



RE: BLM Proposed Conservation and Landscape Health Rule      Attention: 1004-AE92

June 17, 2023

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

Thank you for the opportunity to comment on the proposed US Bureau of Land Management Conservation and Landscape Health Rule.

These comments are submitted by three Western Native Plant Societies (NPS): the Arizona Native Plant Society, Colorado Native Plant Society, and the Native Plant Society of New Mexico.

The Arizona Native Plant Society started in 1976 and is a 501(c)(3) non-profit with the mission to promote knowledge, appreciation, conservation, and restoration of Arizona native plants and their habitats. AZNPS currently has 650 members in eleven chapters throughout the state. AZNPS publishes our own Journal, Plant Press Arizona, twice per year.

Founded in 1976, the Colorado Native Plant Society (CoNPS) is a 501(c)(3) non-profit organization dedicated to furthering the knowledge, appreciation and conservation of native plants and habitats of Colorado through education, stewardship and advocacy. We have more than 1,700 members in seven geographical chapters located throughout the state and publish our journal, Aquilegia, four times a year.

The Native Plant Society of New Mexico (NPSNM) is a non-profit organization with more than 700 members in seven chapters around the state and in El Paso, Texas. Our mission is to educate the public about native plants by promoting knowledge of plant identification, ecology, and uses; foster plant conservation and the preservation of natural habitats; support botanical research; and encourage the appropriate use of native plants to conserve water, land, and wildlife.

Our groups certainly support the proposed rule, as conservation is the bedrock value in managing for multiple use under FLPMA. It is great to see the Bureau elevating its importance, as well as the importance of restoring damaged landscapes. Thank you.

We are unclear though, how exactly BLM intends to interface with groups such as ours to promote the purposes of the Public Lands Rule. It seems that the new Conservation Leasing initiative would be tailor-made for this, but as written, we fear that Conservation Leasing will not be effective for non-profits which wish to enter into conservation leases, and may be counterproductive. We hope BLM will think further on ways to partner with small groups like ours on smaller acreages so as to get restoration done on the ground, by working together in partnership. As we explain below, that section

needs to be reworked to make it possible for non-profits like ours to effectively participate in the Conservation Leasing and habitat restoration activities envisioned in the rule.

AZNPS has direct experience with such a restoration project, which is an example of the partnerships BLM could and should develop more widely with groups such as ours. Over the last 18 years, AZNPS has been active in invasive plant control coupled with desert landscape and native plant restoration. The AZNPS flagship restoration project is on BLM land on the Ironwood Forest National Monument – the Waterman Restoration Project. This is an 18 acre site. AZNPS has led this volunteer effort involving a half dozen other non profit groups including Boy Scouts, Friends organizations, and various youth groups. As such, this project could serve as a template for similar BLM-Native Plant Society projects going forward using the Conservation Lease concept. We urge the BLM to click through to the excellent, profusely illustrated project web site for the Waterman Restoration Project: <https://aznps.com/the-waterman-restoration-project/> It is amazing what 13 years of dedicated effort can do to restore the landscape. This long-term project has been successfully run on shoestring - AZNPS did benefit from a modest BLM Assistance Agreement in recent years.

Section 6102.4 of the proposed regulations governs Conservation Leases. This is a tool which could be hugely beneficial for public land health, but as written it will effectively exclude non-profits such as ours and perhaps Tribes, as well, from applying for the leases. This is because its regulatory framework is modeled on BLM's for-profit leasing system, for grazing and minerals leases, for example, and would impose financial burdens on non-profits which are neither appropriate nor attainable in most instances.

An article by the Center for American Progress (<https://www.americanprogress.org/article/why-conservation-leasing-on-public-lands-is-a-win-win-for-renewables-and-wildlife/>) highlights the potential use for conservation leases to accommodate large compensatory mitigation activities by for-profit developers. If BLM were to make, say, developers of solar projects compensate for loss of habitat, conservation leases could be used to do so and – in theory at least – to hold the project developers responsible for successfully accomplishing the mitigation. Other for-profit entities might want to use conservation leases to obtain credits under ecosystems services transactions. In both these cases, the financial requirements under section 6102.4(f) and bonding requirements under section 6102.4-2 are appropriate. But for cash-constrained non-profits, such as ours, doing small - say, under 20 acre projects, these financial requirements would make entering into conservation leases financially very difficult.

For example, if one of our Societies wanted to obtain a conservation lease to restore habitat for a rare plant or a stream, we would have to provide BLM with the same monetary resources that for-profits would. There is an oblique reference in the rules (at 6102.4(f)) to 43 CFR 2920.6 and 2920.8. Those sections require applicants:

- to pay BLM for the processing costs of the lease application, including required EAs and EISs under NEPA (a 2014 study by GAO found the median cost of EAs prepared for the Department of Energy to be \$65,000 – a substantial portion of any of our annual budgets);
- requires advance payments for the BLM's monitoring costs;
- makes the applicant liable for increased costs if BLM incurs higher costs than the original estimate;
- mandates that joint lease requests encumber both parties if one withdraws (say, an NPS partners with a land restoration for-profit company doing compensatory mitigation work and the for-profit changes

its business plan or goes bankrupt, withdrawing from the project, then the NPS would be liable for all costs);

- requires the payment of an annual rental fee based on fair market value (how could this ever be determined for ecosystem services or habitat restoration work? Should BLM pay the NPS for increasing the fair market value of the property?); and

- requires the submission of a bond by the applicant to cover "reclamation of the conservation lease area(s) and the restoration of any lands or surface waters adversely affected by conservation lease operations." This provision especially makes little sense in the context of non-profit groups trying to improve habitat.

We suggest that BLM should write provisions into the final rule to exclude the wide range of non-profits (including Tribes, 501(c)(3)s, school groups, scouting groups, local governments, fraternal organizations, scientific researchers) from having to comply with these financial requirements when doing restorative work via Conservation Leases on small parcels. We stand ready to help BLM achieve its objectives here, and hope you will rethink our ability to partner with the Bureau under those terms.

We would also urge BLM to be mindful of the administrative and paperwork burdens on non-profits to obtain and execute conservation leases. For example, in Southern Arizona, conservation leases pertain to significant acreages on BLM land. Non-profits like Native Plant Societies would be overwhelmed by the administrations of large contracts and under huge pressure to use large numbers of volunteers to get things done. There are a few examples of non-profits in Southern Arizona that have taken on large conservation contracts and become more involved in paperwork and PR than meaningful volunteer work on the ground. This is something the regs should avoid imposing.

As mentioned earlier, AZNPS has received a modest Assistance Grant from BLM for the Waterman Project. We suggest that the regulations incorporate a reference to this program and other funding opportunities to make non-profits, as well as BLM Field Offices, aware of its existence and applicability.

BLM should also not envision that just providing the opportunity for conservation leasing means that the agency has no further responsibility for habitat improvement and restoration itself. With the degraded condition of many of the BLM's lands – which will only become more apparent once the cumulative impacts to be tallied under 6102.2(d) are assessed – voluntary efforts by non-profits and mandated compensatory mitigation by for-profits will not be enough to fulfill the agency's new mandate to ensure resilient ecosystems and functioning biological communities. BLM should staff and fund resource groups in each field and state office to ensure that habitat improvement and resilience efforts are given resources and attention adequate to the task at hand. BLM needs to be identifying where these efforts are needed. The actions of non-profits and for-profits by taking conservation leases can supplement the agency in reaching these agency-wide goals, but BLM cannot rely solely on those third-party efforts to get the job done.

Thank you.

John Scheuring, Conservation Chair, Arizona Native Plant Society

Brad Klafehn, Co-chair, Conservation Committee, Colorado Native Plant Society

Rachel Jankowitz, Conservation Chair, Native Plant Society of New Mexico