



U.S. Department of the Interior
Bureau of Land Management

Restoration & Mitigation Leases

Fall 2024



Sacramento River Bend, BLM photo



Restoration and Mitigation Leasing Program

This presentation will cover the following topics:

- **What are Restoration & Mitigation Leases?**
- **Application Process**
- **Key Considerations**
- **Post-Authorization**



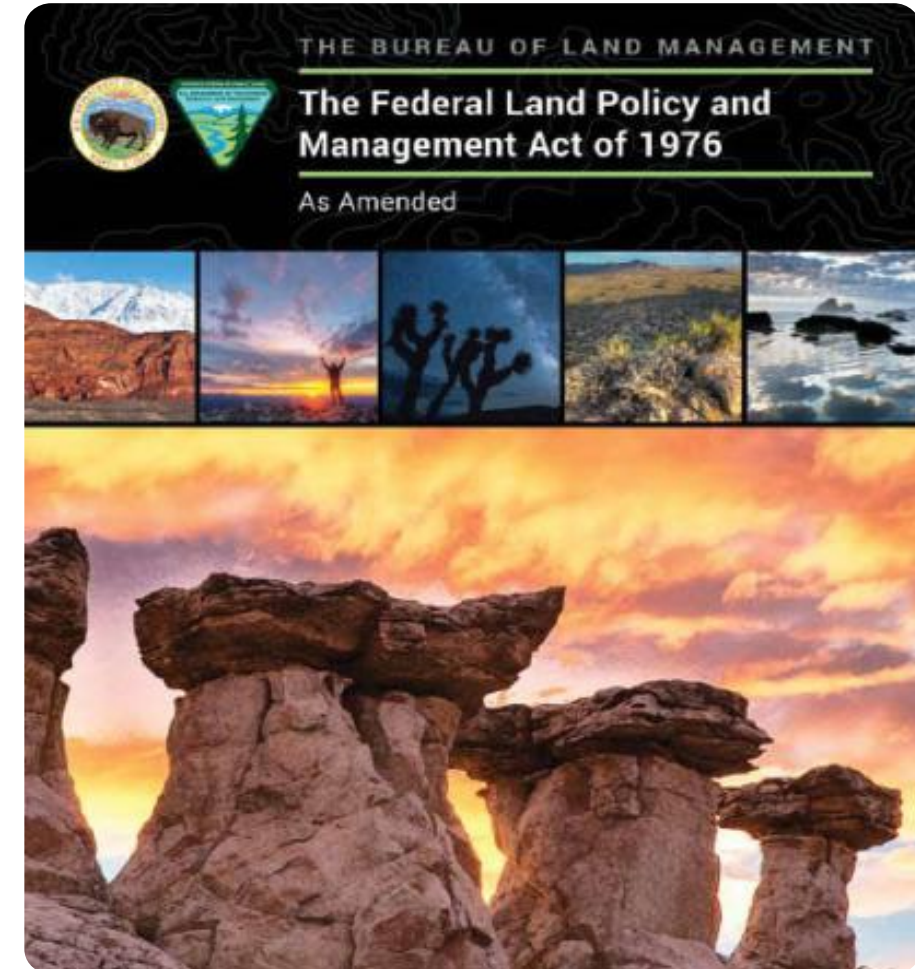
Restoration and Mitigation Leasing Program

- **What are Restoration & Mitigation Leases?**
- Application Process
- Key Considerations
- Post-Authorization



Authority & Guidance

- **The Federal Land Policy and Management Act (FLPMA)** authorizes the Secretary of the Interior to issue leases for the public to use, occupy and develop public lands.
- **The Public Lands Rule** establishes a regulatory framework for BLM to manage a restoration and mitigation leasing program (43 CFR 6102.4).
- **IM 2024-038, [Restoration and Mitigation Leasing](#)**, provides preliminary implementation guidance for the leasing program established in the Public Lands Rule.





What are Restoration and Mitigation Leases?

Restoration & mitigation leases were called “Conservation Leases” in the proposed rule

Re-named in the final rule to address public requests for clarification on the purpose and allowable use of these leases

May only be issued for two purposes: to restore degraded public land or to offset the impacts of other land use authorizations

Restoration & mitigation leases are discretionary actions, may not override existing rights or authorizations, and do not convey exclusive rights to use the public lands



Restoration Leases

Restoration leases may be issued to restore land & resources by passively or actively assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed to a more natural, resilient ecological state.

Restoration leases have a maximum term of 10 years & may be renewed if necessary to serve the original purpose of the lease.

Restoration leases are eligible for a rent & cost recovery fee waiver if they are not used to generate revenue, and the restoration lease will enhance resources or provide public benefit.





Public Lands Rule Restoration Framework

**Identify Measurable & Quantifiable Restoration Outcomes in
All Land Use Plans (LUP)**



**Identify Priority Landscapes for Restoration & Create
Restoration Plans for Those Priority Landscapes**



**Restoration Plans May Highlight Priority Areas
for Restoration Leasing**



Mitigation Leases

Issued to offset impacts to resources resulting from other land use authorizations. A lease is **required** for mitigation banks, in-lieu fee programs, & mitigation projects that are large, complex, or of long duration.

Do not have a maximum term length. Mitigation leases are issued for a term commensurate with the impact they are offsetting & may be renewed.

Not eligible for a rent or cost recovery fee waiver. Rent & cost recovery for mitigation leases will be governed by the provisions of 43 CFR 2920.6 & 2920.8.



Public Lands Rule Mitigation Framework

Identify opportunities for restoration and habitat improvements in land use plans & mitigation strategies



Applicants seeking mitigation relief submit proposals based on opportunities identified in mitigation strategies and LUPs



Mitigation leases are issued to offset impacts of other land use authorizations



Restoration and Mitigation Leasing Program

- What are Restoration & Mitigation Leases?
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Application Process

• Proposal

- Before an application for restoration or mitigation leases can be accepted by the BLM for processing, the BLM must first review the proposal to ensure that the project is consistent with the requirements of the Public Lands Rule. Once the proposal is found to be consistent with requirements in 43 CFR 6102.4, an application can be submitted for further review.

• Pre-Application Meeting

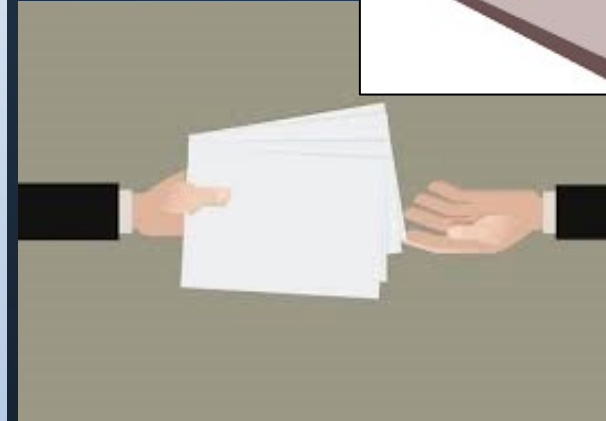
- The pre-application meeting is required for most land use authorizations. It gives the applicant an opportunity to explain their proposal to BLM lands and realty and mitigation and restoration staff, who in return can explain what the requirements are for a mitigation or restoration lease along with their expectations of the application process.

• Application

- IM 2024-038, Attachment 2, includes instructions and documents required for completing an application. A complete application package with all required documents must be received before the BLM can begin processing the application.

• Review

- BLM lands and realty staff will review the application, set up the case file, map the project, and complete other preliminary research information, such as land status, existing uses, etc. Once the case file is completed, the lands and realty staff will forward their findings to the mitigation and restoration staff.



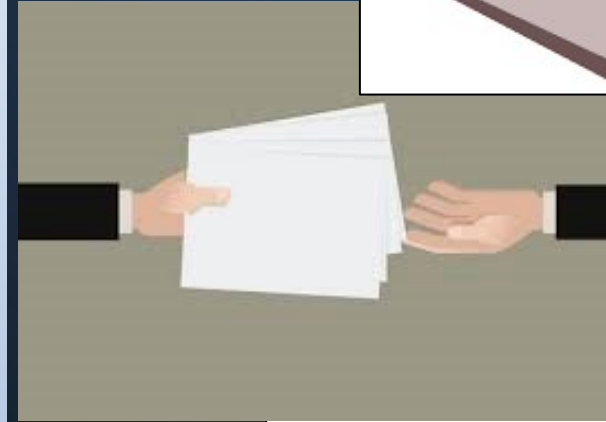


Interim Guidance for the Leasing Process

A new manual and handbook will be developed to provide the technical details involved in processing applications for restoration and mitigation leases.

There are a few notable differences for processing mitigation and restoration leases, as opposed to processing other types of Title III authorizations under 43 CFR 2920:

- Under the Public Lands Rule, for the first year, the State Director has the approval authority for restoration and mitigation leases, subject to concurrence from the Assistant Director for HQ-200. This will allow the state directors and headquarters to understand how restoration and mitigation leases can be implemented in future years.
- The Public Lands Rule allows for fee and cost recovery waivers for restoration leases that meet certain criteria.
- Appraisals are required for some leases under 43 CFR 2920.
- Application form SF-2920-1 will not be used for restoration or mitigation leases because the Public Lands Rule includes specific requirements for the application package. Applications for restoration and mitigation leases should be submitted using the template provided in Attachment 2 of IM 2024-038.





Restoration and Mitigation Leasing Program

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Considerations: 43 CFR 6102.4

Is the applicant qualified to hold a restoration or mitigation lease?



Qualified Applicants

May Be Granted To:

- Individuals,
- Businesses,
- Conservation districts,
- Non-governmental organizations,
- Tribal governments, and
- State fish & wildlife agencies

Exception: Mitigation Leases for In-lieu Fee Programs Limited To:

- Non-governmental organizations,
- State fish & wildlife agencies, and
- Tribal Governments

Foreign persons, as defined in 31 CFR 802.221, are prohibited from holding a restoration or mitigation lease.



Considerations: 43 CFR 6102.4

Does the applicant have the technical and financial capability to carry out the actions proposed in the lease?



Technical Capability

- BLM should ask similar questions as when evaluating offers for BLM contracts and proposals for other land use authorizations, such as:
 - Do they have prior experience completing similar projects?
 - Were the projects they worked on successful?
 - Did they work on the project for the entire duration of the project or did they quit before it was successful?
- BLM may consider requesting documentation of past similar projects, including references, and resumes of the key personnel who will be conducting the work proposed in the lease application plan.
- The bottom line is that the less experience an applicant has, the higher the risk that the project may not be successful.





Financial Assurances

Financial assurances can be evaluated by having the applicant prepare a cost estimate for the work proposed in the lease development plan and having them show proof of their funding sources.

The Public Lands Rule defines financial assurances for ensuring performance of the construction of the project and, when needed, the long-term management of the project:

- Short-term financial assurances ensure that performance criteria are met for construction of **compensatory** mitigation projects. This will be required in the form of bonds, letters of credit, escrow accounts, or other appropriate instruments.
- Long-term financial assurances are needed for mitigation leases that require monitoring and management for an extended period after mitigation project construction is completed. These funds must be deposited with a qualified mitigation fund holder, managed in any investment account, and disbursed in accordance with the long-term management plan.





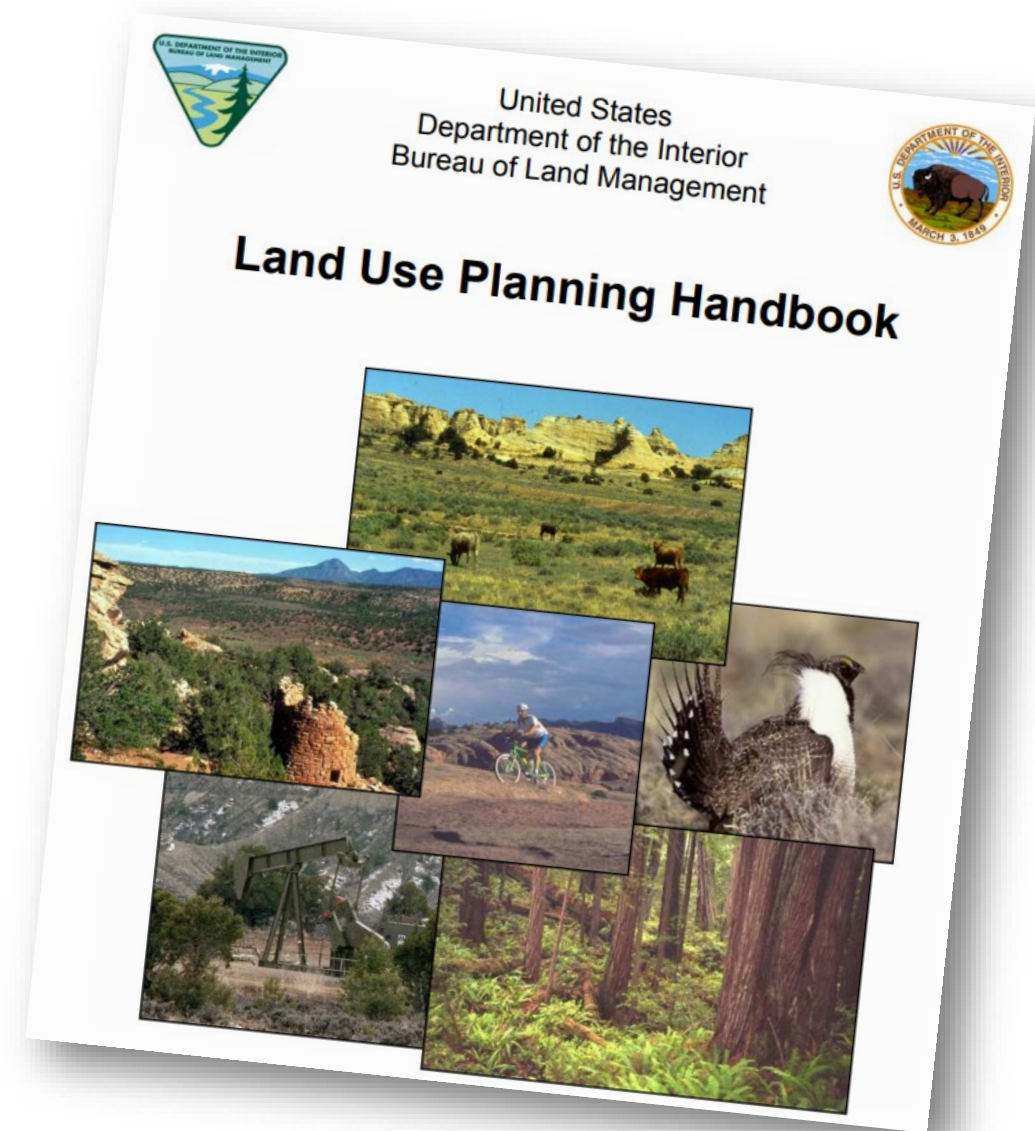
Considerations: 43 CFR 6102.4

**Does the proposed lease conform
with the applicable land use plan?**



Land Use Plan Conformance

- A proposed lease **must** conform with the applicable land use plan
 - Issuing a restoration or mitigation lease does NOT require a specific allocation in the land use plan
- **Key considerations**
 - Are the actions proposed in the lease development plan consistent with LUP goals and objectives?
 - Is the proposed lease area allocated for a specific use to the exclusion of other uses?





Considerations: 43 CFR 6102.4

Is the project located in an appropriate area, and is it an appropriate size?



Location of a Proposed Lease

- Consistent with applicable land use plan(s)
- Proposed lease area should have high potential for long-term success of lease activities
 - ACECs and National Landscape Conservation System units
 - Priority landscapes for restoration
 - Landscapes managed for intactness
- Avoid siting leases in areas with high potential for future development





Size of a Proposed Lease

- Tied to goals and objectives of the lease
- Some factors to consider:
 - Scale of degraded landscape
 - Anticipated market demand for mitigation credits or scale of impacts to offset





Considerations: 43 CFR 6102.4

Considerations for the Authorized Officer



Considerations for the Authorized Officer

As outlined in 6102.4(d), certain factors make lease issuance more likely:

- Consistent with restoration or mitigation principles
- Consistent with BLM's land use plan objectives for the area
- Collaboration with current authorized users for the proposed lease activities
- Support from local communities
- Consideration of environmental justice objectives





Restoration Leases

**Must be consistent with restoration principles
(43 CFR 6102.3(d))**

Restoration actions must:

- Address the cause(s) of degradation
- Be implemented & monitored at an appropriate scale
- Use native seeds and nature-based, or low-tech processes where possible
- Incorporate high-quality information and best management practices
- Be coordinated across BLM programs
- Identify opportunities for tribal collaboration





Mitigation Leases

Must offset impacts from other land use authorizations.

Must comply with mitigation principles (43 CFR 6102.5(c))

- Include performance criteria & effectiveness monitoring
- Include adaptive management principles
- Mitigation actions must be:
 - Commensurate
 - Durable
 - Timely
 - Additional





Public Outreach

The presence of community support will make a proposed lease more likely to be approved. Public outreach should include:

- Applicant conducted outreach
 - Examples include letters of support; editorials or articles in local news media or government or organizational websites; verbal support from elected officials; verbal public comment at public meetings.
- BLM conducted outreach
 - When feasible, the BLM should also conduct outreach to affected parties, including current authorization holders and other interested parties, once a complete application has been received.
- Consideration of environmental justice (EJ) and tribal input
 - Respecting Tribal sovereignty and EJ are both whole-of-government responsibilities, and opposition to or support from tribes or EJ communities should be carefully considered and incorporated into BLM decision-making on lease applications.





Considerations: 43 CFR 6102.4

**Is the proposed lease compatible
with existing uses?**



Compatibility Determination

Authorized officers should consider the following when making a compatibility determination:

- Laws applicable to the proposed lease area
- Previously authorized uses and valid existing rights
- Casual use





Laws Applicable to the Proposed Lease Area

- Must comply with all laws applicable to the proposed lease area
- May not restrict authorized subsistence or cultural use



Authorized Uses & Valid Existing Rights

- Communicate with existing users
- Identify possible conflicts
- Seek potential resolutions



If a proposed lease is incompatible with a previously authorized use or a valid existing right, the lease should not be approved.



Casual Use

- Restoration & mitigation leases are generally compatible with casual use.
- Restrictions of casual use will be rare, such as temporarily restricting recreation use while a revegetation project takes root.
- If a restriction of casual use is necessary, it should be for the shortest duration and smallest area possible.



What happens if a new use is proposed on an existing restoration or mitigation lease?

- **Ensure Compatibility:** The newly proposed use must not interfere with the activities authorized under the restoration and mitigation lease.
- **Impact Assessment:** Will the newly proposed use interfere with the lease holder's ability to achieve lease goals?
- **Modification Options:** Can the newly proposed use be adjusted to avoid any conflicts?



Considerations: 43 CFR 6102.4

**Is the monitoring plan
appropriate and sufficient?**



Lease Application Monitoring Plans


Must Address:

- Management goals
- Planned activities
- Monitoring objectives including indicators and methods
- Reporting areas
- Monitoring location selection and timeframes
- Data quality assurance and control procedures



Inventory and Monitoring of Ecological Resources Manual (MS 1735)

Establishes policy for collecting, managing, and applying high-quality, science-based inventory, assessment, and monitoring information related to ecological resources on public lands managed by the BLM.



UNITED STATES
DEPARTMENT OF THE INTERIOR BUREAU OF LAND
MANAGEMENT

MANUAL TRANSMITTAL SHEET

INVENTORY AND MONITORING OF ECOLOGICAL RESOURCES

Subject: INVENTORY AND MONITORING OF ECOLOGICAL RESOURCES

1. Updates, supersedes, or rescinds:
New Manual.

2. Explanation of Materials Transmitted:
MS-1735, Inventory and Monitoring of Ecological Resources, provides policy guidance for collecting, managing, and applying high-quality, science-based inventory, assessment, and monitoring information related to ecological resources on public lands managed by the BLM. This new policy ensures that BLM ecological resource monitoring activities are well-coordinated, efficient, and provide maximal information for decision-makers. This policy builds on existing MS-1734 Inventory and Monitoring Coordination and the 2011 Assessment, Inventory, and Monitoring (AIM).

3. Reports Required:
None

4. Delegations of Authority Updated:
None

5. Filing Instructions: File as directed below:
REMOVE
None

FOIA
Designation P
Letter:

Release
1-1831
Date
08/07/2024
Office Code
HQ-210

INSERT
All of 1735 (Rel. 1-27)
(Total: 29 Pages)



BLM Monitoring Principles



Structured implementation



Standardized field measurements



Appropriate sample designs



Data management and stewardship



Integration with remote sensing



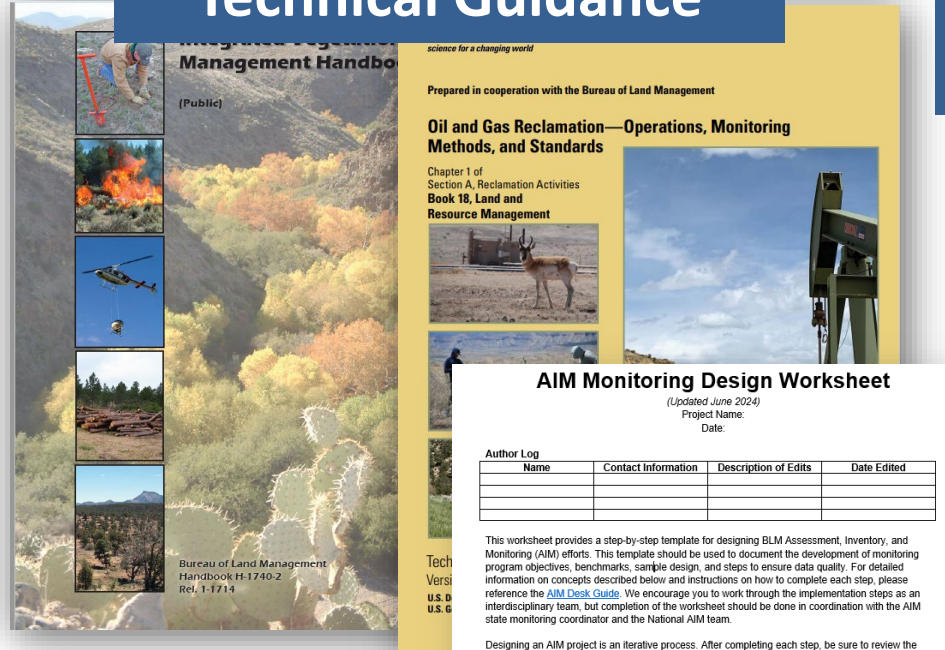
Data use





Available Tools to Inform Restoration Monitoring Plans

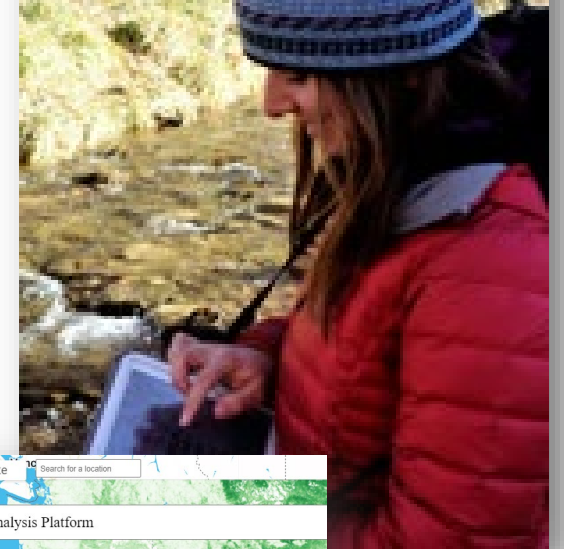
Technical Guidance



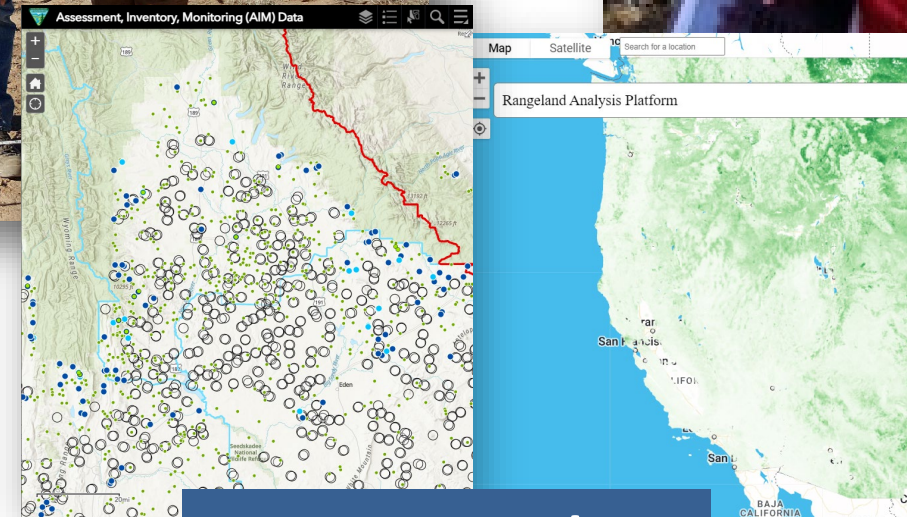
Standardized Protocols and Training



Mobile Data Capture



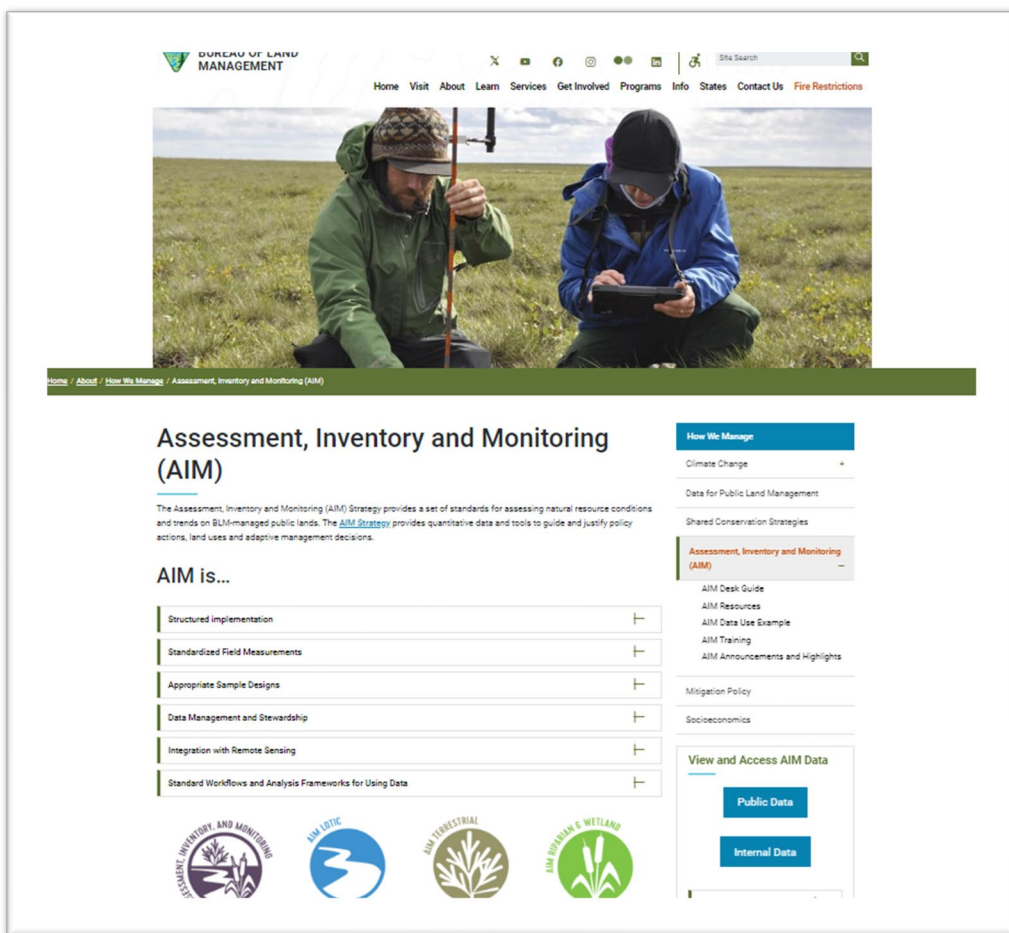
Monitoring Plan Templates



Data Portals



Learn More: Assessment, Inventory, and Monitoring (AIM)



- The AIM program provides tools for monitoring uplands, streams, rivers, wetlands and riparian areas. The AIM principles are smart business practices for streamlining monitoring.
- AIM provides monitoring plan templates, standardized protocols, trainings, and mobile data capture tools that are used across the BLM.
- AIM has also partnered with wildlife, aquatic resources, and range programs to provide info and training on available satellite derived map products.
- Learn more about available tools and datasets on the BLM AIM website – blm.gov/aim



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Ongoing oversight and management of Restoration and Mitigation Leases:

- Lease Activity Reports
- Termination and Suspension Conditions



Lease Activity Reports

The Public Lands Rule requires the lessee submit a lease activity report annually for restoration and mitigation leases. The lease activity report documents monitoring activities and shows whether the lease activities are effective. During the mid-term evaluation of the lease and any other similar review, BLM will consider whether the leaseholder will be able to achieve the goals and objectives of the lease.

The BLM office will ensure reports include:

- Summary of restoration or mitigation activities up to report date
- Assessment of goal achievement based on monitoring data
- Identification of barriers to meeting lease goals
- Proposed steps to address identified barriers
- Additional information needed to evaluate progress
- Photographs of baseline conditions and post-treatment





Termination & Suspension Conditions:

Leases may be terminated or suspended by mutual agreement between lessee & BLM.

BLM may terminate or suspend for:

- Improper use
- Failure to meet lease purpose
- Non-compliance with laws, regulations, or lease terms
- Impossibility of fulfilling lease goals
- Failure to pay rent
- Achievement of original lease goals



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Thank You

