



## Colorado Wild Public Lands

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June 20, 2023

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

VIA Federal eRulemaking Portal: <https://www.regulations.gov>

Dear Director and Staff,

RE: Comments on BLM's Proposed 43 CFR Parts 1600 and 6100

Colorado Wild Public Lands is a nonprofit organization based in Basalt, Colorado, that advocates for the public ownership and stewardship of public lands, and for keeping those lands open and accessible to the public. A focus of our work is monitoring land exchanges around Colorado. We welcome the opportunity to comment on the proposed BLM Conservation Rule and we support the overarching goals therein. Please see the following discussion for our specific comments regarding either our support; questions; concerns; or alternate suggestions. We have also included an annotated version of the text of the BLM's proposed rule with suggested edits, see Attachment A.

### I. CWPL SUPPORTS THE UNDERLYING INTENTIONS OF THE PROPOSED AMENDMENTS AND ADDITIONS TO 43 CFR

This organization agrees that many of the concepts put forward in this rulemaking have potential to significantly enhance the future management of lands under BLM jurisdiction; these concepts hopefully will reorient the agency's position from commodity management to emphasizing the BLM's role as stewards of the nation's public lands and natural

resources. In a recent article dated March 9, 2023: Stewardship drives the BLM’s Approach to Managing Vast Areas of Public Lands; Derrick Henry, Public Affairs Specialist<sup>1</sup>, wrote:

“Stewardship remains a key part of the BLM’s mission, one that reflects everyone’s shared love of our public lands.”

The proposed language of 43 CFR seems carefully crafted to underscore that FLPMA’s Multiple Use mandate can accommodate both the Agency’s historic commodity management and efforts to ensure that the ecological bounty of these lands continue to benefit future generations.

#### *A. Conservation on Equal Footing*

Despite the fact that the word “Conservation” is not included in FLMPA’s direction regarding public lands management, there is an understanding that the agency does have an important obligation to steward the natural values of lands in its jurisdiction. Section III (a) of the Supplementary Information preamble to the proposed rule changes does an excellent job of explaining this dichotomy, citing a litany of phrases used in FLPMA that describe the concept of conservation without ever using the word. Two examples in these citations include:

The term “multiple use” means, among other things, “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” and “the use of some land for less than all of the resources” (43 U.S.C. 1702(c)).<sup>2</sup>

CWPL supports adoption of language that explicitly verbalizes and therefore codifies the implication that Conservation is a co-equal member of the Multiple Use pantheon.

Sections of the proposed rule that CWPL commends and supports include<sup>3</sup>:

- The explicit definition of Conservation in 6101.4

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<sup>1</sup> <https://www.blm.gov/blog/2023-03-09/stewardship-drives-blms-approach-managing-vast-areas-public-land#:~:text=Vast%20areas%20of%20public%20land%20are%20entrusted%20to%20the%20Bureau,12%20western%20states%2C%20including%20Alaska>

<sup>2</sup> <https://www.regulations.gov/document/BLM-2023-0001-0001>

<sup>3</sup> Not enumerated in this list is language included in the text of section IV of <https://www.regulations.gov/document/BLM-2023-0001-0001> that refers to proposed language that does not appear in the text of Section 6100; “Section 6101.5(d) in the proposed rule would direct authorized officers to implement principles of ecosystem resilience by recognizing conservation as a land use within the multiple use framework ...” However, 6101.5(d) does not appear in the text of the proposed Section 6100; there are an (a), a (b) and a (c), but no (d). Hence, we will not list it here, as we cannot ascertain the actual language.

- The commitment to Ecosystem Resilience through the addition of Section 6100, and the multiple references throughout the larger proposal to the BLM championing management for ecosystems and their conservation, restoration and resilience.
- The commitment to preserving “intact landscapes” in future land acquisitions through language in 6102.2(c).
- The replacement of the word “value” in 1610.7-2 (c)(1) to “resources, values, systems, processes, or hazards”; the new language expands the underlying worth of public lands from the tangibly economic to include the ecological and spiritual benefits of natural resources.
- The explicit direction and expanded discretion in proposed section 1610.7-2 for the BLM to actively engage in identifying lands for designation as Areas of Critical Environmental Concern (ACEC)

#### *B. 43 CFR Section 6100 Ecosystem Resilience*

CWPL applauds the stated purpose of this section: “to promote the use of conservation to ensure ecosystem resilience” [43 CFR 6101.1].

“The proposed rule recognizes that the BLM has three primary ways to manage for resilient public lands: (1) protection of intact, native habitats; (2) restoration of degraded habitats; and (3) informed decisionmaking, primarily in plans, programs, and permits.” [<https://www.regulations.gov/document/BLM-2023-0001-0001>, Section III (B)]

These are the land manager’s Conservation toolbox and proposed Section 6100 does a good job of detailing how the agency will utilize these tools to put Conservation to work to benefit the public: (1) will be undertaken through the increased emphasis on ACECs. (2) may be accomplished through measures prescribed in Section 6100. And (3) will be supported by the proposed rules’ new emphasis on data collection, inventories, cataloguing and monitoring.

#### 1.) 43 CFR Section 1610.7-2 Designation of Areas of Critical Environmental Concern

We support both the raised importance of ACECs in the proposed rule through direction to actively engage in the identification of lands with unique and/or important characteristics and expanded discretion to extend protections to these resources through special designations. Perhaps this is the most important tool in this rulemaking proposal to ensure the future viability of intact ecosystems; if utilized proactively, the protections and special management directed through this language will elicit the attentions and actions necessary to protect these landscapes and resources for the use and enjoyment of future generations.

CWPL is also supportive of the rules’ intention to encourage more local control over the designation process. Imbuing the Field Managers rather than the State Director with this responsibility will benefit local landscapes through reliance on local managers’ and users’

knowledge and sense of place; presumably, this more local genesis will foster local support for the protected resources through:

“opportunities for public involvement that can foster relationships, build trust, and result in durable decisionmaking.” [<https://www.regulations.gov/document/BLM-2023-0001-0001>, Exec sum section D]

Specifically, CWPL supports language in:

- 1610.7-2(b) – requiring “authorized officers to identify, evaluate, and give priority to areas that have potential for designation and management as ACECs” during both “development *and revision* of Resource Management Plans”. [emphasis added]
- 1610.7-2(c) -designating this authority and discretion for more active engagement to field managers, not the state director.
- 1610.7-2(d)(2) striking “more than local significance” from the definition of importance; these expanded criteria will protect local treasures.
- 1610.7.2(i) directing the State Director to:
  - (1) Keep inventories and monitoring current.
  - (2) Prioritize the “acquisition of inholdings within ACECs and adjacent or connecting lands identified as holding related relevant and important resources, values, systems, processes, or hazards as the designated ACEC.”

CWPL would like to see an addition to Section 1610.7-2 so that specific criteria are developed that, if met, would require ACEC designation. This would give the Field Managers further tools and references for the designation process. Section 1610.7-2 prescribes measures for the identification of potential ACECs including sources for identification and public engagement requirements [1610.7-2(c)], criteria that must be met for designation [1610.7-2(d)], and practical considerations regarding potential designation [1610.7-2(e)]. However, nowhere does the language prescribe conditions or criteria under which an ACEC *must be designated*. CWPL suggests that if the purpose of this section’s overhaul is to ensure greater use of this authority, the re-write should also include clear direction about conditions under which designation must occur.

## 2.) Emphasis on Data Collection and Underlying Science to Guide Land Planning Decisions and Management Actions

This proposal’s emphasis on using all available sources of information to inform planning and decisionmaking is a significant inclusion. CWPL believes that facts speak for

themselves and that information and data should be co-equal to public opinion as drivers in the decisionmaking process and subsequent actions. The agency often lacks comprehensive data to support land management decisions and we consistently raise this problem in our comments. Hence, we see a lot of promise in this proposal and support the proposed language in:

- 1601.7-2 (c)(1) The Field Manager must analyze inventory data to determine whether there are areas containing resources, values, systems, processes, or hazards eligible for designation as ACECs.
- 1610.7.2 (i)(1) [The State Director shall:] Ensure that inventories used to obtain information and data on relevance and importance are kept current. Monitoring shall be performed and inventories shall be updated at intervals appropriate ... to ensure that data are available to identify trends and emerging issues during plan evaluations
- 6101.2(d) Incorporate inventory, assessment, and monitoring principles into decisionmaking and use this information to identify trends and implement adaptive management strategies;
- 6101.4 - The definitions of High-Quality Information and Monitoring
- 6102.2 (a) When revising a Resource Management Plan under part 1600 of this chapter, authorized officers must use available data, including watershed condition classifications, to identify intact landscapes on public lands that will be protected from activities that would permanently or significantly disrupt, impair, or degrade the structure or functionality of intact landscapes.

The proposal identifies an existing tool the Agency could use to support data collection, namely the adaptation of the Land Health Standards used for Grazing Management to the management of other activities on BLM lands. This could be a useful tool to support this goal, especially because it is a tool with which the Agency is already familiar.

There is another very important tool already in the toolbox, and that is the meaningful application of the Cumulative Impacts Analysis under NEPA. Were the agency to direct field offices to take this requirement seriously, this could be the most powerful tool to support this new mandate. Because it applies to so many actions the BLM considers (RMPs, regional and landscape permitting regimens, ACEC designations, travel and recreation planning), on local, regional and national scales, it could and should be used to manage data compilation systematically and consistently.

The Agency is constantly collecting data on both large and small scales through field studies and evaluations, research projects, daily field observations many other agency and public interactions with BLM lands. Data management of this information at the field offices would support landscape scale monitoring of conditions and trends. The data management could be used in Cumulative Impacts analysis on smaller projects undertaken through these field offices; these analyses would then support larger scale monitoring and could be used

to quantitatively support larger scale projects such as Resource Management Planning, ACEC designation and efforts such as this rulemaking proposal. But the proposed reliance on data and information only works if the data is collected and managed in a consistent, systematic and controlled manner; CWPL suggests that greater attention to NEPA prescribed Cumulative Impacts Analysis is a way to ensure this.

## II. CWPL DOES NOT SUPPORT ALL OF THE PROPOSED AMENDMENTS AND ADDITIONS

As discussed above, CWPL believes that overall, the Agency is on the right track with the proposed rule changes. However, the proposal includes elements that have potential to neutralize and even negate the significant public benefits the rule changes seek to generate.

### *A. The Agency Should Further Develop and Define the Conservation Leasing Idea*

To begin, the proposed rule and promotional messaging leave a lot of questions. Who would seek Conservation Leases? Would there be a fee to offset their administration and management? How would the leases be managed? How will the Agency staff handle the added administration responsibilities? Will conservation leasing be used as a tool to allow uses that create negative impacts on BLM land to occur, and to be mitigated through a conservation lease? Why is a ten-year lease term proposed? There may be shorter or longer periods that are appropriate.

The agency is putting a lot of emphasis on this concept to advance the Agency's stated desires to protect and manage intact landscapes that support ecosystem resilience and to restore degraded landscapes. These are functions are fundamental to the purpose of Conservation and entirely compatible with the Agency's responsibilities as managers and stewards of our public lands. However, CWPL is concerned that the Conservation Leasing concept as described here places too much emphasis on the Agency's role as commodity managers and not enough emphasis on its stewardship responsibilities. The very notion of a lease is in fact a property right, hence a commodity. The leases should not be used to offer a quid pro quo for allowing activities that are inappropriate for a given site (i.e., development on sensitive lands in exchange for a restoration project somewhere else), nor should they ever be allowed to exclude public access to lands subject to conservation leases. This proposed program is no substitute for the agency's responsibility to protect lands under its jurisdiction.

That said, with more emphasis on stewardship, we conceptually support conservation leases to be used proactively for restoration on lands identified through management planning as needing attention (e.g., for existing grazing lessees so that they manage their rangeland properly, or for recreational groups who want to look after their trails by doing additional native planting and noxious weed removal, or those who want to sponsor scientific studies). They might be helpful for organizations offsetting carbon impacts (e.g., airlines) to plant trees. Moreover, these leases should be issued subject to agency direction

and oversight, so that the Agency is not simply abdicating their stewardship responsibilities to outside parties.

CWPL is concerned that the current rule lacks specific criteria to direct the identification of lands suitable for this program. The biggest concern is that reliance on Conservation Leases will occur reactively in order to facilitate and expedite development or extraction activities on BLM lands (or other land, or by extension through FLPMA on USFS lands as well) *by allowing offsite mitigation* of the impacts of these activities.

“Conservation leasing is also an important tool for compensatory mitigation, which compensates the public for the impacts of development on public land through investments in restoration and other mitigation measures.”

[<https://www.blm.gov/sites/default/files/docs/2023-04/Public%20Lands%20Rule%20Fact%20Sheet.pdf>]

We do not think Conservation Leases should be a tool to allow development and extraction on lands where it is not appropriate (i.e., in lands identified for or under ACEC designation)<sup>4</sup>. Nor should the Agency rely on these leases to avoid on-site mitigation, restoration and reclamation. No net loss of lands in good condition should be a requirement under this rule proposal. The proposed BLM approach seems to be contrary in that it allows development on the “good” lands in a backsliding exchange for making bad ones “less bad”. Finally, the leases should never be used to dis-allow public access or public enjoyment of the lands under lease.

### *B. Removal of ACEC Designation*

CWPL is concerned about the vague language in section 1601.7-2(j), allowing the removal of ACEC designation solely at the discretion of the State Director. We concede that given the hope that this proposed rule will result in increased acreage under ACEC protections, there should be a mechanism that would under very limited and specific circumstances allow for relaxation of stringent protections. The Agency is promoting this rulemaking as a pivotal exercise for its future management strategies; yet this unbridled discretion has the potential to undermine one of the key elements of the proposal. CWPL suggests the Agency expand the language here to limit this discretion through including specific land health and procedural criteria that would support the relaxation of protections for ACEC designated lands; procedural prescriptions should include the local control this rulemaking proposal includes for ACEC designation in Section 1610.7-2(c) and include public engagement as well.

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<sup>4</sup> The examples included in the FAQ “Conservation Leasing in Proposed Public Lands Rule” seem to illustrate precisely these concerns. One of these examples describes how a Solar Farm could be allowed in Lands with Wilderness Characteristics with a conservation lease for off-site to mitigation. Because there is no way to mitigate on site for the permanent impairment of the LWCs, the site is not appropriate for development and permitting the activity would undermine the overarching goals of this proposed rule.

*C. Agency Resources*

There is a lot of excitement in the Conservation world about this rulemaking and the direction that adoption and earnest implementation of the proposed rules could take the BLM. However, the Agency is already struggling to manage existing responsibilities under limited funding and resulting stresses on human resources. In light of these challenges, CWPL asks how the BLM proposes to fund, staff and implement the increased workload that the direction through the proposed rules will necessitate?

If adopted extensively, the Conservation Leasing program will require both administration and oversight, as it will essentially become another widely used Special Use Permit to process and monitor. And the extensive data and information collection efforts prescribed in the proposal will require specialized human resources at the field office, state and federal levels, perhaps even demanding a new department within the agency.

Without proper agency resources devoted to implementation of these proposed programs, it is possible that the only element of this proposal that is practically implemented will be the Conservation Leasing program. If that is the case, then the lion's share of the language in this proposal becomes only lip service to the meaningful conservation elements therein. CWPL can only support this proposal if all aspects of the proposed Conservation management approach are included together.

There is a lot in here to generate enthusiasm, but we encourage the agency to be circumspect about what it really hopes to and can accomplish through this effort to ensure that it works collaboratively to elicit meaningful improvement over the status quo.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Anne Rickenbaugh". The signature is fluid and cursive, with a large initial "A" and "R".

Anne Rickenbaugh,

Board of Directors, Colorado Wild Public Lands

Attachments:

Attachment A: Proposed Rule – CWPL Proposed Changes



## ATTACHMENT A: Proposed Rule – CWPL Proposed Changes

Please see the sections with yellow highlights for proposed additions or deletions.

### 3. Add part 6100 to read as follows:

#### § 6101.4

##### Definitions.

##### As used in this part, the term:

*Best management practices* means state-of-the-art, efficient, appropriate, and practicable measures for avoiding, minimizing, rectifying, reducing, compensating for, or eliminating impacts over time.

*Casual use* means any short-term, noncommercial activity that does not cause appreciable damage or disturbance to the public lands or their resources or improvements and that is not prohibited by closure of the lands to such activities.

*Conservation* means maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions.

*Disturbance* means a discrete event in time that affects the structure and function of an ecosystem. Disturbances may be viewed as “characteristic” when ecosystems and species have evolved to accommodate the disturbance attributes or “uncharacteristic” when the attributes are outside an established range of variation.

*Effects* means the direct, indirect, and cumulative impacts from a public land use; effects and impacts as used in this rule are synonymous.

*High-quality information* means information that promotes reasoned, fact-based agency decisions. Information relied upon or disseminated by BLM must meet the standards for objectivity, utility, integrity, and quality set forth in applicable federal law and policy. Indigenous knowledge may qualify as high-quality information when that knowledge is authoritative, consensually obtained, and meets the standards for high-quality information.

##### *Important, Scarce, or Sensitive resources:*

(1) *Important resources* means resources that the BLM has determined to warrant special consideration, consistent with applicable law.

(2) *Scarce resources* means resources that are not plentiful or abundant and may include resources that are experiencing a downward trend in condition.

(3) *Sensitive resources* means resources that are delicate and vulnerable to adverse change, such as resources that lack resilience to changing circumstances.

*Indigenous Knowledge (IK)* means a body of observations, oral and written knowledge, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. IK is applied to phenomena across biological, physical, social, cultural, and spiritual systems. IK can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. IK is developed by Indigenous Peoples including, but not limited to, Tribal Nations, American Indians, Alaska Natives, and Native Hawaiians.

*Intact landscape* means an unfragmented ecosystem that is free of local conditions that could permanently or significantly disrupt, impair, or degrade the landscape's structure or ecosystem resilience, and that is large enough to maintain native biological diversity, including viable

populations of wide-ranging species. Intact landscapes have high conservation value, provide critical ecosystem functions, and support ecosystem resilience.

*Land enhancement* means any infrastructure or other use related to the public lands that is designed to improve production of forage; improve vegetative composition; direct patterns of use to improve ecological condition; provide water; stabilize soil and water conditions; promote effective wild horse and burro management; or restore, protect, and improve the condition of land health or fish and wildlife habitat. The term includes, but is not limited to, structures, treatment projects, and the use of mechanical devices or landscape modifications achieved through mechanical means.

*Landscape* means a network of contiguous or adjacent ecosystems characterized by a set of common management concerns or conditions. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context. Areas described in terms of aquatic conditions, such as watersheds or ecoregions, may also be “landscapes.”

*Mitigation* means:

- (1) Avoiding the impacts of a proposed action by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (3) Rectifying the impact of the action by repairing, rehabilitating, or restoring the affected environment;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- (5) Compensating for the impact of the action by replacing or providing substitute resources or environments. In practice, the mitigation sequence is often summarized as avoid, minimize, and compensate. The BLM generally applies mitigation hierarchically: first avoid, then minimize, and then compensate for any residual impacts from proposed actions.

*Mitigation strategies* means documents that identify, evaluate, and communicate potential mitigation needs and mitigation measures in a geographic area, at relevant scales, in advance of anticipated public land uses.

*Monitoring* means the periodic observation and orderly collection of data to evaluate:

- (1) Existing conditions;
- (2) The effects of management actions; or
- (3) The effectiveness of actions taken to meet management objectives.

*Permittee* means any person that has a valid permit, right-of-way grant, lease, or other land use authorization from the BLM.

*Protection* is the act or process of conservation by preserving the existence of resources while keeping resources safe from degradation, damage, or destruction.

*Public lands* means any lands or interests in lands owned by the United States and administered by the Secretary of the Interior through the BLM without regard to how the United States acquired ownership.

*Reclamation* means, when used in relation to individual project goals and objectives, practices intended to achieve an outcome that reflects the final goal to restore the character and productivity of the land and water. Components of reclamation include, as applicable:

- (1) Isolating, controlling, or removing of toxic or deleterious substances;

- (2) Regrading and reshaping to conform with adjacent landforms, facilitate revegetation, control drainage, and minimize erosion;
- (3) Rehabilitating fisheries or wildlife habitat;
- (4) Placing growth medium and establishing self-sustaining revegetation;
- (5) Removing or stabilizing buildings, structures, or other support facilities;
- (6) Plugging drill holes and closing underground workings; and
- (7) Providing for post-activity monitoring, maintenance, or treatment.

*Resilient ecosystems* means ecosystems that have the capacity to maintain and regain their fundamental structure, processes, and function when altered by environmental stressors such as drought, wildfire, nonnative invasive species, insects, and other disturbances.

**Restoration** means the process or act of conservation by assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. **The definition should be more specific and include examples of prescribed actions such as removing noxious weeds, managing new forests, fire restoration, rehabilitating river banks, wetlands and riparian systems, and direction to manage toward an indigenous level of biodiversity.**

*Sustained yield* means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of BLM-managed lands without permanent impairment of the productivity of the land. Preventing permanent impairment means that renewable resources are not depleted, and that desired future conditions are met for future generations. Ecosystem resilience is essential to BLM's ability to manage for sustained yield.

*Unnecessary or Undue degradation* means harm to land resources or values that is not needed to accomplish a use's goals or is excessive or disproportionate.

#### § 6101.5

Principles for ecosystem resilience.

Except where otherwise provided by law, public lands must be managed under the principles of multiple use and sustained yield.

(a) To ensure multiple use and sustained yield, the BLM's management must conserve the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; preserve and protect certain public lands in their natural condition (including ecological and environmental values); maintain the productivity of renewable natural resources in perpetuity; and consider the long-term needs of future generations, without permanent impairment of the productivity of the land. **The BLM must consider, and plan for mitigation of, longer term impacts of drought, wildfire and other climate change conditions.**

(b) The BLM must conserve renewable natural resources at a level that maintains or improves future resource availability and ecosystem resilience.

(c) Authorized officers must implement the foregoing principles through:

(1) Conservation as a land use within the multiple use framework, including in decisionmaking, authorization, and planning processes;

(2) Protection and maintenance of the fundamentals of land health and ecosystem resilience;

(3) Restoration and protection of public lands to support ecosystem resilience;

(4) Use of the full mitigation hierarchy to address impacts to species, habitats, and ecosystems from land use authorizations; and

(5) Prevention of unnecessary or undue degradation **and prevention of any degradation leading to significant negative impacts to the resources described in (a) above as that will REDUCE sustained yield.**

## Subpart 6102 Conservation Use to Achieve Ecosystem Resilience

### § 6102.1

Protection of intact landscapes.

(a) The BLM must manage certain landscapes to protect their intactness. This requires:

(1) Maintaining intact ecosystems through conservation **actions such as designating ACECs and not permitting activities that would degrade the integrity of those ecosystems.**

(2) **Managing lands strategically for compatible uses, prohibiting incompatible uses on intact landscapes or causing fragmentation to occur that will permanently impair ecosystem resilience on public lands.**

(3) Maintaining or restoring resilient ecosystems through habitat and ecosystem restoration projects that are implemented over broader spatial and longer temporal scales.

(4) Coordinating and implementing actions across BLM programs, offices, and partners to protect intact landscapes.

(5) Pursuing management actions that maintain or mimic characteristic disturbance.

(b) Authorized officers will seek to prioritize actions that conserve and protect intact landscapes in accordance with § 6101.2.

### § 6102.2

Management to protect intact landscapes.

(a) When revising a Resource Management Plan under part 1600 of this chapter, authorized officers must use available data, including watershed condition classifications, to identify intact landscapes on public lands that will be protected from activities that would permanently or significantly disrupt, impair, or degrade the structure or functionality of intact landscapes. **Existing information must be evaluated to determine whether additional scientific study is needed, for example noxious weed counts or inventory of sensitive plant species. The additional studies should be completed as part of the planning process and continued as part of the management strategy.**

(b) During the planning process, authorized officers must determine which, if any, tracts of public land will be put to conservation use. In making such determinations, authorized officers must consider whether:

(1) The BLM can establish partnerships to work across Federal and non-Federal lands to protect intact landscapes;

(2) Multiple lines of evidence indicate that active management will improve the resilience of the landscape through reducing the likelihood of uncharacteristic disturbance;

**(3) The BLM must work with communities to identify geographic areas important for their strategic growth and development and to identify known intact and sensitive landscapes, in order to allow for better identification of the most suitable areas to protect intact landscapes;**

**(4) The BLM should identify opportunities for co-stewardship with Tribes and develop mutually agreed upon conservation management plans;**

(5) Conservation leases (see § 6102.4) can be issued to manage and monitor areas within intact landscapes with high conservation value and complex, long-term management needs; and

(6) Standardized quantitative monitoring and best available information is used to track the success of ecological protection activities (see § 6103.3).

(c) When determining whether to acquire lands or interests in lands through purchase, donation, or exchange, authorized officers must prioritize the acquisition of lands or interests in lands that would further protect and connect intact landscapes and functioning ecosystems.

(d) Authorized officers must collect and track disturbance data that indicate the cumulative disturbance and direct loss of ecosystems at a watershed scale resulting from BLM-authorized activities. This information must be included in a national tracking **system and should include identified areas that have been exchanged from BLM to private ownership through land exchanges [for example, exchange acreages that included Harrington's Penstemon habitat].** The BLM must use the national tracking system to strategically minimize surface disturbance, including identifying areas appropriate for conservation and other uses in the context of threats identified in watershed condition assessments, to analyze landscape intactness and fragmentation of ecosystems, and to inform conservation actions.

### § 6102.3

#### Restoration.

(a) The BLM must emphasize restoration across the public lands to enable achievement of its multiple use and sustained yield mandate.

(b) In determining the restoration actions required to achieve recovery of ecosystems and promote resilience, the BLM must consider the degree of ecosystem degradation and develop restoration goals and objectives designed to achieve ecosystem resilience and land health standards (see § 6103.1–1).

(c) The BLM should employ active management to promote restoration. Over the long-term, restoration actions must be durable, self-sustaining, and expected to persist based on the resource objective.

### § 6102.3–1

#### Restoration prioritization.

(a) Not less than every five years, authorized officers must identify priority landscapes for restoration. In doing so, authorized officers must consider:

(1) Results from land health assessments, watershed condition classifications and other best available information (see subpart 6103 of this part);

(2) The likelihood of success of restoration activities to achieve resource or conservation objectives;

(3) The possibility of implementing a series of coordinated restoration actions benefiting multiple resources at scales commensurate to the cause of the degradation in areas where the BLM manages sufficient lands or partnerships exist to work across jurisdictions;

(4) Where restoration actions will have the greatest social, economic, and environmental justice impacts for local communities; and

(5) Where restoration can concurrently or proactively prevent unnecessary or undue degradation, such as ecosystem conversion, fragmentation, habitat loss, or other negative outcomes that permanently impair ecosystem resilience.

### § 6102.3–2

#### Restoration planning.

**The overall goal should be for each BLM District to have a map that identifies specific areas suitable for restoration or conservation measures.**

(a) Authorized officers must include a restoration plan in any Resource Management Plan adopted or revised in accordance with part 1600 of this chapter. Each restoration plan must include goals, objectives, and management actions that require:

- (1) Measurable progress toward attainment of land health standards;
- (2) Clear outcomes and monitoring to describe progress and enable adaptive management (see subpart 6103).
- (3) Coordination and implementation of actions across BLM programs and with partners to develop landscape restoration objectives.
- (4) Attainment of statewide and regional needs as identified in the assessment of priority landscapes for restoration and consistent with Resource Management Plan goals.
- (5) Restoration of landscapes that land health assessments, watershed condition classifications and other best available information suggest should be prioritized for restoration.

(b) Authorized officers must design and implement restoration actions to achieve the goals and objectives adopted under paragraph (a) of this section. In doing so, authorized officers must:

- (1) Ensure that actions are designed, implemented, and monitored at appropriate spatial and temporal scales using suitable treatments and tools to achieve desired outcomes.
- (2) Ensure that restoration management actions address causes of degradation, focus on ecological process-based solutions, and where possible maintain attributes and resource values associated with the potential or capability of the ecosystem.
- (3) Coordinate and implement actions across BLM programs and with partners to develop holistic restoration actions.
- (4) Issue conservation leases under § 6102.4 for the purpose of restoring, managing, and monitoring areas within priority landscapes.
- (5) Ensure incorporation of locally appropriate best management practices that address the following:

(i) A five-year schedule that describes activities prior to planning (such as pretreatments and native-plant materials procurement), implementation actions (including operation, maintenance, and repair), monitoring (see § 6103.2), and reporting;

(ii) Potential remedial and contingency measures that account for drought and changed circumstances that could delay implementation; and

(iii) Opportunities for compensatory mitigation for important, scarce, or sensitive resources or resources protected by law.

(c) Authorized officers must annually track restoration-project progress toward achieving goals, projects that have achieved project goals, and projects completed without meeting project goals. When assessment and monitoring efforts reveal that restoration outcomes have not been met, authorized officers must assess and track why restoration outcomes are not being achieved and what, if any, additional resources or changes to management are needed to achieve restoration goals.

(d) Authorized officers may authorize a restoration project or approve compensatory mitigation as part of a broader land use authorization only if the proposed restoration project or compensatory mitigation will be consistent with the land health standards, restoration goals and objectives, best management practices and Resource Management Plan restoration plans described in paragraph (a) of this section.

## § 6102.4

### Conservation leasing.

(a) The BLM may authorize conservation use on the public lands by issuing conservation leases on such terms and conditions as the authorized officer determines are appropriate for the purpose of ensuring ecosystem resilience through protecting, managing, or restoring natural environments, cultural or historic resources, and ecological communities, including species and their habitats.

(1) Conservation leases on the public lands may be authorized for the following activities:

(i) Conservation use that involves restoration or land enhancement; and

(ii) Conservation use that involves mitigation. **This use of conservation leases should BE MINIMIZED. There need to be very clear rules for when conservation leases can be used for mitigation. Conservation leases should NOT be used to facilitate activities on BLM land that create negative impacts to land resources.**

(2) Authorized officers may issue conservation leases to any qualified individual, business, non-governmental organization, or Tribal government.

(3) Conservation leases shall be issued for a term consistent with the time required to achieve their objective.

(i) A conservation lease issued for purposes of restoration or protection may be issued for a maximum term of 10 years and shall be reviewed mid-term for consistency with the lease provisions.

(ii) A conservation lease issued for purposes of mitigation shall be issued for a term commensurate with the impact it is mitigating and reviewed every 5 years for consistency with the lease provisions.

(iii) Authorized officers shall extend or further extend a conservation lease if necessary to serve the purpose for which the lease was first issued. Such extension or further extension can be for a period no longer than the original term of the lease.

(4) Subject to valid existing rights and applicable law, once the BLM has issued a conservation lease, the BLM shall not authorize any other uses of the leased lands that are inconsistent with the authorized conservation use. **There should be a converse provision discouraging the issuance of leases if inconsistent activities are on-going and of local importance.**

(5) No land use authorization is required under the regulations in this part for casual use of the public lands covered by a conservation lease. **It is unclear what this means. Please explain further so that we can comment.**

(b) The process for issuing a conservation lease is as follows:

(1) An application for a conservation lease must be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application. The filing of an application gives the applicant no right to use the public lands.

(2) If the lease application is approved, the authorized officer will issue an approved conservation lease on a form approved by the Office of the Director, Bureau of Land Management.

(c) An application for a conservation lease must include:

(1) A description of the proposed conservation use in sufficient detail to enable authorized officers to evaluate the feasibility of the proposed conservation use; the impacts, if any, on the environment; the public or other benefits from the conservation use; the approximate cost of the proposed conservation use; any threat to public health and safety posed by the proposed use; and how, in the opinion of the applicant, the proposed use conforms to the Bureau of Land Management's plans, programs, and policies for the public lands covered by the proposed use. The description shall include but not be limited to:

**(New Number) Name and goals of the conservation project, and a) which resources are being restored and b) how does this help with sustainability in relation to specific conditions like drought or wildfire.**

(i) Details of the proposed uses and activities;

(ii) A description of all facilities for which authorization is sought, including access needs and special types of leases that may be needed; **identify if this is mitigation for the impacts of another project or only a restoration project. If it is mitigation, include further details in a following section.**

**(iii) A map of sufficient scale to allow the required information to be legible as well as a legal description of primary and alternative project locations. The map should show the existing conditions and resources to be enhanced, e.g., wetlands, creeks, existing manmade improvements, contours at min, 40' intervals, and vegetation. Include size of the proposed easement area.**

**A vicinity map that shows the location of the proposed conservation area in relation to an area that extends to the nearest highways or towns on all sides**

(iv) A schedule for restoration or land enhancement activities if applicable; and

(v) The following additional information, upon request of authorized officers:

(A) Additional studies or environmental data, if such studies or data are necessary for the BLM to decide whether to issue, issue with modification, or deny the proposed conservation lease.

(B) Documentation of or proof of application for additional private, State, local or other Federal agency licenses, permits, easements, certificates, or other approvals.

(C) Evidence that the applicant has, or prior to commencement of conservation activities will have, the technical and financial capability to operate, maintain, and terminate the authorized conservation use.

(2) The application shall include the name and legal mailing address of the applicant, as well as a statement of the applicant's interest in the resource or purpose of the lease.

(3) If the applicant is other than an individual, the application shall include the name and address of an agent authorized to receive notice of actions **or respond to questions from the agency or the public pertaining to the application. The names and addresses of the individual owners of the organization shall also be included.**

(4) If any of the information required in this section has already been submitted as part of a separate conservation use proposal, the application need only refer to that proposal by filing date, office, and case number. The applicant shall certify that there have been no changes in any of the information.

**(5) Budget for project and funding source/s.**

(d) Approval of the application is not guaranteed and is solely at the discretion of the authorized officer.

(e) A conservation lease may only be assigned or transferred with the written approval of the authorized officer, and no assignment or transfer shall be effective until the BLM has approved it in writing. Authorized officers may authorize assignment or transfer of a conservation lease in their



discretion if no additional rights will be conveyed beyond those granted by the original authorization, the proposed assignee or transferee is qualified to hold the lease, and the assignment or transfer is in the public interest.

(f) Administrative cost recovery, rents and fees for conservation leases will be governed by the provisions of §§ 2920.6 and 2920.8.

#### § 6102.4-1

Termination and suspension of conservation leases.

(a) If a conservation lease provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon event, the conservation lease shall automatically terminate by operation of law upon the occurrence of such event.

(b) A conservation lease may be terminated by mutual written agreement between the authorized officer and the lessee to terminate the lease.

(c) Authorized officers have discretion to suspend or terminate conservation leases under the following circumstances:

(1) Improper issuance of the lease;

(2) Noncompliance by the holder with applicable law, regulations, or terms and conditions of the conservation lease;

(3) Failure of the holder to use the conservation lease for the purpose for which it was authorized; or

(4) Impossibility of fulfilling the purposes of the lease.

(d) Upon determination that the holder has failed to comply with any terms or conditions of a conservation lease and that such noncompliance adversely affects or poses a threat to land or public health or safety or impacts to ecosystem resilience, authorized officers shall issue an immediate temporary suspension.

(1) Authorized officers may issue an immediate temporary suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, authorized officers shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent. Authorized officers may also take such action considered necessary to address the adverse effects or threat to land or public health or safety or impacts to ecosystem resilience.

(2) Authorized officers may order immediate temporary suspension of an activity regardless of any action that has been or is being taken by another Federal or State agency.

(3) Any time after an order of temporary suspension has been issued, the holder may file with authorized officers a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request. Authorized officers may grant the request upon determination that the adverse effects or threat to land or public health or safety or impacts to ecosystem resilience are resolved.

(4) Authorized officers may render an order either to grant or to deny the request to resume within 5 working days of the date the request is filed. If authorized officers do not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal as if an order denying the request had been issued.

(e) Process for termination or suspension other than temporary immediate suspension.

(1) Prior to commencing any proceeding to suspend or terminate a conservation lease, authorized officers shall give written notice to the holder of the legal grounds for such action and shall give the

holder a reasonable time to address the legal basis the authorized officer identifies for suspension or termination.

(2) After due notice of termination or suspension to the holder of a conservation lease, if grounds for suspension or termination still exist after a reasonable time, authorized officers shall give written notice to the holder and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to part 4 of this chapter. The authorized officers shall suspend or revoke the conservation lease if the Administrative Law Judge determines that grounds for suspension or revocation exist and that such action is justified.

(3) Authorized officers shall terminate a suspension order when authorized officers determine that the grounds for such suspension no longer exist.

(4) Upon termination of a conservation lease, the holder shall, for 60 days after the notice of termination, retain authorization to use the associated public lands solely for the purposes of reclaiming the site to its use conditions consistent with achieving land health fundamentals, unless otherwise agreed upon in writing or in the conservation lease terms. If the holder fails to reclaim the site consistent with the requirements of these regulations and the conservation lease terms within a reasonable period, all authorization to use the associated public lands will terminate, but that shall not relieve the holder of liability for the cost of reclaiming the site.

#### § 6102.4-2

Bonding for conservation leases.

(a) *Bonding obligations.* (1) Prior to the commencement of surface-disturbing activities, the conservation lease holder shall submit a surety or a personal bond conditioned upon compliance with all the terms and conditions of the lease covered by the bond, as described in this subpart. The bond amounts shall be sufficient to ensure reclamation of the conservation lease area(s) and the restoration of any lands or surface waters adversely affected by conservation lease operations. Such restoration may be required after the abandonment or cessation of operations by the conservation lease holder in accordance with, but not limited to, the standards and requirements set forth by authorized officers.

(2) Surety bonds shall be issued by qualified surety companies certified by the Department of the Treasury.

(3) Personal bonds shall be accompanied by:

(i) Cashier's check;

(ii) Certified check; or

(iii) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a conservation use authorization.

(b) *State-wide bonds.* In lieu of bonds for each individual conservation lease, holders may furnish a bond covering all conservation leases and operations in any one State. Such a bond must be at least \$25,000 and must be sufficient to ensure reclamation of all of the holder's conservation lease area(s) and the restoration of any lands or surface waters adversely affected by conservation lease operations in the State.

(c) *Filing.* All bonds shall be filed in the proper BLM office on a current form approved by the Office of the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. Bonds shall be filed in the Bureau State office having jurisdiction of the conservation use easement covered by the bond.

(d) *Default.* (1) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a conservation lease, the face amount of the surety bond or personal bonds and the surety's liability thereunder shall be reduced by the amount of such payment.

(2) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by authorized officers. In lieu thereof, the principal may file separate or substitute bonds for each conservation use covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger amount as determined by authorized officers. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from authorized officers.

(3) Failure to comply with these requirements may:

(i) Subject all leases covered by such bond(s) to termination under the provisions of this title;

(ii) Prevent the bond obligor or principal from acquiring any additional conservation lease or interest therein under this subpart; and

(iii) Result in the bond obligor or principal being referred to the Suspension and Debarment Program under 2 CFR part 1400 to determine if the entity will be suspended or debarred from doing business with the Federal Government.

#### § 6102.5

Management actions for ecosystem resilience.

(a) Authorized officers must:

(1) Identify priority watersheds, landscapes, and ecosystems that require protection and restoration efforts; **also identify lands that are suitable for use for forestation or tree planting for offsetting carbon impacts. These must be listed with their name, location, size, and legal description, and shown on LEGIBLE and UNDERSTANDABLE maps. Conservation leases should be primarily be located on these previously identified land parcels unless the applicant presents a compelling case backed with scientific study.**

(2) Develop and implement strategies, including **not allowing activities that produce negative impacts, buffer zones,** mitigation strategies, and approaches that effectively manage public lands to protect **EXISTING** resilient ecosystems;

(3) Develop and implement monitoring and adaptive management strategies for maintaining sustained yield of renewable resources, accounting for changing landscapes, fragmentation, invasive species, and other environmental disturbances (see § 6103.2);

(4) Report annually on the results of land health assessments, including in the land health section of the *Public Land Statistics*;

(5) Ensure consistency in watershed condition classifications both among neighboring BLM state offices and with the fundamentals of land health; and

(6) Store watershed condition classification data in a national database to determine changes in watershed condition and record measures of success based on conservation and restoration goals.

(b) In taking management actions, and as consistent with applicable law, authorized officers must:

(1) Consistent with the management of the area, avoid authorizing uses of the public lands that permanently impair ecosystem resilience;

- (2) Promote opportunities to support conservation and other actions that work towards achieving sustained yield;
- (3) Issue decisions that promote the ability of ecosystems to recover or the BLM's ability to restore function;
- (4) Meaningfully consult with Indian Tribes and Alaska Native Corporations during the decisionmaking process on actions that may have a substantial direct effect on the Tribe or Corporation;
- (5) Allow State, Tribal, and local agencies to serve as joint lead agencies consistent with 40 CFR 1501.7(b) or as cooperating agencies consistent with 40 CFR 1501.8(a) in the development of environmental impact statements or environmental assessments;
- (6) Respect include Indigenous Knowledge, including by:
  - (i) Encouraging Tribes to suggest ways in which Indigenous Knowledge can be used to inform the development of alternatives, analysis of effects, and when necessary, identification of mitigation measures; and
  - (ii) Communicating to Tribes in a timely manner and in an appropriate format how their Indigenous Knowledge was included in decisionmaking, including addressing management of sensitive information;
- (7) Develop and implement mitigation strategies that identify compensatory mitigation opportunities and encourage siting of large, market-based mitigation projects (e.g., mitigation or conservation banks) on public lands where durability can be achieved;
- (8) Consider a precautionary approach for resource use when the impact on ecosystem resilience is unknown or cannot be quantified; and
- (9) Provide a justification for decisions that may impair ecosystem resilience.
  - (c) Authorized officers must use national, regional, and site-based assessment, inventory, and monitoring data as available and appropriate, along with other high-quality information, as multiple lines of evidence to evaluate resource conditions and inform decisionmaking, specifically by:
    - (1) Gathering high-quality available data relevant to the management decision, including standardized quantitative monitoring data and data about land health;
    - (2) Selecting relevant indicators for each applicable management question (e.g., land health standards, restoration objectives, or intactness);
    - (3) Establishing a framework for translating indicator values to condition categories (such as quantitative-monitoring objectives or science-based conceptual models); and
    - (New number) When appropriate, and/or if needed information is missing, acquiring additional scientific data to support the above activities. There are likely circumstances when new scientific methods are needed to gather baseline information as well as to perform ongoing monitoring, for example, after a recent fire, new baseline studies of existing conditions will be required.
    - (4) Summarizing results and ensuring that a clear and understandable rationale is documented, explaining how the data was used to make the decision.

§ 6102.5-1  
Mitigation.

- (a) The BLM will generally apply the mitigation hierarchy to avoid, minimize and compensate for, as appropriate, adverse impacts to resources when authorizing uses of public lands. As appropriate in a planning process, the authorized officer may identify specific mitigation approaches for identified

uses or impacts to resources. **Prior to considering mitigation, the BLM should consider ALL other alternatives including NOT ALLOWING the proposed activity. The BLM should develop standards (see 6103 below) that are indicative of a suitably protected resource. If these standards would be violated by a proposed activity, the activity should not be allowed.**

(b) Authorized officers shall, to the maximum extent possible, require mitigation to address adverse impacts to important, scarce, or sensitive resources.

(c) For compensatory mitigation, the BLM may use a third-party mitigation fund holder. Authorized officers may approve third-party mitigation fund holders to establish mitigation accounts for use by entities granted land use authorizations by the BLM, when such accounts are an appropriate and efficient method for implementing mitigation measures required through a BLM decision document. Approved mitigation fund holders are allowed to collect and manage mitigation funds collected from permittees and to expend the funds in accordance with agency decision documents and permits.

(d) Authorized officers may establish mitigation accounts as appropriate when multiple permittees have similar compensatory mitigation requirements or a single permittee has project impacts that require substantial compensatory mitigation that will be accomplished over an extended period and involve multiple mitigation sites.

(e) Authorized officers may approve the use of a mitigation account by a permittee only if a mitigation fund holder has a written agreement with the BLM as described in paragraph (h) of this section.

(f) Authorized officers may approve a third party as a mitigation fund holder if the party:

(1) Qualifies for tax-exempt status in accordance with Internal Revenue Code (IRC) section 501(c)(3);

(2) Has a history of successfully holding and managing mitigation, escrow, or similar corporate accounts;

(3) Is a public charity bureau for the state in which the mitigation area is located, or otherwise complies with applicable state laws;

(4) Is a third party organizationally separate from and having no corporate or family connection to the entity accomplishing the mitigation program or project, the project proponent, and the permittee;

(5) Adheres to generally accepted accounting practices that are promulgated by the Financial Account Standards Board, or any successor entity; and

(6) Has the capability to hold, invest, and manage the mitigation funds to the extent allowed by law and consistent with modern "prudent investor" and endowment law, such as the Uniform Prudent Management of Institutional Funds Act of 2006 (UPMIFA) or successor legislation when funds are needed for long-term management and monitoring. UPMIFA incorporates a general standard of prudent spending measured against the purpose of the fund and invites consideration of a wide array of other factors. For states that have not adopted UPMIFA, analogous state legislation can be relied upon to achieve this purpose.

(g) The BLM may not approve a state or local government agency to hold mitigation funds under paragraph (f) of this section unless the government agency is able to demonstrate, to the satisfaction of the BLM, that it is acting as a fiduciary for the benefit of the mitigation project or site and can show that it has the authority and ability to:

(1) Collect the funds;

(2) Protect the account from being used for purposes other than the management of the mitigation project or site;

- (3) Disburse the funds to the entities conducting the mitigation project or management of the mitigation site;
- (4) Demonstrate that it is organizationally separate from and has no corporate or family connection to the entity accomplishing the mitigation program or project, the project proponent, and the permittee; and
- (5) Adhere to generally accepted accounting practices that are promulgated by the Governmental Accounting Standards Board or any successor entity.
- (h) The BLM must execute an agreement with any approved mitigation fund holder. All mitigation fund holder agreements must be recorded with the BLM within 30 days of the agreement being fully executed. The BLM office originating the mitigation fund holder agreement must ensure that annual fiscal reports are accurate and complete.

## Subpart 6103 Tools for Achieving Ecosystem Resilience

### § 6103.1

#### Fundamentals of land health.

(a) Standards and guidelines developed or revised by the BLM in a land use plan must be consistent with the following fundamentals of land health:

- (1) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.
- (2) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment to support healthy biotic populations and communities.
- (3) Water quality complies with state water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives established in the land use plan such as meeting wildlife needs.
- (4) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed and Candidate species, and other special status species.

(b) Authorized officers must manage all lands and program areas to achieve land health in accordance with the fundamentals of land health and standards and guidelines, as provided in this subpart.

### § 6103.1-1

#### Land health standards and guidelines.

(a) To ensure ecosystem resilience, authorized officers must implement land health standards and guidelines that, at a minimum, conform to the fundamentals of land health across all lands and program areas.

- (1) Authorized officers must apply existing land health standards and guidelines, including those previously established under subpart 4180 of this chapter, across all lands and program areas.
- (2) Authorized officers must review land health standards and guidelines during the land use planning process and develop new or revise existing land health standards and guidelines as necessary for all lands and program areas to ensure the standards and guidelines serve as appropriate measures for the fundamentals of lands health.

(3) Authorized officers will periodically, but not less than every 5 years in conjunction with regular land use plan evaluations, review land health standards and guidelines for all lands and program areas to ensure they serve as appropriate measures for the fundamentals of land health. If existing standards and guidelines are found to be insufficient, authorized officers must evaluate whether to revise or amend the applicable land use plans.

(b) Authorized officers must determine the priority and scale for evaluating standards and guidelines based on resource concerns.

(c) Authorized officers must establish an appropriate set of goals, objectives, and success indicators to ensure that each land health standard can be measured against resource conditions. New and amended standards:

(1) May include previously identified indicators if they are applicable to the new or amended standard;

(2) Must incorporate appropriate quantitative indicators available from standardized datasets;

(3) Must address changing environmental conditions and physical, biological, and ecological functions not already covered by existing standards; and

(4) May require consultation with relevant experts within and outside the agency.

(d) The BLM may establish national indicators for all lands and program areas taken from existing indicators and the development of new indicators, as needed, in support of the implementation of the fundamentals of land health.

(1) Authorized officers must periodically review authorized uses for consistency with the fundamentals of land health for all lands and program areas.

(2) Reserved.

#### § 6103.1–2

Land health assessments, evaluations, and determinations.

(a) Authorized officers must consider existing land health assessments, evaluations, and determinations in the course of decisionmaking processes regardless of program area. Authorized officers may prepare new land health assessments, evaluations, and determinations in connection with decisionmaking, and must do so if required by other law or regulation.

(b) In the course of conducting land health assessments, authorized officers must measure applicable indicators.

(c) In the course of conducting land health evaluations, authorized officers must:

(1) Document whether land health standards are achieved through land health assessments, documented observations, standardized quantitative data, or other data acceptable to authorized officers as described in § 6103.2.

(2) Use multiple lines of evidence. Indicator values can be compared to benchmark values to help evaluate land health standards. Attainment or nonattainment of a benchmark for one indicator can be considered as one line of evidence used in the assessment and evaluation.

(d) If resource conditions are determined to not be meeting, or making progress toward meeting, land health standards, authorized officers must determine the causal factors responsible for nonachievement.

(e) Authorized officers must make progress toward determining the causal factors for nonachievement as soon as practicable but not later than within a year of the land health assessment identifying the nonachievement.

(1) Upon determining that existing management practices or levels of use on public lands are significant factors in the nonachievement of the standards and guidelines, authorized officers must take appropriate action as soon as practicable.

(2) Taking appropriate action means implementing actions, consistent with applicable law and the terms and conditions of existing authorizations, that will result in significant progress toward fulfillment of the standards and significant progress toward compliance with the guidelines.

(3) Relevant practices and activities may include but are not limited to the establishment of terms and conditions for permits, leases, and other use authorizations and land enhancement activities.

(4) If authorized officers determine that existing management practices or levels of use on public lands are not significant causal factors in the nonachievement of the standards, other remediating actions should be identified and implemented as soon as practicable to address the identified causal factors.

(5) Authorized officers may authorize changes in management or development of a restoration plan to meet other objectives.

#### § 6103.2

Inventory, assessment, and monitoring.

(a) Watershed condition classifications must be completed as part of all land use planning processes.

(b) The BLM will maintain an inventory of public lands. This inventory must include both critical landscape components (e.g., land types, streams, habitats) and core indicators that address land health fundamentals. Authorized officers will use inventory, assessment, and monitoring information, including standardized quantitative monitoring data, remote sensing maps, and geospatial analyses, to inform decisionmaking across program areas, including but not limited to: **It is important to follow through with this and include maps of areas to be protected, intact areas, areas to be restored, and any other areas not suitable for development, grazing or extraction activities. Additionally, meaningful Cumulative Impacts Analysis under NEPA should be emphasized as a valuable tool to assist with these inventories at the field office level.**

(1) Authorization of permitted uses;

(2) Land use planning;

(3) Land health evaluation;

(4) Available watershed assessments;

(5) Restoration planning, including prioritization;

(6) Assessments of restoration effectiveness;

(7) Evaluation and protection of intactness;

(8) Mitigation planning; and

(9) Other decisionmaking processes.

(c) Authorized officers must inventory, assess, and monitor activities employing the following principles:

(1) Structured implementation of monitoring activities through interdisciplinary monitoring plans, which guide monitoring program development, implementation, and data use for decision-makers;

(2) Standardized field measurements to allow data comparisons through space and time in support of multiple management decisions;



- (3) Appropriate sample designs to minimize bias and maximize applicability of collected data;
- (4) Data management and stewardship to ensure data quality, accessibility, and use; and
- (5) Integration with remote sensing products to optimize sampling and calibrate continuous map products.

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## Footnotes

<sup>(1)</sup> See generally Carr, et al., A Multiscale Index of Landscape Intactness for the Western United States (2016), <https://www.sciencebase.gov/catalog/item/57d8779de4b090824ff9acfb>; Doherty et al., A Sagebrush Conservation Design to Proactively Restore America's Sagebrush Biome (Open-file report 2022–1081 USGS), <https://pubs.er.usgs.gov/publication/ofr20221081>.