset class could attract trillions. The financial incentives are huge. The value of traditional economic assets is

[2] National Strategy to Develop Statistics for Environmental-Economic Decisions: A U.S. System of Natural Capital Accounting and Associated Environmental-Economic Statistics. (2023, January). Office of Science and Technology Policy, Office of Management and Budget & Department of Commerce. https://www.whitehouse.gov/wp-content/uploads/2023/01/Natural-Capital-Accounting-Strategy-final.pdf
[3] See EY comment to SEC on NAC proposal available at https://www.sec.gov/comments/sr-nyse-2023-09/srnyse202309-281019-686302.pdf.

estimated to be worth $1.5 quadrillion. The value of the assets that produce ecosystem services (like photosynthesis) is estimated at $5 quadrillion globally. Valuing ecosystem services is largely subjective, so this number is fairly meaningless other than to provide some insight into how proponents are thinking of them.

Accounts are supposed to be grounded in something materially solid. At the end of the day, NCAs are built on sand. University of Reading Professor Tom Oliver points out that referring to nature as capital implies it is equivalent to other forms of capital, while it is fundamentally different since some natural assets are not substitutable for other assets. He additionally highlights that while financial capital can be invested, spent to derive benefits, or even borrowed, the same is not true for natural capital. He stated, "Treatment of natural assets in identical ways to other capital would be catastrophic for the environment."[4]

Furthermore, certain natural assets should not be financialized. Public goods and common goods are and should belong to the community. Financialization leads to ownership, and assigning ownership to public goods like the air we breathe is a scary proposition that threatens to benefit the most wealthy at the expense of the average citizen. In short, financializing public goods opens the door to these becoming commodities that are bought and sold, traded and owned.

The organization that partnered with the NYSE in pursuing the ill-advised NAC proposal, the Intrinsic Exchange Group (IEG), proposed a natural capital framework that relies heavily on subjective valuations, like aesthetic value, in an attempt to attain an objective measure. This is futile and dishonest. Even measures that are objective, like the costs associated with flooding from not maintaining wetlands, are difficult to quantify in any sort of real value.

Because some aspects of natural capital are subjectively quantified and valued, NCA frameworks cater to ideological goals and would likely mislead investors and others interested in the valuation. This bias is most clearly seen in the fact that IEG's framework includes "option value," which it defines as benefits from nature that are "currently unknown."[5] This plainly suggests that natural assets are, if anything, systematically undercounted. IEG's framework doesn't consider the possibility that it systematically over-values undisturbed nature. This bias cannot be explained except through an ideological lens.

In addition, ecological performance rights are not recognized as legal property since they pertain to non-exclusive public goods. These rights are defined as the value derived from natural assets and ecosystem services within designated areas. Consequently, NACs would essentially be shell entities lacking tangible assets. Since ecological performance rights don't align with established property law categories, any licenses granted for them would be revocable and unenforceable. Even if entities attempted to secure rights through leases, the lack of enforceability would render such arrangements legally precarious and devoid of economic value.

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[4] Oliver, Tom. "Is the concept of 'Natural Capital' useful?" *Debating Naturals Value - The Concept of 'Natural Capital'* (2018) Ed (Victor Anderson) Palgrave Pivot, doi: 10.1007/978-3-319-99244-0, , available at https://research.reading.ac.uk/social-and-applied-ecology/wp-content/uploads/sites/148/2020/10/Is-the-concept-of-Natural-Capital-useful_Palgrave-Macmillan.pdf

[5] See page 10 of IEG. "Ecological Performance Reporting Framework," available at https://www.sec.gov/files/rules/sro/nyse/2023/34-98665-ex3.pdf.

Natural Accounting Framework Detrimental to Property Rights and Public Land Management

The natural accounting framework is detrimental to property rights and public land management. In the case of NACs, somebody other than the landowner could purchase and manage the land's ecological services. Relatedly, NCAs create the value of ecological services, and, as is noted, "what gets measured gets improved," implying management of those natural processes.[6] Whether through coercive regulation or outside private entities determining land usage, this management implies less local control and economically destructive outcomes.

In the case of public lands, the Bureau of Land Management ("BLM") has put forward a "Conservation Rule" that attempts to redefine the BLM's multiple-use mandate under the Federal Land Policy and Management Act of 1976 ("FLPMA") to include "conservation" as a use, bypassing Congress to effectively amend this statute in the process. To further "conservation" as a use, the BLM would then issue "conservation leases" to private actors to manage the lands for undefined conservation purposes.

The current administration's "America the Beautiful" 30x30 land preservation program far exceeds any efforts by prior administrations to conserve land. This initiative incentivizes and rewards the voluntary conservation efforts of fishers, rangers, farmers, and forest owners, as part of an effort to preserve 30 percent of America's lands and waters by 2030.[7] Further, with 30x30 in mind, researchers are exploring incorporating additional requirements to conservation easements to enhance the environmental benefits to the public, since the public is paying for the easements through tax breaks.[8]

This raises serious questions about how conservation easements, which have been in existence for decades, could be affected by the agenda. If ecological services are separate from land ownership and the government is introducing the valuation of natural processes, what happens with a conservation easement that never contemplated ecological services? The valuation of ecological services could potentially open the door for the federal government to determine how those services are managed and enforced on conservation easements, depending on how the contracts are written.

Under NACs, farmland would have needed to be farmed using poorly defined "regenerative agriculture" practices, and "perpetuating industrial agriculture" would be prohibited as an "unsustainable activity." In conservation easements funded in part by federal funds, the federal government retains the right to enforce the easement. That right kicks in if the government determines the land trust holding the easement is not appropriately enforcing it. At what point do ecological services enter as a right over other land uses like industrial agriculture and require a change in practice?

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[6]See page 3 of National Strategy to Develop Statistics for Environmental-Economic Decisions: A U.S. System of Natural Capital Accounting and Associated Environmental-Economic Statistics. (2023, January). Office of Science and Technology Policy, Office of Management and Budget & Department of Commerce. https://www.whitehouse.gov/wp-content/uploads/2023/01/Natural-Capital-Accounting-Strategy-final.pdf
[7] U.S. Department of Interior. America the Beautiful. Annual Reports. https://www.doi.gov/priorities/america-the-beautiful
[8] Utah State University. Making Private Lands Count for Conservation: Policy Improvements toward 30x30. (2022, March). https://www.thecgo.org/wp-content/uploads/2022/03/Private-Lands-30-x-30-1.pdf

For instance, a landowner might be allowed to continue farming but only use organic fertilizer and no fossil fuel-based machinery because the use of synthetic fertilizer, machinery, and even grazing may be considered as "perpetuating industrial agriculture." As stated in a comment letter to the SEC on the NAC proposal by Utah's Public Lands Policy Coordinating Office ("PLPCO"), "Generally speaking, agricultural production, especially livestock grazing, is often falsely viewed negatively when discussing climate change."[9] As climate change language increasingly appears in federal funding priorities, is there a risk that industrial agricultural activities will be challenged?

Potential Impact of Natural Capital Accounting

In Utah, agricultural employment represents one percent of all jobs statewide (compared to 1.3% nationwide) and generates nearly $2.1 billion in cash receipts annually.[10] Of this sum, the sale of cattle contributes $378 million.[11] These figures underscore the significant role agriculture, particularly livestock grazing, plays in Utah's economy.

According to PLPCO, responsible public land use for livestock grazing is crucial for Utah's agricultural economy, especially with urbanization encroaching on available agricultural space. Livestock grazing on federally administered lands is vital, constituting 73% of Utah's 45 million acres of grazing lands (with 9% state-owned and 18% privately owned). The federal government, particularly the BLM overseeing 67% of federal grazing land, significantly influences the success of livestock grazing in Utah. However, concerns arise as grazing has declined by over 66% on BLM lands and about 50 percent on Forest Service lands in Utah over the past century.[12]

The mixed-use approach to managing public lands in Utah and the care farmers and ranchers have for their land are far more effective than a proposal that involves prohibiting productive uses of the land by assigning an arbitrary value and placing the lands under the control of private investors, including foreign actors, who cannot possibly care about the land more than those presently managing it.

When the federal executive branch implements measures to limit the multiple uses of public lands, our local communities often feel the direct repercussions. For instance, over the past few decades, Utah communities have faced economic challenges due to administrative decisions aimed at scaling back mining, logging, and other natural resource-based industries. The decline of sawmills, mines, and processing facilities has resulted in diminished employment opportunities and investments in crucial infrastructure, both in Utah and neighboring states.[13]

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[9] Public Lands Policy Coordinating Office. (2023, October 25). Comment letter to the SEC opposing Natural Asset Companies. Pg. 7. https://www.sec.gov/comments/sr-nyse-2023-09/srnyse202309-281221-687202.pdf

[10] Headwaters Economics. 2019. Economic Profile System: Agriculture, available at: https://headwaterseconomics.org/apps/economic-profile system/49000

[11] 2017 Census of Agriculture. 2017. State Profile: Utah, available at: https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/Utah/cp99049.pdf

[12] See generally Hayden Ballard, Killing Kaibab Industries, Idaho Critical Legal Studies Journal, available at: https://www.uidaho.edu/-/media/UIdaho-Responsive/Files/law/critical-legal-studies/issues/volume-14/hayden-l-ballard-killing-kaibab-industries-13-the-crit-critical-stud-j-2020.pdf?la=en&hash=6343683CACC6F77FB76DDDC4D70AEBC3E621705E (2020).

[13] See generally Hayden Ballard, Killing Kaibab Industries, Idaho Critical Legal Studies Journal, available at: https://www.uidaho.edu/-/media/UIdaho-Responsive/Files/law/critical-legal-studies/issues/volume-14/hayden-l-ballard-killing-

Additionally, the lack of management in forests, exacerbated by the reduction in logging and active oversight, has heightened wildfire risks and associated costs, extending well beyond the immediate economic impacts and contributing significantly to the creation of economically disadvantaged rural communities in Utah.[14] When wildfires inevitably break out, climate change is often blamed. However, reduced logging and management neglect are major contributing factors.[15]

At least the executive branch operates within a system of political accountability. Delegations from western states can write letters to and make information requests of agencies, as well as call hearings and witnesses to bring sunlight and local perspectives to bear on the activity of public land managers. Short of acquiring an ownership stake in a company holding conservation leases, it's unclear what recourse local and state governments or congressional delegations would have to influence public land management once it's been delegated to private parties.

National Security Implications

The ability for foreign governments to invest in private NACs presents serious national security and natural resource risks. What better way for a foreign adversary to cripple the United States than by locking up our natural resources and food supply without a fight? This concern stems in part from recent events in Utah where foreign corporations, such as the Chinese-owned WH Group, have caused significant economic distress by acquiring and subsequently downsizing major hog farming operations. Despite terminating contracts with local hog farms and laying off a large portion of the workforce, WH Group intends to retain ownership of vast agricultural land and water rights and keep it out of production, preventing new farmers from entering the market and exacerbating economic challenges.[16] If foreign entities are permitted to invest in NACs, they could withhold productive agricultural resources, potentially leading to artificial food and resource shortages nationwide. Similar situations involving energy production could arise. This prospect is unacceptable.

Conclusion

Natural Asset Companies, Natural Capital Accounts, and conservation leases on public lands are deeply flawed ideas. By attempting to assign a financial value to ecological services and performance rights, we open the door to subjective interpretations and potential abuse.

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kaibab-industries-13-the-crit-critical-stud-j-2020.pdf?la=en&hash=6343683CACC6F77FB76DDDC4D70AEBC3E621705E (2020).

[14] See generally Hayden Ballard, Killing Kaibab Industries, Idaho Critical Legal Studies Journal, available at: https://www.uidaho.edu/-/media/UIdaho-Responsive/Files/law/critical-legal-studies/issues/volume-14/hayden-l-ballard-killing-kaibab-industries-13-the-crit-critical-stud-j-2020.pdf?la=en&hash=6343683CACC6F77FB76DDDC4D70AEBC3E621705E (2020).

[15]See generally The Senate and Congressional Western Caucuses. "Western Conservation Principles: An alternative proposal to conserve and restore America's landscapes," available at https://westerncaucus.house.gov/uploadedfiles/10.5.2021_western_conservation_principles_final.pdf. Also see generally Little Hoover Institute. "Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada," available at https://lhc.ca.gov/report/fire-mountain-rethinking-forest-management-sierra-nevada/.

[16] Amy Joi O'Donoghue, How the end of hog farming can kill a way of life in rural Utah, Deseret News, available at: https://www.deseret.com/2023/12/8/23992293/how-end-of-hog-farming-can-kill-a-way-of-life-in-rural-utah (2023). And Dave Sebastian, Chinese Owned Pork Producer Smithfield Prepares for U.S. Listing, The Wall Street Journal, available at: https://www.livemint.com/news/chineseowned-pork-producer-smithfield-prepares-for-u-s-listing-11697733802038.html (2023).

Furthermore, attempts to value non-exclusive public goods are incompatible with established accounting standards and property laws and threaten the rights of property owners. The proposed Conservation Rule by the BLM exacerbates these concerns by circumventing legislative processes and threatening the livelihoods of those who rely on multiple-use economic activities in rural areas, particularly in the western United States. It is crucial that we resist these backdoor attempts at land-use regulation. We must be cognizant of the notion that “what gets measured gets improved,” particularly if it comes at the cost of coercive regulation and diminished local input and economically destructive outcomes. The withdrawn NYSE proposal, the White House strategy on natural capital accounting, the BLM Conservation Rule, and related efforts are based on subjective valuation of non-exclusive public goods and should continue to be scrutinized and ultimately stopped.