

Federal Land Management: When “Multiple Use” and “Sustained Yield” Diverge

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The [Federal Land Policy and Management Act](#) (FLPMA) has provided the framework for federal management of public lands since 1976. Among other things, FLPMA [instructs](#) the Secretary of the Interior (Secretary) to manage public lands “under principles of multiple use and sustained yield.” This Legal Sidebar explains a potential change that the Bureau of Land Management (BLM), an agency within the Department of the Interior tasked with management of federal lands, has proposed in how it implements the dual mandate of multiple use/sustained yield on federal lands.

The Supreme Court has [described](#) “multiple use management” as “a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put.” Because FLPMA includes more than 200 million acres in its definition of *public lands*, many parties have significant interests in the interpretation and application of this short phrase *multiple use and sustained yield*.

Understanding the meaning of that phrase starts with FLPMA itself. The statute envisions management that balances the use of the resources of public lands with the preservation of those resources for future generations. It [defines](#) *sustained yield* as “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.” FLPMA [offers](#) a more detailed definition of *multiple use* that obliges BLM to manage the lands under its purview “so that they are utilized in the combination that will best meet the present and future needs of the American people,” allowing for periodic adjustments “to conform to changing needs and conditions” and taking into account “the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values.” It [also requires](#) “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.”

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These statutory definitions create some obligations and constraints for BLM's land management policies, but they also allow the agency some latitude to interpret the subjective concepts found in these statutory definitions as it sees fit. Federal [case law](#) has interpreted multiple use/sustained yield obligations in the context of FLPMA and in the related [Multiple-Use Sustained-Yield Act of 1960](#), which sets forth management principles for national forests administered by the U.S. Forest Service. That case law suggests that the courts will be deferential to agency evaluations and interpretations related to land management, particularly where those decisions are informed by technical expertise. One court [noted](#) that the multiple use/sustained yield and related obligations in the act “breathe discretion at every pore.”

To date, BLM has not made a comprehensive attempt to explain how it interprets its authority and obligations under FLPMA's multiple use and sustained yield principles. The phrases *multiple use* and *sustained yield* barely appear in BLM's FLPMA promulgated regulations, although BLM's forest management regulations [include](#) a framework for “sustained-yield forest units” in certain regions in accordance with FLPMA and other statutory obligations. Instead, BLM's interpretation of its multiple use and sustained yield goals must be inferred from its decisions on a case-by-case basis. BLM has promulgated a variety of [manuals, handbooks, and memoranda](#) to guide staff and stakeholders in particular decisions, but those sources often refer to multiple use and sustained yield principles in the abstract rather than providing details about implementation. For example, BLM's handbook on “Land Use Planning” [provides](#) that agency plans should be crafted “under the principles of multiple use and sustained yield.”

On March 30, 2023, BLM took a step to define more explicitly how it will balance the competing goals of multiple use and sustained yield principles, issuing a [proposed rule](#) to amend its regulations to prioritize healthy ecosystems. The text of the proposed rules focuses on the “sustained yield” aspect of BLM's obligation, [noting](#) that it is imperative that the agency “steward public lands to maintain functioning and productive ecosystems and work to ensure their resilience.” By *resilience*, the agency means that “ecosystems and their components can absorb, or recover from, the effects of disturbances and environmental change.”

The proposed rule focuses on the protection, resilience, and restoration of public lands, [framing](#) the conservation policies contained in the proposed rule as necessary to allow BLM to “effectively manage for multiple use and sustained yield in the long term.” BLM [highlights](#) three tools for protecting resilience: protection of intact native habitats, restoration of degraded habitats, and informed decisionmaking—particularly with respect to plans, programs, and permits.

The proposed rule would create a new regulatory framework to allow the agency to focus land management practices that protect this resilience. FLPMA [directs](#) BLM to adopt Land Use Plans for tracts or areas under its purview and to ensure that management decisions about particular projects or actions conform to those plans. This proposed rule would [apply](#) a “fundamentals of land health” analysis, which is currently used on grazing areas, to all BLM lands. It would also [amend and codify](#) the process for designation of “areas of critical environmental concern” (ACECs). The latter change [includes](#) a requirement that the agency consider “ecosystem resilience, landscape-level needs, and rapidly changing landscape conditions” in ACEC designation and management considerations. These new types of analysis and area designations would be [incorporated](#) into its management plans to guide project-level decisionmaking.

Perhaps the most significant change [proposed](#) in the rule is the creation of “conservation leases,” a proposed new program that would allow BLM to issue leases on federal lands “for the purpose of pursuing ecosystem resilience through mitigation and restoration.” Details on this proposal are sparse, as BLM is [soliciting comments](#) on the appropriate format, duration, scope, and even name for the proposed leasing program. BLM also [clarified](#) that the program “is not intended to provide a mechanism for precluding other [federal land] uses, such as grazing, mining, and recreation” and that “[c]onservation leases should not disturb existing authorizations, valid existing rights, or state or Tribal land use

management.” BLM’s explanation for the conservation leases suggests that they could be used in conjunction with other multiple use goals to achieve an appropriate balance between those goals. [For example](#), BLM suggests that the project sponsor for a renewable energy project might also enter into a conservation lease to compensate for the loss of wildlife habitat that the renewable energy project may cause.

Stakeholders who wish to participate in this rulemaking process may do so by submitting comments to BLM. [Comments are due](#) July 5, 2023. Additionally, some Members of Congress have suggested that legislation may be appropriate to address the proposed rule. Members in both [the House](#) and [the Senate](#) have drafted legislation directing BLM to withdraw the proposed rule and to prohibit adoption of the rule “or any substantially similar rule” in the future. These opponents of the proposed rule [argue](#) that it could infringe on “long-standing multiple uses (of federal lands), like grazing, timber management, and mineral development.” Congressional supporters of the proposed rule may also consider enacting the programs and priorities contemplated by the proposed rule into legislation, as a future Administration would otherwise be free to amend or repeal the rule.

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