

Missouri Basin Resource Advisory Council Minutes
General Business Meeting
June 20-21, 2023
BLM Montana State Office, Billings, MT

Attendance:

June 20, 2023, 10:00 AM to 4:00 PM

RAC members: Perri Jacobs, Jeff Schafer, Trisha Tonn, Art Hayes III, Nathan Jagim, Doug Krings, Mark Good, Greg Jergeson, Miles Hutton (chair), Doug Kary, Stacey Barta, Cliff Merriman

Public (Teams-virtual): Nate Deschmeemaeker

Public (In-Person): None

Guest Presenter (Teams-virtual): Chris Mehus, Western Sustainability Exchange (WSE)

BLM: Scott Haight, Kristin Kaiser, Gina Baltrusch, Lori (Chip) Kimball, Eric Lepisto, Donna Bradley, Kristine Braun

June 21, 2023, 8:00 AM to 1:00 PM

RAC Members: Perri Jacobs, Jeff Schafer, Kevin Wagner, Trisha Tonn, Art Hayes III, Nathan Jagim, Doug Krings, Mark Good, Doug Kary, Greg Jergeson, Miles Hutton (chair), Stacey Barta, Cliff Merriman

Public (Teams-virtual): None

Public (In-Person): Nate Deschmeemaeker, Ian Davidson

BLM: Scott Haight, Kristin Kaiser, Regina Baltrusch, Nate Arave, Greg Morel, Kristine Braun, Aaron Thompson, Lisa Bruno, Donna Bradley

June 20, 2023

Scott Haight welcomed members and the meeting was brought to order, housekeeping items for the meeting were reviewed. All members were encouraged to participate in the discussions; these meetings are for the RAC to provide advice and recommendations to the BLM. The meeting was turned over to MBRAC Chair Miles Hutton. The RAC member briefing packet contained Eastern Montana Dakota District and North Central Montana District updates, news release, Restoration Landscape summaries, and Frequently Asked Questions regarding Conservation Leasing in Proposed Public Lands Rule.

Brief self-introductions were completed by all in attendance.

Chair and Co-Chair were elected. Doug Krings nominated Miles Hutton to continue as Chair; Miles Hutton accepted the nomination. Perri Jacobs seconded the motion. No discussion. All members voted in favor of Miles Hutton continuing as Chair.

Short discussion regarding Co-Chair responsibilities. Art Hayes nominated Kelley Lewis to continue as Co-Chair, Perri Jacobs seconded the motion. All members voted in favor of Kelley Lewis to continue as Co-Chair.

BLM-1004-AE92 Public Lands Rule (Conservation and Land Health Rule) report given. The 'Public Lands Rule' subcommittee (Greg Jergeson, Perri Jacobs, Jeff Schafer, Mark Good, Nate Jagim) identified questions for the RAC to consider for developing a RAC response to the proposed rule. All members reviewed the questions and discussed the sub-committee response. When consensus was reached, a final vote was taken, and the response was finalized. For questions that consensus could not be reached, the outcome was noted, and members were encouraged to respond individually. The RAC sub-committee and Chair will complete a final review of the responses and send the document to BLM-Montana State Office to be forwarded to Department of Interior.

At the RAC's request, Chris Mehus, Program Director for the Western Sustainability Exchange, presented an overview of the Montana Grasslands Carbon Project and provided an instructional summary of how carbon credits and the carbon market work. The MGC project's purpose is to develop regenerative grazing by managing grazing use with a holistic approach to improve the soil carbon cycle.

June 21, 2023

The meeting began with a recap of the previous day's efforts and overview of the current day's agenda.

Kristine Braun, ND RMP planning coordinator, presented a brief overview of the process and status of the RMP. The full cadre of RAC members were not familiar with the plan and the process. Kristy summarized a previous overview presented to the sub-committee titled North Dakota Draft RMP/EIS dated Feb. 14, 2023, to bring members up to date. The ND RMP sub-committee (Doug Kary, Nathan Jagim, Kelley Lewis) was to bring forward issues to be considered in developing the final alternatives. Due to the deadline to review the Conservation and Land Health Rule, the ND RMP sub-committee did not have a draft report/recommendation ready to present to the RAC members for their review/vote. Sub-committee members have additional responsibilities that are limiting the time they have available. Doug Krings and Trisha Tonn volunteered to join the sub-committee. Trisha Tonn made a motion to table discussion of additional members until after noon. Jeff Schafer seconded the motion, all voted in favor, none opposed.

Public Comment

Nate Deschmeemaeker, Director for the Montana Grasslands Commission Board, participated in the public comment period. He will send his presentation notes to Gina Baltrusch, NCMD PAO, to be included in the minutes.

Ian Davidson, Field Manager for Wild Montana, also spoke during the public comment period. He will email his comments to Gina Baltrusch for inclusion in the minutes.

RAC members did not have any questions for the two presenters.

Tabled Items

The Conservation and Land Health Rule question review was completed. Art Hayes made a motion to accept the responses, except for formatting and grammatical changes, to the Conservation and Land

Health Rule document from the sub-committee. Cliff Merriman seconded the motion. All members in favor, none opposed.

Art Hayes proposed to accept the addition of two RAC members to the ND-RMP subcommittee, (Trisha Tonn, and Doug Krings). Jeff Schafer seconded the motion. All in favor, none opposed.

A meeting of a quorum of the subcommittee will make recommendations for the RAC to review and submit recommendations regarding the ND RMP final alternatives to Kristine Braun.

Potential agenda topics for the next meeting were proposed and may include a field visit. Additional proposed topics may be sent for consideration to RAC coordinators and the designated federal officials.

- ND RMP final RAC report – priority topic

- Fuels Treatments- controlled burns and mechanical treatments

- CO2 Sequestration in Carter County

- Powerline project ND to Miles City

The next meeting will be held in Miles City at the BLM Office. Date to be determined, likely September 18 or after.

Jeff Schafer made a motion to adjourn the meeting, Perri Jacobs seconded it. All in favor, none opposed.

Respectfully submitted,

Miles Hutton

Missouri Basin Resource Advisory Council Chair

From: [Ian Davidson](#)
To: [Baltrusch, Regina C](#)
Subject: [EXTERNAL] Re: Comments for the MBRAC meeting minutes
Date: Wednesday, June 21, 2023 12:01:06 PM

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi Gina,

Here are the comments I made. Thank you again for the opportunity to speak at the RAC meeting.

My name is Ian Davidson and I am a Field Organizer for Wild Montana based in Billings. Wild Montana is a state-wide grassroots conservation organization that works to protect wild places in Montana, enhance public land access, and help our communities thrive. Thank you for allowing for a public comment period at your meeting today.

I am here to speak in support of the BLM's draft "public lands rule". This rule is an important step forward to making sure we protect the most important intact landscapes, have healthy wildlife habitat, and use balanced decision making for our public lands. The rule would put conservation on equal footing with other uses under BLM's multiple use mandate. This does not take away from existing uses, but allows for the BLM to continue to be good stewards of our public lands by guiding responsible development and safeguarding the most special places where we love to hike, hunt, fish, etc. The rule would also be a step in the right direction because it would support informed decision making for all future BLM projects and planning efforts by ensuring the BLM has the latest science and accurate data about land health and existing conditions.

Some additional details about how the rule will be implemented are needed and we look forward to seeing how the BLM incorporates the feedback received during the public comment period into the final rule. Thank you for your time.

Ian

On Wed, Jun 21, 2023 at 11:28 AM Baltrusch, Regina C <rbaltrusch@blm.gov> wrote:

Hi Ian,

Thanks for commenting at the meeting. Please, send your written comments for inclusion in the meeting minutes.

Thank you!

Gina

Gina Baltrusch

Public Affairs

North Central Montana District

Bureau of Land Management

406-791-7778 desk

406-308-9387 cell

rbaltrusch@blm.gov

WWW: <https://www.blm.gov/office/north-central-district-office>

Facebook – <https://www.facebook.com/BLMMontana>

Twitter – https://twitter.com/blm_mtdks

YouTube – <https://www.youtube.com/channel/UcTBadugysy9KphC5kqTmSkA>

Flickr – https://www.flickr.com/photos/blm_mtdks/

--



IAN DAVIDSON (he/him)
Field Organizer
Wild Montana

[406.204.5949](tel:406.204.5949)
idavidson@wildmontana.org

wildmontana.org | [Facebook](#) | [Twitter](#) | [Instagram](#)

Uniting and mobilizing communities to keep Montana

wild.

This email from Wild Montana (and any attachments) is confidential and is meant only for the individual(s) or entity to whom it is addressed. If you are not the designated recipient of this message, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please destroy and/or delete all copies of it and notify the sender of the error by return email.

From: [Nathan Descheemaeker](#)
To: [Baltrusch, Regina C](#); [Miles Hutton](#)
Subject: [EXTERNAL] Public Comment Notes 6-21-23
Date: Wednesday, June 21, 2023 10:14:48 PM
Attachments: [Public Comment 6-21-23.docx](#)

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Regina,

Please find attached the Comment notes presented to the Missouri River Basis RAC 6/21/23.
Thank you for having me.

Much appreciated,

Nathan Descheemaeker
MTGCC - Director
406-366-2456

Public Comment Notes to the Missouri River Basin Resource Advisory Council 6/21/23,

The Montana Grass Conservation Commission (Grass Commission) is a governor appointed commission with statutory authority over the grazing administration in the state. The commission also has a statutory role to safeguard the domestic livestock industry. The origins of the Grass Commission go back to the Montana Grass Conservation Commission Act of 1939. The state statute directly resulted from the passage of the Federal Taylor Grazing Act of 1934 (TGA). Montana is the only state that established a State statutory framework of state grazing districts to execute the provisions of the TGA and interrelate with the Federally reserved districts. The Grass Commission functions with an MOU with the Bureau of Land Management and shares cooperative responsibility to protect the range and safeguard the domestic livestock industry by executing the provisions within the TGA, FLPMA, Public Rangeland Improvement Act (PRIA), and the Montana Grass Conservation Commission Act.

The designated purpose of TGA grazing districts is threefold,

1. Protection of the range
2. Orderly use by farmers and stockmen
3. Stabilization of livestock and farming industry

Conservation was considered in the context of the development and promotion of an essential industry to the nation.

43 CFR § 4100.0-2 - "The objective of these regulations [is] to ... provide for the sustainability of the western livestock industry and the communities that are dependent upon productive, healthy public rangelands. . .

The TGA and the Montana Grass Conservation Commission Act was ahead of its time for balancing the needs of the human and natural environments. Forage allocation under the grazing system provides for livestock as well as wildlife. TGA Grazing lands administered by BLM and managed by livestock producers for grazing purposes are accessible to the public for recreation, hunting, and fishing.

FLPMA carried forward TGA Grazing reserved and classified districts with full force and authority,

43 USC § 1701 Savings Provision (c) - "All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act [Oct 21, 1976) shall remain in full force and effect until modified under the provisions of this Act or other applicable law."

The TGA grazing districts have been:

1. **Withdrawn** from settlement and entry (TGA § 315, EO 6910)
2. **Reserved** for dedicated public purpose/stabilization of livestock industry and protection of dependent commensurate properties (MGCA 76-16-102. Purpose, EO 6910)
3. **Classified** as Chiefly Valuable for Grazing and Raising of Forage Crops/with statutory requirement for Secretary of Interior to adequately safeguard grazing privileges (TGA § 315; § 315(b))

“When enacting FLPMA, Congress did not repeal or modify the grazing provisions of the TGA. . . Congress. . . expressly protected the grazing permit system as contemplated by the TGA and expressly preserved the classifications and withdrawals that led to the creation of grazing districts” (Solicitor Clarification M-37008 2003).

Preference for permits and are extended to bona fide occupants and settlers engaged in the livestock industry:

43 USC § 315b Grazing permits - “... Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of the lands...So far as consistent with the purposes and provisions of this subchapter, grazing privileges recognized and acknowledged shall be adequately safeguarded...”

Conservation leasing is not defined in Statute nor delegated by Congress. FLPMA defines principal and major uses limited to 6 explicit uses of which conservation leases are not included.

43 USC § 1702(I) - “The term “*principal or major uses*” includes, and is **limited to, domestic livestock grazing**, fish and wildlife development and utilization, mineral exploration and production, rights-of way, outdoor recreation, and timber production.”

Agencies in some instances have discretion to fill in gaps in statutes, this conservation leasing rule is not an instance of this.

Conservation use has been defined as an activity excluding livestock grazing, The BLM was barred from implementing conservation use by the U.S. Court of Appeals for the Tenth Circuit in *Public Lands Council v. Babbitt*, 167 F.3d 1287 (10th Cir. 1999), *aff'd*, 529 U.S. 728 (2000), which found that the Secretary of the Interior (acting through the BLM) **lacked the statutory authority** to issue grazing permits intended exclusively for “conservation use.” 167 F.3d at 1308.

Supreme Court has historically and recently ruled regarding the non-delegation doctrine which holds the Congress holds the sole legislative function under the Constitution.

West Virginia v. Environmental Protection Agency, 597 U.S. ____ (2022)

“...Agencies have only those powers given to them by Congress, and “enabling legislation” is generally not an “open book to which the agency [may] add pages and change the plot line.” E. Gellhorn & P. Verkuil, *Controlling Chevron Based Delegations*, 20 *Cardozo L. Rev.* 989, 1011

...We presume that “Congress intends to make major policy decisions itself, not leave those decisions to agencies.” *United States Telecom Assn. v. FCC*, 855 F. 3d 381, 419 (CADDC 2017)

...Thus, in certain extraordinary cases, both separation of powers principles and a practical understanding of legislative intent make us “reluctant to read into ambiguous statutory text” the delegation claimed to be lurking there. *Utility Air*, 573 U. S., at 324. To convince us otherwise, something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to “clear congressional authorization” for the power it claims.

. . .Nor may agencies seek to hide “elephants in mouseholes,” *Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001), or rely on “gap filler” provisions,

. . .it is unlikely that Congress will make an “[e]xtraordinary gran[t] of regulatory authority” through “vague language” in “a long-extant statute.” *Ante*, at 18–20 (quoting *Utility Air*, 573 U. S., at 324).

. . .But an agency’s attempt to deploy an old statute focused on one problem to solve a new and different problem may also be a warning sign that it is acting without clear congressional authority. See *ante*, at 18

. . .When an agency claims to have found a previously “unheralded power,” its assertion generally warrants “a measure of skepticism.” *Utility Air*, 573 U. S., at 324.”

North Dakota RMP

Mentioned and recommended the RAC to look at the North Dakota AG substantive comments regarding the ND RMP which signified that BLM was bringing in the conservation leasing concept into the RMP (p.8).

Finally, this conservation leasing if approved and codified in the CFR will likely be litigated and potentially challenged under the Congressional Review Act as it is similar to the BLM planning 2.0 rule which was abolished under the CRA.

Nathan Descheemaeker, Director, Montana Grass Conservation Commission



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Missouri Basin Resource Advisory Council
Montana/Dakotas State Office
5001 Southgate Drive
Billings, MT 59101

June 30, 2023

In Reply Refer To:
1784 (MT91000)

EMAIL TRANSMISSION – 6/30/2023
Memorandum

To: Tracy Stone-Manning
Director

Through: Sonya Germann
State Director

From: Miles Hutton
Chair, Missouri Basin RAC

Subject: RAC comments re. Public Lands Rule titled “Conservation and Landscape Health”

The BLM Missouri Basin Resource Advisory Council (RAC) met June 20-21 in Billings, Montana. A major focus of the meeting was to formulate comments on the BLM proposed Public Lands Rule. The RAC comments were approved by consensus vote to forward for your consideration and are detailed in the attachment.

The RAC's comments take the form of requests for clarification, statements, or responses to questions posed by the BLM in the proposed rule section-by-section discussion. At several places the RAC could not reach a consensus, which is noted.

Should you have any questions regarding the RAC's comments, RAC Chair Miles Hutton is available at (406) 301-1033 or by email at: mhutton@blainecounty-mt.gov; or from the Designated Federal Officials (DFO) listed below:

Scott Haight, Eastern Montana/Dakotas District Manager: (406) 366-1535, shaight@blm.gov
Kirsten Kaiser, North Central Montana District Manager: (406) 538-1978, kkaiser@blm.gov

cc (w/attm):

Scott Haight, BLM, Eastern Montana Dakotas DM/DFO
Kirsten Kaiser, BLM, North Central Montana DM/DFO
Regulations.gov upload; Conservation and Land Health

Attachment
Missouri Basin Resource Advisory Council (MBRAC)
Comment/Recommendations on Proposed Public Lands Rule

I. There are a number of questions the Missouri Basin Resource Advisory Council (MBRAC) would like to pose in order to clarify the proposed rules:

A. Regarding the Overall Proposed Rule:

1. Are there any inherent conflicts between the Taylor Grazing Act, the Mineral Leasing Act, the 1872 Mining Law, and the Federal Land Policy and Management Act of 1976 that need to be resolved in relation to the proposed rule? And, how would that be resolved?
2. While the preamble states that conservation leases will not override other permitted uses, does the new rule contain language that specifically states that and does not contradict such in other sections of the rule? Example: In the Conservation Leasing FAQ, BLM's "mule deer habitat" example suggests fence removal which could conflict with grazing lease requirements.
3. Will maintaining well-managed grazing on the landscape remain a priority?

B. Throughout the Proposed Rule:

1. How does the Proposed Rule define the "Authorized Officer" as referenced throughout?
2. How would the "Authorized Officer" be chosen?
3. Would the BLM include reference to stakeholders having generational and historical knowledge within the area of effect, along with indigenous knowledge, as referenced throughout?

C. Ref. A. The Need For Resilient Public Lands (Page 19585) Section 102. Section 102(a)(8) of FLPMA states the policy of the United States that "the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use" (43 U.S.C. 1701(a)(8)).

1. Will the Proposed Rule address intact areas like Wilderness Study Areas?

D. Ref. D. Inventory, Evaluation, Designation and Management of ACECs (Page 19586). In the initial stages of the planning process, the BLM, through inventories and external nominations, identifies any potential new ACECs to evaluate for relevance, importance, and the need for special management attention. The BLM determines whether such special management attention is needed by evaluating alternatives in the land use plan and considering additional issues related to the management of the proposed ACEC, including public comments received during the planning process.

1. How will intact landscapes be determined?

2. Will the BLM use the same criteria used for Lands with Wilderness Characteristics?
 3. How will the Proposed Rule address consistency by field offices when conducting inventories and applying protective measures?
- E.** Ref. Regulatory Flexibility Act (page 19594, middle column):
1. We request more information on the assumptions contained within the “Economic and Threshold Analysis” stating that the proposed rule would not have a “significant economic impact on a substantial number of small entities.” The majority of BLM lands can be found in 11 Western states, many of which are almost entirely classified as rural. Some conservation uses could negatively impact the economies of rural areas, including entire rural communities and all local businesses. That is substantial to a rural state such as Montana (and Wyoming, Arizona, Nevada, Colorado, and Utah). Please explain how the proposal arrive at this conclusion.
- F.** Ref. Section 6101.2 paragraph (a) “developing, amending, and revising land use plans; and approving uses on the public lands.”:
1. Are there any circumstances in the proposed rules that would cause the suspension of any grazing privileges for multi-year periods for a grazing lessee who has been complying with existing rules and paying their lease fees in a timely manner?
- G.** Ref. Section 6102.4 paragraph (5)(b)(1):
1. Under the proposed rules, could a third-party individual nominate and secure a conservation lease on a tract that is currently under a grazing lease, or other types of leases, without that lessee’s input/consideration?
 2. Could the BLM propose a tract currently under a grazing lease, or other types of leases, for a conservation lease without the current lessee’s input/consideration?
- H.** Ref. Section 6102.4(b) and (c) page 19591
1. In this section it says, “Applicants would be required to submit detailed information regarding the conservation use”. This language is unclear. To provide clarity, could it instead state “the conservation plan or practice”? The parties entering into the Conservation Enhancement and Preservation Agreement are not using the Tract, rather they are implementing a specific type of conservation practice to enhance the resource.
- I.** Ref. Section 6102.2 (b) (page 19599):
1. No place in the proposed Rule is the term “tract” defined. What will be the criteria for the establishment of a “tract”?
- J.** Ref. Section 6102.4 (4):
1. What is the definition of “closed” in regard to the conservation lease?
- K.** Ref. Section 6103.1–1 Land health standards and guidelines (page 19503) (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. How will land health standards be developed for all uses, including recreation?

II. The following are the MBRAC's responses to the questions that the BLM posed to commentators throughout the proposed rules:

- A. Ref. Section 6101.1 – Purpose (Page 19588). What additional or expanded provisions could address this issue in this rule? How might the BLM use this rule to foster ecosystem resilience of old and mature forests on BLM lands?
1. We believe mitigation measures that a lessee may take should be focused, if not on the exact location of the lease, at least within the planning area. If for example, a mining company were to fund a mitigation project distant from the location of the disturbance, even in another state, there would be little opportunity for other local lessees or other local public to share in or evaluate the compensatory effects of those mitigation measures.
 2. The use of wise management decisions should include forest thinning projects and controlled burns within old and mature forests.
 3. In addition to managing old and mature forests, we recommend forest- thinning, controlled burning and other forest best-management practices be considered on all lands to address encroachment issues of non-desirable species.
- B. Ref. Section 6102.3-2 – Restoration Planning (Page 19591). The BLM seeks comments on whether State and local governments, including state agencies managing fish and wildlife, also should be eligible for holding conservation leases.
1. The BLM should include all entities, be it a private individual or organization or public agency, as eligible to hold a conservation lease. The important consideration should be whether the project meets restoration or compensatory mitigation objectives, does not disturb existing authorizations, valid existing rights, or state or Tribal land use management. This would be especially important if these lands are adjacent to BLM owned lands. This would create larger tracts of land with similar characteristics, therefore probably similar challenges to resolve. It will be important for BLM staff to obtain public comment and address concerns, especially from those with the potential to be affected and to oversee projects to ensure that they are completed and meet the purpose for which they are proposed.
- C. Ref. Section 6101.1 – Purpose (Page 19588). What additional or expanded provisions could address this issue in this rule? How might the BLM use this rule to foster ecosystem resilience of old and mature forests on BLM lands?
1. We believe mitigation measures that a lessee may take should be focused, if not on the exact location of the lease, at least within the planning area. If for example, a mining company were to fund a mitigation project distant from the location of the disturbance, even in another state, there would be little opportunity for other local lessees or other local public to share in or evaluate the

compensatory effects of those mitigation measures.

- D.** Ref. BLM Question, “The BLM requests public comment on the following aspects of the conservation lease proposal. Is the term “conservation lease” the best term for this tool?”
1. We could not come to a consensus for a response, we discussed the rationale of choosing the term “lease” versus “agreement.”
- E.** Ref. BLM Question, “What is the appropriate default duration for conservation leases?”
1. The appropriate default should be the length of time necessary to complete the conservation enhancements or preservation improvements or 10 years, whichever is shorter. Renewals should be available if a project requires additional time to complete. They should not be in perpetuity.
- F.** Ref. BLM Question, “Should the rule constrain which lands are available for conservation leasing?”
1. No. However, conservation leases should not supersede existing permitted uses (i.e., Taylor Grazing Act, 1872 Mining Law, Federal Land Policy Management Act, etc.), unless the existing permittees formally agree to the proposed conservation lease. Compensatory mitigation for loss of value of existing permitted use should be negotiated. Only Federally owned lands should be part of a conservation lease. If there are non-BLM lands contiguous to a conservation lease that would benefit from the same conservation practices, it may be possible for BLM to informally partner with the landowner to conduct the same actions and therefore preserve a larger tract of land.
- G.** Ref. BLM Question, “Should the rule expressly authorize the use of conservation leases to generate carbon offset credits?”
1. The rule should not clarify or limit the conservation practices or enhancements allowed. Actions should be scientifically sound and financially feasible. We do not want to limit practices that are unforeseen which could be beneficial for the resource. Non-use, in and of itself, should not be recognized as a conservation practice.
- H.** Ref. BLM Question, “Should the rule clarify what actions conservation leases may allow?”
1. We propose conservation leases should not be authorized for carbon sequestration purposes (earning carbon offset credits) as the sole intent of use.
- I.** Ref. BLM Question, “Should conservation leases be limited to protecting or restoring specific resources, such as wildlife habitat, public water supply watersheds, or cultural resources?”
1. The list should not be limited, so long as it applies to natural resources.
- J.** Ref. BLM Question, “The BLM seeks comment on how fair market value would be determined in the context of restoration or preservation. Would existing methods for

land valuation provide valid results?”

1. They could, but based on the existing information, we don't know at this time. We recommend using the existing valuation processes or methods and re-evaluate every five (5) years.

K. Ref. BLM Question, “Would lands with valuable alternative land uses be prohibitively expensive for conservation use?”

1. There is not enough information available to formulate an adequate response.

L. Ref. BLM Question, “Should the BLM incorporate a public benefit component into the rent calculation to account for the benefits of ecosystem services?”

1. Yes. Ref. Section 6102.4 (d) (page 19591). In this section in the second paragraph, it states “Cost recovery, rents, fees for conservation leases would be governed by existing regulation 43 CFR 2920.6 and 2920.8. Under those regulations BLM must charge a rent of at least fair market value. This section would only apply in the instance of a mitigation project conducted in relation to another “wasting, disturbance, and other impaired use of other BLM managed lands. In the instance, of a preservation or enhancement conservation practice the Entity is providing benefit to the BLM and not to the entity.

M. Ref. Section 6102.4-2 – Bonding for Conservation Leases (Page 19592). “The BLM seeks public comment on whether this rule should allow authorized officers to waive bonding requirements in certain circumstances, such as when a Tribal Nation seeks to restore or preserve an area of cultural importance to the Tribe. Should the waiver authority be limited to such circumstances or are there other circumstances that would warrant a waiver of the bonding requirement?”

1. When the specific project warrants the need for a bond, there should be no waiver of bonding requirements for Conservation Leases.

N. Ref. Section 6102.5-1-Mitigation (Page 19592). “The BLM seeks comment on this language. Does it create a barrier to entry for new mitigation banks? Is there alternative language that would be preferable?”

1. The proposed language requiring expertise of the mitigation bank is warranted given the value of the public resource.

O. Ref. Section 1610.7-2 – Designation of Areas of Critical Environmental Concern (Page 19594). “The BLM is interested in public comment on whether additional regulatory text would help the BLM best fulfill its mandate under FLPMA section 202(c)(3) to ‘give priority to the . . . protection of [ACECs].’ Should the regulations further specify how ACECs should be managed?”

1. A consensus could not be reached in order to provide a collective response.

III. Additional input/comments:

A. Ref. Section 6102.2 (b) (page 19599).

1. Conservation Leases on tracts currently being leased to other individuals or

entities. These conservation enhancement and preservation agreements should be entered into with BLM, the entity or individual who wants to perform the practice, and the current lessee, in partnership when possible. This would enhance the performance of the practice and facilitate issues of access and assure the current lessee that the practices would not have a negative impact on adjacent privately owned land resources.

B. Ref. Section 6102.4 (4) (page 19600).

1. This section states “the BLM shall not authorize any other uses of the leased lands that are not consistent with authorized conservation use.” This language leads to concerns that current lessees with authorized uses will be removed from tracts that are identified for conservation uses. It also doesn’t state who will have the burden of preventing livestock from entering these tracts. The regulation should clarify the BLM will be responsible for all of the costs associated with the construction of fence. It should look at the impacts of building such structures on the travel of livestock and wildlife to other habitat resources. It should also factor in if the addition of structures to limit this access by unintended users would do more damage to the resource than the benefits of enhancement of preservation practice activity.