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SABIN CENTER FOR CLIMATE CHANGE LAW

Submitted Via *Regulations.gov*

June 26, 2023

The Honorable Debra Haaland,
Secretary of the U.S. Department of the Interior
Bureau of Land Management,
1849 C St. NW, Room 5646, Washington, DC 20240

Re: Conservation and Landscape Health
Docket ID: BLM-2023-0001
RIN: 1004-AE92

Secretary Haaland,

The Sabin Center for Climate Change Law at Columbia Law School submits these comments in response to the notice of proposed rulemaking ("NPRM") issued by the Bureau of Land Management ("BLM") on April 3, 2023, entitled "Conservation and Landscape Health," 88 Fed. Reg. 19582–19604 (the "Proposed Rule"). The Sabin Center strongly supports the adoption of the Proposed Rule, which is necessary for BLM to fulfill its statutory obligation to manage and protect public lands under the growing threat of global climate change.

As the NPRM recognizes, the Federal Land Management Policy Act ("FLPMA") places conservation on equal footing with other uses of public land.[1] FLPMA requires BLM to "manage the public lands under principles of multiple use and sustained yield."[2] These management principles require BLM to consider, mitigate, and adapt to the growing impact of global climate change, because climate change irreversibly threatens the use, productivity, and environmental qualities of public lands. A 2023 report by the Intergovernmental Panel on Climate Change concluded that rapid climate change caused by human emissions of greenhouse gasses ("GHGs") is expected to drive losses of biodiversity in "land, freshwater, and ocean ecosystems," and

[1] 88 Fed. Reg. 19583, 19585 (Apr. 3, 2023).

[2] 43 U.S.C. § 1732(a).

regional decreases in food production, among many other effects.[3] "As warming levels increase, so do the risks of species extinction or irreversible loss of biodiversity in ecosystems."[4]

Given the increasing damage caused by climate change, and acknowledging the potential for conservation leases to prevent GHG emissions, mitigate emissions through land management, and help American ecosystems adapt to the impacts of climate change, the Sabin Center strongly supports quick action by BLM to finalize the Proposed Rule.

In doing so, however, we recommend that BLM make three modifications to further strengthen the Proposed Rule.

- First, this comment letter strongly supports the incorporation of public benefits, including ecosystem services, into the "fair market value" rent calculations for conservation leases, and the Sabin Center urges BLM to credit conservation leases for their contribution to global GHG emissions reductions, if any, using a social cost of GHG ("SC-GHG") framework.
- Second, this comment letter urges BLM to adopt controls that will prevent public lands tenants from using land enhancement leases to cheaply defer their preexisting remediation, restoration, and decommissioning obligations.
- Third, this comment letter addresses BLM's question of whether the Proposed Rule should "expressly authorize the use of conservation leases to generate carbon offset credits."[5] While the Sabin Center strongly supports the GHG-conscious management of public lands, it is the position of the Sabin Center that the Proposed Rule should not authorize the use of conservation leases to generate commercially traded carbon offset credits.

In addition to these substantive comments, we have identified ambiguities surrounding the duration of land enhancement and mixed-use leases that may hamper the creation of these categories of conservation lease.

These points are further elaborated below.

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[3] INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, SYNTHESIS REPORT OF THE IPCC SIXTH ASSESSMENT: SUMMARY FOR POLICYMAKERS 15 (Mar. 19, 2023), https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf.

[4] *Id*. at 19.

[5] 88 Fed. Reg. 19583, 19591 (Apr. 3, 2023).

1. Understanding "Fair Market Rent" in the Context of Conservation, Mitigation, and Environmental Services Leases

The Proposed Rule will administer "cost recovery, rents, and fees for conservation leases" under existing regulations 43 C.F.R. §§ 2920.6 and 2920.8.[6] Section 2920.8(a) provides that all "holders of a land use authorization" must pay rental fees, "based either upon the fair market value of the rights authorized in the land use authorization or as determined by competitive bidding."[7] This provision reflects a statutory goal of FLPMA—that "the United States [should] receive fair market value [for] the use of the public lands and their resources unless otherwise provided for by statute."[8] BLM seeks comments addressing "how fair market value would be determined in the context of restoration or preservation," and expressing positions as to whether BLM should "incorporate a public benefit component into the rent calculation to account for the benefits of ecosystem services."[9]

This comment letter expresses positions on two aspects of this complex issue. First, the Proposed Rule should incorporate public benefits, including ecosystem services, into the "fair market value" rent calculations for conservation leases. This practice would be consistent with long-standing interpretations of "fair market value" and would align with BLM's dual mandate to manage land in accordance with principles of multiple use and sustained yield. Second, in assessing the fair market value of a proposed conservation lease and comparing conservation leases against other activities, the Proposed Rule should credit conservation leases for their contribution to global GHG emissions reductions, if any, using a SC-GHG framework.

A. Crediting Conservation Leases for Public Benefits and Ecosystem Services

The Sabin Center supports the incorporation of public benefits, including ecosystem services, into the "fair market value" rent calculations for conservation leases. Advocates,

[6] 88 Fed. Reg. 19583, 19591 (Apr. 3, 2023).

[7] 43 C.F.R. 2920.8(a)(1).

[8] 43 U.S.C. § 1701(a)(9).

[9] 88 Fed. Reg. 19583, 19591 (Apr. 3, 2023).

academics, and government actors have long argued that BLM should apply broad definitions of "fair market value" for leases that includes public benefits and detriments.[10]

Crediting public benefits created by lessees against the value of rights transferred to them is consistent with long-standing interpretations of "fair market value" under FLPMA. Since the passage of FLPMA in 1976, BLM has at times deducted the value of tenant-initiated improvements from calculations assessing the "fair market value" of transferred rights. This practice is evident in some of the earliest regulations passed under FLPMA's authority. For example, FLPMA § 211 authorizes BLM to sell public lands to occupants who had used and developed the land before 1975 for "not less than the fair market value."[11] Since 1979 BLM has calculated "fair market value" for these sales by deducting "value resulting from development and occupation by the applicant or his predecessors in interest . . . from the appraised price."[12] This approach is also consistent with recent government assessments of public lands leasing programs. For example, a 2021 study of Federal oil and gas leasing by the Department of the Interior acknowledges that climate change, environmental harms, and other public detriments should be considered alongside the question whether a leasing program "provide[s] a fair return to taxpayers."[13]

B. Incorporating the Social Cost of GHGs

To accurately assess the fair market value of a proposed conservation lease and compare conservation leases to other activities, BLM should credit conservation leases for their

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[10] *See Michael Burger, A Carbon Fee As Mitigation for Fossil Fuel Extraction on Federal Lands*, 42 COLUM. J. ENVTL. L. 295, 319 (2017); *see also* Jayni Foley Hein & Peter Howard, *Reconsidering Coal's Market Value: The Social Costs of Coal Production and the Need for Fiscal Reform* 1, Institute for Policy Integrity (Oct. 2015), https://policyintegrity.org/files/publications/Coal_fair_market_value.pdf ("A robust definition of fair market value . . . should include: the market price of the coal resource, the option value of leasing that resource, and the social cost of mining—the cost to American taxpayers of mining on public lands due to non-internalized externalities. This broader definition would be consistent with Interior's dual mandate to earn a fair return on development of energy resources, and to preserve and protect the environment."); *see also* EXEC. OFFICE OF THE PRESIDENT OF THE U.S., THE ECONOMICS OF COAL LEASING ON FEDERAL LANDS: ENSURING A FAIR RETURN TO TAXPAYERS 28 (2016), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160622_cea_coal_leasing.pdf (noting that "there is an economic rationale for increasing [coal leasing] royalty rates both to ensure a fair return to the taxpayers and to internalize environmental externalities.").

[11] 43 U.S.C. § 1721(b)(2).

[12] 43 C.F.R. § 2547.3.

[13] REPORT ON THE FEDERAL OIL AND GAS LEASING PROGRAM: PREPARED IN RESPONSE TO EXECUTIVE ORDER 14008 3, U.S. Department of the Interior (Nov. 2021), https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf.

contributions, if any, to global GHG emissions reductions, using a SC-GHG framework. This metric would allow BLM to better weigh the value of a proposed conservation use that produces positive externalities like GHG emissions reductions or sequestration against alternative GHG-emitting public lands uses.

To appropriately assess the climate benefits and averted climate costs associated with a proposed conservation lease, BLM should look to the National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change (the "Guidance") issued by the U.S. Council on Environmental Quality ("CEQ") in January 2023. Among other considerations, CEQ's Guidance recommends that agencies assess the impact of proposed federal actions based on "the best available [SC-GHG] estimates . . . to translate climate impacts into the more accessible metric of dollars, allow decision makers and the public to make comparisons, help evaluate the significance of an action's climate change effects, and better understand the tradeoffs associated with an action and its alternatives."[14] SC-GHG metrics have repeatedly been upheld by courts as a valid method of assessing the climate impact of proposed federal actions.[15]

In assessing SC-GHG benefits from conservation leases, BLM should base its evaluations on the full range of SC-GHG values published by the Interagency Working Group on SC-GHG ("IWG").[16] In February 2021 IWG published four social cost estimates for each of carbon dioxide, methane, and nitrous oxides.[17] IWG adopted multiple average figures with different discount rates "in light of disagreements in the literature on the appropriate discount rate to use in this context, and uncertainty about how rates may change over time."[18] This methodology is important because

[14] National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, U.S. Council on Environmental Quality, 88 Fed. Reg. 1196, 1198 (Jan. 9, 2023).

[15] *See, e.g.*, *Zero Zone, Inc. v. United States Dep't of Energy*, 832 F.3d 654 (7th Cir. 2016); *Montana Env't Info. Ctr. v. U.S. Off. of Surface Mining*, 274 F. Supp. 3d 1074 (D. Mont. 2017), *amended in part, adhered to in part sub nom. Montana Env't Info. Ctr. v. United States Off. of Surface Mining*, No. CV 15-106-M-DWM, 2017 WL 5047901 (D. Mont. Nov. 3, 2017); *High Country Conservation Advocs. v. United States Forest Serv.*, 52 F. Supp. 3d 1174 (D. Colo. 2014); *WildEarth Guardians v. Zinke*, No. CV 17-80-BLG-SPW-TJC, 2019 WL 2404860 (D. Mont. Feb. 11, 2019), *report and recommendation adopted sub nom. WildEarth Guardians v. Bernhardt*, No. CV 17-80-BLG-SPW, 2021 WL 363955 (D. Mont. Feb. 3, 2021).

[16] Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, at 23 (2021), https://perma.cc/53W6-VCS4.

[17] *Id*. at 22–24.

[18] *Id*. at 17.

the SC-GHG values are sensitive to changes in discount rate, and there is currently no consensus on the proper rate to use to account for intergenerational impacts of GHG emissions.

2. "Land Enhancement" Leases, and Lessons from BSEE's "Idle Iron" Policy

The Proposed Rule allows BLM to issue conservation leases for the purpose of "land enhancement."[19] Land enhancement is defined broadly, and includes:

> "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."[20]

The Sabin Center supports BLM's efforts to construe conservation leases broadly, and to create regulatory flexibility that will encourage innovation in conservation leasing. However, the Sabin Center urges BLM to adopt controls that will prevent public lands tenants from using land enhancement leases to cheaply defer their preexisting remediation, restoration, or decommissioning obligations.

In 2021, recognizing the harms caused by GHGs emitted from abandoned fossil fuel wells, Congress directed BLM to "plug, remediate, and reclaim orphaned wells located on Federal land," and to monitor and reduce "idled wells on Federal land."[21] In early 2023 the Department of the Interior established an Orphaned Wells Program Office to coordinate activities to "plug, remediate, and reclaim orphaned oil and gas wells on Federal, State, Tribal, and private lands."[22] However,

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[19] 43 C.F.R. § 6102.4(a)(1)(i) (proposed), at 88 Fed. Reg. 19583, 19600 (Apr. 3, 2023).

[20] 43 C.F.R. § 6101.4 (proposed), at 88 Fed. Reg. 19583, 19598 (Apr. 3, 2023).

[21] 42 U.S.C. § 15907(b).

[22] Secretary's Order No. 3409, Establishment of the Orphaned Wells Program Office, Department of the Interior (Jan. 10, 2023), https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3409.pdf.

leasing mechanisms that allow physical infrastructure to remain on public lands may, if not carefully managed, undermine these efforts to decommission unused fossil fuel infrastructure.

The Department of the Interior has recently grappled with the issue of quasi-abandoned infrastructure in the context of offshore oil and gas leasing. Under longstanding regulations, an offshore facility must be decommissioned "within 1 year after [its] lease or pipeline right-of-way terminates," unless the decommissioning party receives approval for the facility to be used for other activities.[23] Separately, facilities must generally be decommissioned when they "are no longer useful for operations,"[24] and the Bureau of Safety and Environmental Enforcement ("BSEE") has the authority to order responsible parties to plug offshore wells that "pose[] a hazard to safety or the environment" or are "not useful for lease operations and [are] not capable of oil, gas, or sulphur production in paying quantities."[25]

However, ambiguities around the "usefulness" of facilities left these regulations open to abuse.[26] Many companies refused to decommission aging and disused infrastructure under the theory that it "added value to the lease or might one day be used in support of other, active wells and facilities."[27] In 2010, recognizing this problem, BSEE issued guidance to its lessees known as the "Idle Iron" policy. This policy was designed to reduce hazards from offshore installations left effectively, if not legally, abandoned.[28] The Idle Iron policy generally requires lessees to decommission wells and platforms that have not been used for mineral production or other authorized uses in the past five years.[29]

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[23] 30 C.F.R. § 250.1725(a).

[24] 30 C.F.R. § 250.1703.

[25] 30 C.F.R. § 250.1711.

[26] Katherine Schmidt, *'Idle Iron' Guidance Could be Double-Edged Sword for Companies*, HOUMA TODAY (Nov. 6, 2010), https://www.houmatoday.com/story/news/2010/11/07/idle-iron-guidance-could-be-double-edged-sword-for-companies/26946694007/ (quoting Evan Smith, director of the Tulane Energy Institute, as saying that "Over time, the practice has been if you come up with a reasonable excuse, and it has navigation lights on it, you can pretty much leave it out there.").

[27] Press Release, U.S. Department of the Interior, Interior Department Issues "Idle Iron" Guidance (Sept. 15, 2010), https://www.doi.gov/news/pressreleases/Interior-Department-Issues-Idle-Iron-Guidance.

[28] *Idle Iron Policy*, BUREAU OF SAFETY & ENVIRONMENTAL ENFORCEMENT (n.d.), https://www.bsee.gov/what-we-do/environmental-focuses/decommissioning/idle-iron.

[29] BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT, NTL No. 2018-G03 (Dec. 11, 2018), https://www.bsee.gov/sites/bsee.gov/files/notices-to-lessees-ntl//ntl-2018-g03.pdf.

The history of BSEE's "Idle Iron" policy demonstrates the risk that opportunistic actors may defer their decommissioning obligations by claiming that drilling facilities, roads, and other installations may be useful in the future. BLM's "idle well" program may be vulnerable to this type of manipulation, as "idle wells" are defined as wells "that ha[ve] been nonoperational for not fewer than 4 years; and *for which there is no anticipated beneficial future use*."[30] BLM must ensure that the broad scope of "land management" leases does not allow lessees to preserve unproductive GHG-emitting wells or related road and pipeline infrastructure by claiming that it may serve a future "land enhancement" use.

3. Use of Conservation Leases to Generate Commercial Carbon Credits

In the NPRM, BLM solicits comments on the question of whether the Proposed Rule should "expressly authorize the use of conservation leases to generate carbon offset credits."[31] As the private sector demand for carbon offsets has increased, carbon protocols have proliferated, offering a variety of standards and qualities of carbon offset credit.[32] Generally, however, "[t]he quality and credibility of carbon offsets may be considered in terms of broad metrics, including realness, additionality, leakage, permanence, and verification."[33]

The Sabin Center strongly supports the GHG-conscious management of public lands, and the application of land management practices to reduce emissions from and increase storage of biological carbon. However, it is the position of the Sabin Center that the Proposed Rule should not authorize the use of conservation leases to generate commercially traded carbon offset credits. The conservation leases contemplated by the Proposed Rule are poorly suited for generating offset credits because they lack two key characteristics necessary for high-quality commercial carbon offsets: permanence and additionality.

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[30] 42 U.S.C. § 15907(a)(2) (emphasis added).

[31] 88 Fed. Reg. 19583, 19591 (Apr. 3, 2023).

[32] *See* Haya BK, Evans S, Brown L, Bukoski J, Butsic V, Cabiyo B, Jacobson R, Kerr A, Potts M and Sanchez DL (2023) Comprehensive review of carbon quantification by improved forest management offset protocols. *Front. For. Glob. Change* 6:958879. doi: 10.3389/ffgc.2023.958879 (reviewing areas where offset protocols diverge from scientific best practices).

[33] Agriculture and Forestry Offsets in Carbon Markets: Background and Selected Issues, Congressional Research Service 4 (Nov. 3, 2021), https://crsreports.congress.gov/product/pdf/R/R46956.

A. The Conservation Leases, as Proposed, Lack Permanence

GHGs remain in the atmosphere for long periods after their emission, and permanent GHG emissions are not adequately offset by temporary GHG sequestration. For this reason, "[m]any carbon standards require 100-year permanence" for any activity to generate tradable offset credits.[34] The Cap-and-Trade Program administered by the California Air Resources Board ("CARB"), for example, requires offset credits to provide either "GHG reductions and GHG removal enhancements [that] are not reversible," or that are guaranteed to "endure for at least 100 years."[35]

The conservation leases discussed in the Proposed Rule are not well-designed to guarantee permanent GHG reductions. At a minimum, mitigation leases issued to generate carbon offset credits must be issued for a guaranteed term of 100 years. While the Proposed Rule provides that a mitigation lease must be "issued for a term commensurate with the impact it is mitigating," such leases are subject to review every five years. A long-duration mitigation lease combined with significant protections against premature termination might, in theory, create enough "permanence" to support the creation of commercial carbon offsets. However, easements or other transfers of durable property rights would provide better permanence guarantees and be more easily administered by BLM.

B. The Conservation Leases, as Proposed, Lack Additionality

While concerns about permanence may potentially be addressed within the scope of the Proposed Rule, the Proposed Rule also lacks another core feature of high-quality carbon offsets: additionality. "Additionality means that the GHG mitigation would not have occurred without the purchase of the carbon offset."[36] CARB's Cap-and-Trade Program defines additionality as "greenhouse gas emission reductions or removals that exceed any greenhouse gas reduction or removals otherwise required by law, regulation or legally binding mandate, and that exceed any greenhouse gas reductions or removals that would otherwise occur in a conservative business-as-

[34] Agriculture and Forestry Offsets in Carbon Markets: Background and Selected Issues, Congressional Research Service 4 (Nov. 3, 2021), https://crsreports.congress.gov/product/pdf/R/R46956.

[35] Cal. Code Regs. tit. 17, § 95802.

[36] Agriculture and Forestry Offsets in Carbon Markets: Background and Selected Issues, Congressional Research Service 4 (Nov. 3, 2021), https://crsreports.congress.gov/product/pdf/R/R46956.

usual scenario."[37] Considering the scale of emissions reduction already pledged by the United States, the volume of GHGs emitted from permitted fossil fuel extraction on public lands, and BLM's statutory obligation to apply principles of sustained yield and multiple use to its land management practices, is unclear whether a carbon credit generated from BLM-managed public lands can satisfy the requirement of additionality.

The United States has made significant commitments to reduce and mitigate national GHG emissions. On January 20, 2021, President Joe Biden accepted the Paris Agreement on behalf of the United States.[38] Article 4, paragraph 2 of the Paris Agreement "requires each Party to prepare, communicate and maintain successive nationally determined contributions," ("NDCs," a term used for agreed-upon national GHG emissions reductions), "that it intends to achieve."[39] In April of 2021 the Biden administration submitted an updated NDC, pledging that the United States would "achieve an economy-wide target of reducing its net greenhouse gas emissions by 50-52 percent below 2005 levels in 2030."[40] While Congress has yet to enshrine binding nation-wide emissions limits, federal agencies are already interpreting their statutory powers and obligations in light of the nation's Paris Agreement commitments.[41]

It is unclear how much of BLM's managed public land must be dedicated to satisfy these pledges. The NDC submitted by the United States notes that the country "may address emissions and subsequent removals from natural disturbances on managed lands in accounting for its NDC."[42] In addition, the CEQ Guidance discussed earlier in this comment letter recommends that

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[37] Cal. Code Regs. tit. 17, § 95802.

[38] United States Rejoins the Paris Agreement on Climate Change: Options for Congress, Congressional Research Service 1 (Feb. 25, 2021).

[39] *Nationally Determined Contributions*, UNITED NATIONS CLIMATE CHANGE (n.d.), https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs.

[40] Nationally Determined Contribution: Reducing Greenhouse Gases in the United States: A 2030 Emissions Target, United States of America (Apr. 15, 2021), https://unfccc.int/sites/default/files/NDC/2022-06/United%20States%20NDC%20April%2021%202021%20Final.pdf.

[41] *See, e.g.*, Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks, U.S. National Highway Traffic Safety Administration, 87 Fed. Reg. 25710, 25984 (May 2, 2022) (noting that the National Highway Traffic Safety Administration's authorizing statute "permits—and arguably requires—that NHTSA consider how it can best coordinate its CAFE standards with EPA's GHG standards and the nation's Paris Agreement commitments.").

[42] Nationally Determined Contribution: Reducing Greenhouse Gases in the United States: A 2030 Emissions Target, United States of America 19 (Apr. 15, 2021), https://unfccc.int/sites/default/files/NDC/2022-06/United%20States%20NDC%20April%2021%202021%20Final.pdf.

"Federal land and resource management agencies should consider developing and maintaining agency-specific principles and guidance for considering biological carbon in management and planning decisions."[43] This is complemented by FLPMA's overriding requirement that BLM "manage the public lands under principles of multiple use and sustained yield."[44] These principles may themselves create a statutory obligation for BLM to engage in carbon-conscious land management.

The Sabin Center is not the first organization to identify this barrier to developing carbon offset markets on Federal public lands. This challenge was highlighted in a 2021 report by the Congressional Research Office that examined the role of agriculture and forestry in U.S. climate mitigation. The report noted that:

> "Additionality is a specific concern across all forest offset project types. This is in part because many of the activities that generate offset credits are also common forest management activities, which creates challenges when determining whether an activity was truly additional or would have occurred anyway."[45]

Without clear, adequate, and enforceable carbon management commitments from BLM and other managers of public lands, it is impossible to demonstrate that a private-sector GHG sequestration program on public lands provides the additionality needed to generate high-quality carbon offset credits. The problem is, ultimately, a simple one—BLM cannot sell extra carbon offsets until it determines the scope of its own offset pledges.

4. Duration of Land Enhancement Leases and Multi-Purpose Leases

In addition to the substantive comments discussed above, the Sabin Center would like to offer technical comments that may reduce ambiguity surrounding the maximum duration of land enhancement leases and multi-purpose conservation leases.

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[43] National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, U.S. Council on Environmental Quality, 88 Fed. Reg. 1196, 1207 (Jan. 9, 2023).

[44] 43 U.S.C. § 1732(a).

[45] Agriculture and Forestry Offsets in Carbon Markets: Background and Selected Issues, Congressional Research Service 21 (Nov. 3, 2021), https://crsreports.congress.gov/product/pdf/R/R46956.

The proposed language for § 6102.4(a)(1) authorizes conservation leases for three types of activities: (1) "Conservation use that involves restoration,"[46] (2) "Conservation use that involves . . . land enhancement,"[47] and (3) "Conservation use that involves mitigation."[48] § 6102.4(a)(3) sets out the principle that "[c]onservation leases shall be issued for a term consistent with the time required to achieve their objective."[49] Subsections provide further detail; leases "issued for purposes of restoration or protection may be issued for a maximum term of 10 years,"[50] and leases "issued for purposes of mitigation shall be issued for a term commensurate with the impact [they are] mitigating."[51] All conservation leases may be extended "if necessary to serve the purpose for which the lease was first issued."[52] These subsections omit important categories of lease. The Proposed Rule, as drafted, does not set a duration for "land enhancement" leases, and fails to address the treatment of conservation leases that propose some combination of restoration, protection, or mitigation.

Addressing this ambiguity is important because conservation leases, including land enhancement leases, may be a useful tool in the fight against climate change. A 2017 report by the U.S. Forest Service that examined carbon sequestration concluded that "[l]and management actions on public and private forests and grasslands can be designed to achieve carbon outcomes while meeting other sustainable resource management objectives."[53] Recent studies suggest that, if applied optimally, land management strategies could reduce the United States' net GHG emissions by more than 30%.[54] Private conservation leases may help ensure durable government commitments to climate change-oriented public land management. However, effective storage of GHGs through land management requires long-term commitments to land management plans, as

[46] 43 C.F.R. § 6102.4(a)(1)(i) (proposed), at 88 Fed. Reg. 19583, 19600 (Apr. 3, 2023).

[47] 43 C.F.R. § 6102.4(a)(1)(i) (proposed), at 88 Fed. Reg. 19583, 19600 (Apr. 3, 2023).

[48] 43 C.F.R. § 6102.4(a)(1)(ii) (proposed), at 88 Fed. Reg. 19583, 19600 (Apr. 3, 2023).

[49] 43 C.F.R. § 6102.4(a)(3) (proposed), at 88 Fed. Reg. 19583, 19600 (Apr. 3, 2023).

[50] 43 C.F.R. § 6102.4(a)(3)(i) (proposed), at 88 Fed. Reg. 19583, 19600 (Apr. 3, 2023).

[51] 43 C.F.R. § 6102.4(a)(3)(ii) (proposed), at 88 Fed. Reg. 19583, 19600 (Apr. 3, 2023).

[52] 43 C.F.R. § 6102.4(a)(3)(iii) (proposed), at 88 Fed. Reg. 19583, 19600 (Apr. 3, 2023).

[53] General Technical Report WO-95, Considering Forest and Grassland Carbon in Land Management 47, U.S. Forest Service (June 2017), https://www.fs.usda.gov/research/publications/gtr/gtr_wo95.pdf.

[54] Sha, Z., Bai, Y., Li, R. *et al.* The global carbon sink potential of terrestrial vegetation can be increased substantially by optimal land management. *Commun Earth Environ* 3, 8 (2022). https://doi.org/10.1038/s43247-021-00333-1.

post-sequestration disturbance of a site represents "[p]erhaps the strongest constraint on carbon storage."[55] As previously discussed, effective GHG removal requires sequestration not for years, but for centuries. In this context, ambiguities around the duration of land enhancement leases or mixed-purpose conservation leases may make sequestration leases unattractive at best, and unworkable at worst.

This ambiguity could be addressed with relatively minor changes to the language of the Proposed Rule. BLM could modify § 6102.4(a)(3) to clarify that its principle—that "[c]onservation leases shall be issued for a term consistent with the time required to achieve their objective"[56]—applies to all leases not subject to a maximum term specified in §§ 6102.4(a)(3)(i) or (ii). Alternatively, BLM could revise § 6102.4(a)(3)(ii) to include land enhancement leases and mixed-purpose conservation leases among those leases "issued for a term commensurate with" their environmental purpose. Either of these changes would resolve the ambiguity in the Proposed Rule while preserving flexibility for lessees to propose effective long-duration carbon management leases.

5. Conclusion

In summary, the Sabin Center believes that the Proposed Rule provides new and potentially powerful land use tools to prevent GHG emissions, mitigate emissions through land management, and help American ecosystems adapt to the impacts of climate change. The changes, additions, and recommendations contained in this comment letter would strengthen the Proposed Rule, making it clearer, more resilient, and more effective. The Sabin Center welcomes the adoption of the Proposed Rule, which fulfills FLPMA's promise by creating regulations that treat conservation as "a use on par with other uses of the public lands under FLPMA's multiple-use and sustained-yield framework."[57]

[*Signatures follow*]

[55] General Technical Report WO-95, Considering Forest and Grassland Carbon in Land Management 14, U.S. Forest Service (June 2017), https://www.fs.usda.gov/research/publications/gtr/gtr_wo95.pdf.

[56] 43 C.F.R. § 6102.4(a)(3) (proposed), at 88 Fed. Reg. 19583, 19600 (Apr. 3, 2023).

[57] 88 Fed. Reg. 19583, 19583 (Apr. 3, 2023).

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