



July 5, 2023

Submitted via <https://www.regulations.gov/>

U.S. Department of the Interior
Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attention: 1004-AE92

RE: Comments on the Bureau of Land Management’s Proposed Rule, “Conservation and Landscape Health,” 88 Fed. Reg. 19583 (Apr. 3, 2023)

Dear Director Stone Manning:

The Western Urban Water Coalition (WUWC)¹ appreciates this opportunity to provide comments on the Bureau of Land Management’s (BLM) proposed rule (Proposed Rule) to advance the BLM’s mission to manage the public lands by prioritizing the conservation, resiliency and landscape health of ecosystems across those lands. 88 Fed. Reg. 19583 (Apr. 3, 2023).

We are aware of various trade associations, members of Congress and other parties interested in the Proposed Rule requesting a substantial extension of the comment period, and understand that strong concerns have been expressed regarding the legality and potential effects of the Proposed Rule on BLM administered public land management, if finalized. We have prepared the below comments on the Proposed Rule within the limited time since the Proposed Rule was published, amongst a number of other Biden Administration proposed rulemakings and initiatives of interest to us. In addition to the comments below, WUWC supports a substantial (at least 60 days) extension of the comment period from the original deadline of June 20, 2023, in order to allow WUWC and all interested parties a more meaningful opportunity to further evaluate and comment upon the Proposed Rule. While we appreciate that BLM extended the original

¹ WUWC consists of the following members: Arizona (Central Arizona Project, City of Phoenix and Salt River Project); California (East Bay Municipal Utility District, Eastern Municipal Water District, the City of Los Angeles Department of Water and Power, The Metropolitan Water District of Southern California, San Diego County Water Authority, Santa Clara Valley Water District, and City and County of San Francisco Public Utilities Commission); Colorado (Aurora Water, Colorado Springs Utilities, and Denver Water); Nevada (Las Vegas Valley Water District, Southern Nevada Water Authority, and Truckee Meadows Water Authority); New Mexico (Albuquerque Bernalillo County Water Utility Authority); Utah (Salt Lake City Public Utilities and Washington County Water Conservancy District); and Washington (Seattle Public Utilities).

comment period by 15 days, the 15-day period included two federal holidays, which reduced the amount of available time for comment.

Western Urban Water Coalition

WUWC was established in 1992 to address the West's unique water supply and water quality challenges that threaten the environmental quality, economic sustainability and growth of the western population centers. WUWC consists of the largest urban water utilities in the West, which together serve more than 40 million urban water consumers in 20 major metropolitan areas across seven states. Some of these utilities also operate wastewater, natural gas, and electric, including hydroelectric, facilities.

WUWC members are public utilities dedicated to providing a reliable, high-quality urban water supply for present and future generations. As operators of urban water supply systems, WUWC members serve the health, environmental, and economic needs of their communities every day of the year. WUWC advocates for effective and practicable approaches to the implementation of environmental protection programs in a time when water sources are being diminished by climate change, drought and other factors and the development of sustainable supplies is vital. Their mission has proven more critical now than ever considering the essential role of clean water in combatting the spread of disease and maintaining public health, livelihoods, and sustenance during times of crisis, including the COVID pandemic.

Comments on Proposed Rule

WUWC members support BLM's prioritization of conservation, resiliency, and landscape health of ecosystems on public lands and have been longtime partners of BLM in wildfire mitigation and recovery, climate resiliency, watershed protection and restoration, and other vegetation management and "green" infrastructure initiatives and activities. At the same time, WUWC would like to express concern and emphasis that in pursuing conservation and landscape objectives pursuant to the Proposed Rule, BLM seeks input from WUWC members during the land use planning process and not impede WUWC members' ability to access, maintain, operate, and further develop water supplies and/or water storage and delivery infrastructure, or related electric utility infrastructure, on or adjacent to federal lands. Further, BLM should not impair WUWC members' ability to continue to work with BLM and others to create, restore, and promote climate-resilient "green" infrastructure. WUWC also encourages BLM to advance the Proposed Rule to support activities that reduce the risk of, or otherwise mitigate, wildfires on public lands, in particular, near utility infrastructure.

Designation of Areas of Critical Environmental Concern (ACECs)

The Proposed Rule would include changes to the land use planning regulations for considering and designating potential ACECs in the planning process. Because the designation of new or enlarged ACECs could impact potential development by utilities, BLM should ensure that local utilities have a seat at the table early in the planning process in order to provide an opportunity for input.

Protection of Existing Rights

The Proposed Rule would create a new conservation leasing program administered through the Federal Land Policy and Management Act. The background section of the Proposed Rule states that conservation leases “would not override valid existing rights or preclude other, subsequent authorizations so long as those subsequent authorizations are compatible with the conservation use.” Conservation leasing, along with other provisions in the Proposed Rule that restrict access to public lands, could negatively impact access to and across public lands and active infrastructure and conservation management of these lands.

WUWC members have existing rights to access roads and aqueducts, reservoir facilities, pipelines, powerlines, and other water supply infrastructure, as well as existing permits from BLM that establish property interests on public lands. Permits and rights of way for these types of infrastructure have been granted both before and after the Federal Land Management and Policy Act. Some have been granted in perpetuity while others are termed and include renewal requirements at regular intervals. In addition, new projects are being developed and are fully engaged in the NEPA process, while many others are planned.

BLM should ensure that the implementation of the Proposed Rule will not override, impair, or restrict these rights and the ability to renew these rights, property interests, or otherwise negatively impact management of watersheds and the ability to provide reliable, high-quality urban water supplies. BLM should consider adding, in the section of the Proposed Rule that outlines the process for issuing conservation leases, provisions that expressly state that the issuance of any conservation lease will have no impact on other parties’ existing rights or property interests, or activities by other parties that support watershed management or the maintenance and operation of utility infrastructure. In addition, BLM should also ensure that the Proposed Rule considers projects that are currently in the approval process as well as those already approved, and ensure that the ability to provide access to federal lands for multiple uses is sustained for future water utility needs.

For example, the Truckee Meadows Water Authority (TMWA) owns and maintains a pipeline on an existing BLM right of way. This pipeline can provide up to 8,000 acre feet annually to the TMWA service area, and significant capital was expended for its construction. Likewise, Aurora Water’s Spinney Reservoir, a 53,000 acre foot water supply reservoir that provides critical clean drinking water, has a 25-year termed right of way. The last time Aurora Water renewed this right of way, new rules changed the process such that the renewal process and timeline of the right of way was changed. Fortunately, BLM worked with Aurora Water to ensure that the issues were addressed on an administrative level and the right of way was able to be renewed. BLM should ensure that the Proposed Rule considers previous uses that may be termed or need to be renewed and does not impair those uses in any way.

BLM should ensure that the new conservation leasing program does not overly burden the project planning and permitting of critical infrastructure projects. Project planning requires knowledge of conservation areas when designating a right of way footprint or corridor. BLM’s authorization of conservation leases should provide project planners adequate notice of the nature and term of the leases, such that it doesn’t result in further delays and unpredictability in the permitting process. To that end, the planning and approval process for conservation leases

should include consultation with local cities, counties, and utilities so that any concerns can be addressed from the onset.

Support for Climate-Resilient “Green” Infrastructure

The Proposed Rule would identify conservation as a separate, designated land use and assign conservation the same value as other activities permitted on federal lands, such as fossil fuel development, recreation, or grazing.

WUWC members have long worked with BLM and others to restore and promote climate-resilient “green” infrastructure in watersheds that support WUWC members’ facilities and water supplies and have a significant interest in continuing to do so. BLM should ensure that the Proposed Rule will not impact the continuation of these activities by restricting federal resources and lands from such productive uses that would still be environmentally regulated and have conservation measures. Conservation need not be a separate designated use to provide appropriate emphasis upon conservation objectives and measures at the planning and project levels.

Flexibility to Engage in Conservation Activities

WUWC members need flexibility to engage in conservation activities. For example, WUWC members face uncertainties and overly bureaucratic processes in addressing overgrown, degraded and unhealthy public land as it impacts watershed management. BLM should ensure that the Proposed Rule will allow for flexibility to engage in conservation activities, such as constructing and maintaining fire breaks to address increasingly frequent and severe western wildfires that can threaten water supplies. Therefore, state and local governments should be eligible for holding conservation leases. Further, allowance for conservation measures and activities as part of authorized infrastructure and other projects, without the need for a conservation lease, should be maintained at the planning and project levels.

Reduced Risk and Mitigation of Wildfires

BLM states that this part of the Proposed Rule’s “overall purpose” is “to ensure healthy wildfire habitat, clean water, and ecosystem resilience so that our public lands can resist and recover from disturbances like drought and wildfire.” In addition to clean water and drought resilience, WUWC has a particular interest in wildfire prevention and recommends that BLM ensure that conservation uses permitted on public lands under the Proposed Rule encompass activities to reduce the risk of, or otherwise mitigate, wildfires. BLM also asks: “Should the rule clarify what activities conservation leases may allow?” WUWC recommends that conservation leases explicitly allow activities designed to reduce the risk of, or otherwise mitigate, wildfires on public lands, in particular, those lands near utility infrastructure, including power lines.

This rulemaking is an opportunity for BLM to meaningfully address our comments and those of others who support water projects on and adjacent to public lands. Our members are experienced, on-the-ground partners with BLM and the states in the implementation of watershed protection and restoration, and climate resiliency measures. Based on this experience, WUWC is prepared to assist BLM, other federal and state regulatory agencies, and members of Congress in addressing these important issues. WUWC looks forward to continued dialogue and

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collaboration as BLM completes its rulemaking process to promote ecosystem resilience on public lands. Again, WUWC expresses support for a substantial (at least 60 days) extension of the comment period from the original deadline of June 20, 2023 in order to allow us and all interested parties a more meaningful opportunity to further evaluate and comment upon the Proposed Rule.

Thank you for the opportunity to provide these comments. For more information, please contact me at (303) 739-7378 or mbrown@auroragov.org, or WUWC's national counsel, Ted Boling, at (202) 661-5872 or TedBoling@perkinscoie.com.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'MPB', with a stylized flourish extending to the right.

Marshall P. Brown
Chairman