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STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
State Land Use Planning Advisory Council

June 12, 2023

1004-AE92, Director (630)
Bureau of Land Management
1849 C Street NW #5646
Washington, DC 20240

Re: 1004-AE-92 – Conservation and Landscape Health, Proposed Rule

The Nevada State Land Use Planning Advisory Council (SLUPAC), under my signature, is providing this letter, approved by SLUPAC on June 12, 2023, to comment on the Conservation and Landscape Health, Proposed Rule (1004-AE-92).

SLUPAC is the only Governor-appointed council that has a county representative from each of Nevada's seventeen counties as well as the Nevada Association of Counties (NACO), the Nevada League of Cities & Municipalities, and the Nevada Indian Commission. SLUPAC provides recommendations and expertise on land use planning and natural resources issues and advises the State Land Use Planning Agency regarding the development of plans and statements of policy.

SLUPAC appreciates the opportunity to comment on the Proposed Rule which intends to ensure the health, diversity, and productivity of Nevada's public lands for the use and enjoyment of present and future generations while at the same time balancing conservation activities with the Bureau of Land Management's (BLM) multiple use mandate .

We note the wide range of viewpoints on the Proposed Rule, including amongst councilmembers of SLUPAC. Some oppose the Proposed Rule, some believe it is unnecessary, and some support it, all with varying reasons and interpretations. As drafted, the Proposed Rule can be interpreted to align with the viewpoints and biases of any party. SLUPAC asserts that regulations should be written in a way to remove, as much as possible, any subjectiveness and wide range of interpretation. SLUPAC provides this letter to assist to clarify the intent and application of the Proposed Rule should BLM move it forward.

Fundamentally, SLUPAC believes that the Proposed Rule is unnecessary and that current mechanisms already exist without the need for the Proposed Rule. SLUPAC asserts that a significant land use policy or management change such as that proposed in the Proposed Rule should instead be done through a collaborative and comprehensive Resource Management Plan (RMP) planning process with a focus on local involvement and coordination. SLUPAC believes that there are many mechanisms that

currently exist to reach the intentions of the Proposed Rule. Examples include, without limitation, the current BLM range improvement regulations, private party binding agreements such as the Barrick (now Nevada Gold Mines) Bank Enabling Agreement, the Nevada Conservation Credit System, and locally led conservation district Resource Needs Assessments and Conservation Action Plans. The BLM should work to bolster and provide capacity to these existing partnerships and work to improve the NEPA process so that the conservation objectives of the Proposed Rule can be achieved.

First Prioritize Nevada-Wide Resource Management Plan (RMP) Modernization Project

The current average age of a Nevada RMP is currently more than 22 years. Within this time period, new issues have arisen related to land use changes caused by urban development and changing conditions on Nevada's public lands. Additionally, there have been significant policy changes related to recreation, energy production, mineral extraction, land leasing, agriculture, wildfire management, military activities, transportation, and many other land use planning issues. Nevada's population and economy continue to grow significantly. As a result, the continuing and fast-paced land use changes on Nevada's landscapes need to be addressed collaboratively. Updates are needed to Nevada's outdated RMP's so that the BLM can be responsive to these changing conditions and the ongoing land use planning challenges throughout Nevada.

During our November 10, 2022 meeting, SLUPAC endorsed the Nevada-Wide RMP Modernization Project proposed by BLM's Nevada State Office. This transparent planning process will be more effective in achieving the conservation goals of the Proposed Rule while balancing the other multiple use resource needs and interests of the state.

Consistency with Local Land Use Management Plans

With almost 70% of Nevada's land area under BLM management, the economies and land use plans and policies of Federally recognized Indian Tribes (Tribes), state agencies, and local governments will be impacted by the decisions and land allocations made through, or flowing from, the Proposed Rule. Due to its large Federal land ownership, Nevada will be disproportionately impacted by the proposed public lands rule compared to other states. Some counties in Nevada have as much as 97% of the land within their jurisdiction managed by the federal government which means that these areas are already compromised to be able to generate economic activity and tax base. Conservation activities should be done in a way that strikes a balance between conservation and land uses and economic activity.

Identifying and prioritizing areas where conservation practices can be deployed with as little impact as possible to Nevada's communities, natural lands, cultural resources, recreation, and other future land uses is critical. SLUPAC stresses the importance of close coordination and consistency between local land use master plans and the proposed public lands rule to protect and preserve the resources of the State while providing for the current and future needs of residents. The development of conservation goals on public lands should be prioritized in areas that are consistent with and support local land use plans, goals and policies.

The Federal Lands Policy and Management Act (FLPMA) requires cooperative planning and coordination with state and local government land use plans. BLM land management decisions are to be aligned with local land use plans and policies to the maximum extent that is practicable and

consistent with federal laws and regulations. BLM's Proposed Rule does not clearly define how conservation leases and the designation of Areas of Critical Environmental Concern (ACECs) will be coordinated with local land use plans and policies. For example, the Proposed Rule includes a provision that "intact landscapes" be protected "from activities that would permanently or significantly disrupt, impair, or degrade the structure or functionality of intact landscapes". While the goal of this statement is laudable, it is blind to existing land use plans and policies which may identify other uses and activities.

Furthermore, the definition of "intact landscapes" and the protections they would be given under this Proposed Rule are vague, ripe for misinterpretation, and could inadvertently restrict or preclude beneficial land practices if characterized as "land disturbances". For example, as currently written, common and beneficial conservation activities such as pinyon-juniper encroachment removal, livestock grazing, and invasive weed treatments could be prevented from occurring if considered as "activities that would permanently or significantly disrupt, impair, or degrade the structure or functionality of intact landscapes", and essentially undermine the purpose of the Proposed Rule. Therefore, SLUPAC suggests the BLM clarify and clearly define how the Proposed Rule and actions flowing from it will be coordinated and align with local land use plans and policies. Additionally, SLUPAC would like clarification on how the BLM will address any inconsistencies with local plans and policies. There is an imperative need to clarify and better define conservation provisions to avoid misinterpretation and misapplication.

Proposed Rule and the National Environmental Policy Act (NEPA)

The Proposed Rule represents a significant shift in the BLM's land management policy. Given the potential conflict with local land use plans and policies as well as the potential for other socioeconomic and environmental impacts, promulgation of this new rule should undergo a thorough evaluation under a Programmatic Environmental Impact Statement (PEIS).

The Federal Register Notice of Intent for this Proposed Rule states the "BLM intends to apply the Department Categorical Exclusion (CX) at 43 CFR 46.21(i) to comply with the National Environmental Policy Act." According to NEPA and the BLM's NEPA Handbook, a CX should not be allowed. Section 3.2.1 Policies and Rulemaking, the NEPA Handbook states:

- "The CEQ regulations define major federal actions to include adoption of official policy (that is, rules and regulations), adoption of formal plans, adoption of programs, and approval of specific projects." p. 13

All rulemakings, including the Proposed Rule, are therefore "major Federal actions." The NEPA Handbook also prescribes a 3-part test to determine whether a rule warrants a full EIS under NEPA:

- "When we propose a policy, we must evaluate it to determine whether it is a major Federal action significantly affecting the quality of the human environment, and thus triggers the need to prepare an EIS (40 CFR 1502.4(b)). This evaluation involves a three-part test to determine whether the following apply: the action must (1) be federally approved or conducted, (2) major, and (3) have a significant environmental impact. However, it is not always as clear whether a proposed policy will affect the human environment. The BLM must evaluate if the proposed action would authorize any

activity or commit any resources, thus affecting the human environment (40 CFR 1508.18).” p. 14

SLUPAC maintains that by virtue of creating a new category of “use” under the BLM’s Federal Land Management multiple use mandate, which could be applied across millions of acres under BLM management in Nevada, all three elements of the 3-part test apply. In the same way that the creation of competitive leasing program for solar required an EIS in 2012, so too should the creation of yet another leasing mechanism be subject to NEPA and a full EIS. Therefore, a full EIS is warranted and required.

Furthermore, with multiple landscape level resource management changes currently underway (Western Solar PEIS update, Sage Grouse Plan Amendments, and Revision of Grazing Regulations), the BLM has a responsibility to consider the potential cumulative impacts with this Proposed Rule as stipulated in NEPA.

Undertaking a NEPA analysis would also grant State, Federal recognized Indian Tribes and Local Governments their right under the law to participate in the analysis as Cooperating Agencies (CA) and through required public comment periods. Localized CA engagement would enable the BLM to receive important, community-level socioeconomic data and input regarding the potential impacts of the Proposed Rule, as well as ensure it is consistent with local land use plans and policies as required under FLMPA and NEPA.

Promote Tribal Engagement and Traditional Ecological Knowledge

Local stakeholders, and in particular Federally recognized Indian Tribes have specific knowledge and possess an on-the-ground understanding of Nevada’s land use planning policies and management activities. SLUPAC believes it is critical for the BLM to foster close communication and coordinate conservation efforts with Tribes for the benefit of Nevada’s natural resources. The efforts of the proposed public lands rule to promote increased Tribal engagement and co-management opportunities are commendable. The inclusion of traditional ecological knowledge of the Tribes in Nevada into the land management decisions will help identify and avoid significant cultural resources and better protect natural resources. SLUPAC supports the BLM working in close partnership with Federally recognized Indian Tribes throughout Nevada in a meaningful, collaborative, and transparent manner to incorporate traditional ecological knowledge and promote co-management opportunities.

Need to Combat Current Speculative Leasing Practices

SLUPAC also encourages the BLM to develop policies that will discourage speculative projects on public land. In recent years across several hundred thousand acres throughout Nevada there has been a rush by developers, private investors, and others to propose large scale renewable energy projects, oil & gas leases, mining projects, special use activities, and other uses that are specious and speculative. Many of these speculative projects have very little chance of ever being completed and take up the valuable time of BLM field office staff. Better vetting, tracking and mapping of speculative projects proposed on public lands is needed to help local stakeholders better understand and plan for more realistic projects across Nevada. Given the impact of speculative projects on the demands of BLM field office staff, SLUPAC is concerned about the conservation leasing activities under the Proposed Rule interfering with other important land management activities. Therefore, SLUPAC again supports a comprehensive RMP update to balance conservation with other land use uses and to limit speculation.

Provide Beneficial Local Mitigation

SLUPAC notes that the state lacks a comprehensive and integrated dataset with respect to the impacts of all the permitted multiple use activities on Nevada's public lands. As stated, the average age of an RMP in Nevada is 22 years and better planning is needed to adapt to changing conditions and provide balanced responsible development. SLUPAC encourages the BLM to update its RMP's to provide a full accounting and mapping of the multiple use activities that have been permitted or proposed on public lands in Nevada. This accounting and mapping of these activities will also allow the State, Tribal Nations, and Local Governments in Nevada to better understand the impacts of these uses and provide for mitigation in their own planning processes.

SLUPAC believes that improvements can be made to current management practices to provide a clearer path for compensatory mitigation. Any mitigation that is done to offset the impacts of a project should be done in ways that are consistent with local land use plans and policies. Additionally, mitigation should be done where the project is located and should be to the benefit of a local community that is impacted by the project.

Specific Comments Requested on Proposed Public Lands Rule

The BLM specifically requested comments on several aspects of the conservation lease Proposed Rule. SLUPAC provides the following comments to each of BLM's scoping questions below:

- *The BLM welcomes comments on how applying the fundamentals of land health beyond lands allocated to grazing will interact with BLM's management of non-renewable resources.*
Taken in the context of this Proposed Rule as it is written and described in the Federal Register this is not at all clear. Assessing the land health across the ~248 million acres that the BLM manages seems a worthy, but monumental task – a task that it is not at all clear that the BLM has the capacity to carry out. Non-renewable mineral extraction is an important economic driver of our state and to many of our counties. If this Proposed Rule is moved forward the BLM needs to very explicitly define how it will balance the designation of ACECs and Conservation Leasing with multiple-use principles. In most instances, mineral exploration, grazing, and other uses can be done without compromising long term land health. Additionally, it is unclear how BLM would apply land health standards to other non-permitted uses. SLUPAC supports evaluation of land health through a PEIS process with robust public input.
- *Is the term “conservation lease” the best term for this tool?* It seems like an appropriate term if BLM chooses to move forward with a clear definition of conservation. However, the term “lease” is causing some confusion and consternation amongst stakeholders. Perhaps a better term would be something like “Conservation Agreements with Assurances (CAA)” which puts more emphasis on “agreements” while stating the intent to provide assurances that the conservation work will be completed and be durable.
- *What is the appropriate default duration for conservations leases?* Given the BLM's “multiple-use and sustained-yield mandates to manage public lands for resilience and future productivity” and given the noted accelerated changes that are occurring within ecosystems it seems important for the BLM to maintain a higher degree of flexibility and nimbleness in land management. In

some instances, “restoration” activities can be successful in a relatively short period of time; in other instances, the importance and value of a certain leased area may be so diminished by environmental events (such as wildfire) to eliminate any of the affected area’s potential to contribute to a “resilient ecosystem” or a conservation lease. In the interest of nimble and responsive management BLM should monitor active conservation leases frequently and make lease durations site specific depending on condition, restoration need, and achieving the desired conservation outcome.

- Should the rule constrain which lands are available for conservation leasing? Yes, without succinctly delineating the land that would be available for conservation leasing there is a very real possibility that conservation leases will supersede and crowd out other productive uses. If this Proposed Rule is implemented, the lands available for conservation leases should be defined by Resource Management Plans, and eligibility for conservation leasing should align with local land use plans and policies. The BLM has an obligation under Section 202(c) of FLPMA to “coordinate the land use inventory, planning, and management activities of the Bureau... with the land use planning and management programs of the State and local governments.” NEPA has a similar mandate to analyze and address inconsistencies with local land use plans and policies. As such, BLM has an obligation to define and inventory which lands will be made available for conservations leasing, and ACECs, and to coordinate those efforts with local land use plans and policies.
- Should the rule clarify what actions conservation leases may allow? Yes, and since there are many existing uses under the multiple use framework that are generally compatible with conservation and restoration, the BLM should be clear and permissive in establishing acceptable actions on conservation leases. For example, properly managed grazing is a proven conservation tool in the prevention of wildfire and other beneficial land management practices. Most outdoor recreation including hunting, fishing, camping, etc. can also be compatible with conservation and restoration, and as such should be included as permissible actions within conservation leasing. Potential conservation lease purchasers should know well in advance the actions and activities to be allowed under a conservation lease. Permissible activities on conservation leases should be widely transparent to the public.
- Should the rule expressly authorize the use of conservation leases to generate carbon offset credits? If a lessee demonstrates clear and convincing evidence that carbon capture or sequestration will be achieved, the generation of offset credits is supportable. Ensuring national, regional or global carbon offsets should not be done in a way that overrides or sacrifices local values, plans, and policies.
- Should conservation leases be limited to protecting or restoring specific resources, such as wildlife habitat, public water supply watersheds, or cultural resources? Yes, SLUPAC supports clearly identifying the specific resources to protect or restore in order to help mitigate speculative leasing. Conservation leases should be consistent with local land use plans and policies and have clear and measurable objectives towards the restoration of the affected ecosystem and be framed in the context of what is ecologically possible given any specific site’s ecological state. The use of Ecological Site Descriptions and associated State and Transition Models must be used to help guide conservation lease actions and objectives. These objectives should be publicly stated and

transparent in the Proposed Rule that seeks to create these conservation lease instruments. Monitoring of conservation leases towards stated and measurable objectives should also be part of the process.

SLUPAC looks forward to continuing to work with the BLM to strengthen a framework to ensure healthy, working landscapes, abundant wildlife habitat, clean water, stable and vibrant socioeconomic conditions, and balanced decision-making on Nevada's public lands. We appreciate the opportunity to provide these comments on the Proposed Rule and thank the BLM for its consideration of our concerns while upholding its multiple use and sustained yield mandates of recreation, range, timber, mineral, watershed, wildlife and fish, science and historical values on Nevada's public lands. If you have any questions or would like additional information concerning SLUPAC or this letter, please feel free to contact Scott Carey, State Lands Planner at 775-684-2723 or scarey@lands.nv.gov.

Sincerely,



Jake Tibbitts, Chair
State Land Use Planning Advisory Council

CC:

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