

September 22, 2023

Tracy Stone-Manning
U.S. Department of the Interior, Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Attn: 1004-AE80

Submitted via regulations.gov

Re: Outdoor Alliance, Public Land Solutions, The Conservation Alliance, and Outdoor Industry Association Comments to Proposed Bureau of Land Management Rule re Fluid Mineral Leases and Leasing Process

Dear Director Stone-Manning,

Outdoor Alliance, Public Land Solutions, The Conservation Alliance, and Outdoor Industry Association (collectively, “Outdoor Recreation Groups”) welcome this opportunity to comment on the Bureau of Land Management’s (BLM) proposed Fluid Mineral Leases and Leasing Process Rule.¹ We welcome these much-needed updates to the regulations that implement the intent of the Federal Land Policy and Management Act of 1976 (FLPMA) and the Mineral Leasing Act of 1920. Our organizations strongly support the BLM’s efforts through the proposed rule to ensure the health of our country’s public lands and waters, which are essential settings for the outdoor recreation activities that support our organizations’ missions, constituencies, and customers. In particular, we support the BLM’s intention to take necessary steps that address the impact that fluid mineral leasing has on outdoor recreation and related economies.²

¹ Proposed Rule, Bureau of Land Management, 43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180 re Fluid Mineral Leases and Leasing Process, 88 Federal Register 47562, found at <https://www.federalregister.gov/documents/2023/07/24/2023-14287/fluid-mineral-leases-and-leasing-process>.

² For more information regarding how oil and gas developments on federal lands negatively impact outdoor recreation experiences and economies, see *How Speculative Oil & Gas Leasing is Threatening Economic Growth in the American West*, found at <https://publiclandsolutions.org/wp-content/uploads/2020/04/PLS-LPL-Report91.pdf>; and *Best Practices for Balancing Recreation and*

The BLM’s proposed rule contains many necessary reforms including: 1) leasing preference criteria that will reduce multiple use conflicts on public lands, 2) new fiscal terms that reduce incentives for speculative leasing and thus balance management resources and priorities for all multiple uses, and 3) stronger bonding requirements that will better protect the environment and reduce the number of orphaned and abandoned wells that impose cleanup costs on taxpayers. However, it is important that the BLM strengthen this proposed rule and further integrate the role of outdoor recreation when developing standards for protecting and restoring our public lands and waters.

Our organizations have an extensive, many-year record of participating in and commenting on proposed Interior Department lease sales, policies, rulemakings, and executive orders.³ We also have a long track record advocating for outdoor recreation interests in legislative proposals that would affect public lands and waters.⁴ Collectively our body of work demonstrates a direct interest in oil and gas leasing practices and policies because these actions directly impact outdoor experiences and economies. In the past, the BLM has regularly proposed leasing of important recreation sites for oil and gas development that could negatively affect

Energy Development on Our Public Lands, found at https://publiclandsolutions.org/wp-content/uploads/2017/04/PLS_Balancing-Rec-and-Energy-Report-web.pdf.

³ For example, see the following comment letters: “Need for Interior Department Rule to Address Longstanding Problems with the Onshore Oil and Gas Leasing Program” (2023), found at <https://publiclandsolutions.org/wp-content/uploads/2023/02/PLS-OA-DOI-leasing-ltr-022423-3.pdf>; “Public Land Solutions and Outdoor Alliance Comments to BLM Utah 2022 1st Quarter Competitive Oil and Gas Lease Sale (DOI-BLM-UT-0000-2021-0007-EA)” (2021), found at <https://publiclandsolutions.org/wp-content/uploads/2022/01/UT-BLM-Q1-2022-lease-sale-PLS-OA-EA-comments-120621a.pdf>; “Department of Interior energy program review” (2021), found at <https://static1.squarespace.com/static/54aabb14e4b01142027654ee/t/6079cbd8fddd23af4c0d3cc/1618594777072/OA+Energy+Review+Comment.pdf>; “Outdoor Alliance Comments on Utah September 10, 2019 Lease Sale, Green River District (DOI-BLM-UT-0000-2019-0003-Other_NEPA-VFO/PFO -EA) and Richfield Field Office (DOI-BLM-UT-0000-2019-0003-Other_NEPA-RFO-EA)” (2019), found at <https://static1.squarespace.com/static/54aabb14e4b01142027654ee/t/5d2cbc51e18d0001f128fb/1563212889464/OA+UT+BLM+lease+sales.pdf>; and “Executive Order 13783 ‘Promoting Energy Independence and Economic Growth’ and Secretarial Order 3359 ‘American Energy Independence’ (2017) found at https://publiclandsolutions.org/wp-content/uploads/2017/04/PLS_Zinke_ltr_re_Energy_-EOSOs_071417.pdf.

⁴ Subcommittee hearing on Oil and Gas Development: Restoring Community Input and Public Participation in Leasing Decisions (2019), found at <https://static1.squarespace.com/static/54aabb14e4b01142027654ee/t/5eab8717cef345241a6aa860/1588299557170/OA+HR+3225.pdf>.

outdoor experiences. In recent years, we have encouraged the BLM to formalize regulations that inform the leasing process and evaluate the presence of recreational spaces and consider their value in the leasing process. We have consistently offered realistic oil and gas management policy proposals that would effectively protect outdoor recreation while addressing the obligations of the BLM under FLPMA and Mineral Leasing Act of 1920.⁵

Our organizations, constituents, and customers rely on healthy and well-managed public lands and waters, which are the settings for the recreational pursuits we represent, rely upon, and enjoy. These resources are imperiled by both climate change—a problem exacerbated by the extraction and use of fossil fuels derived from public lands and waters—and the direct effects of oil and gas development on recreational resources. In addition to problematic environmental effects, oil and gas leasing has significant direct effects on outdoor recreation experiences.

Since 2018, Outdoor Alliance has partnered with Rocky Mountain Wild to monitor new oil and gas lease sales in six western states (Colorado, Montana, Nevada, New Mexico, Utah, and Wyoming). As part of Rocky Mountain Wild’s Oil and Gas Watch program, we screened our recreation database (rock climbing sites, mountain biking, hiking, and skiing trails, and whitewater paddling runs) against new oil and gas lease parcels to identify potential recreation conflicts and important places that might be at risk. In recent years, we have flagged 95 parcels and more than 150,000 acres of public land made available for oil and gas leasing and containing recreational resources.

As recreation advocates, our organizations support durable and effective rules to mitigate potential impacts from future and ongoing lease sales on specific recreation assets and other important values that could be detrimental to recreation opportunities and the potential for local communities to invest in a recreation economy. Federal law supports the protection of outdoor recreation as a “principal or major use” under FLPMA, alongside domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, and timber production.⁶ Unlike many other principal uses, however, sustainable outdoor recreation is predominately non-consumptive and uniquely

⁵ “Outdoor Recreation and Oil and Gas Leasing Reform” (2023), found at https://static1.squarespace.com/static/54aabb14e4b01142027654ee/t/64b717f8a7553f53f46c8d59/1689720838274/Report_Rec%2BO%26G+Reform+-+05252023+-+Final-compressed.pdf.

⁶ 43 U.S.C. 1702(l).

compatible with conservation—another multiple use protected by FLPMA. Indeed, activities like camping, hiking, paddling, climbing, mountain biking, skiing, and more are driven by—and dependent upon—the opportunity to interact with the unique features of well-protected and managed natural landscapes.

The outdoor industry also contributes significantly to local economies, bringing billions of dollars and millions of jobs nationwide, benefiting communities across the country in many ways.⁷ Recreation visitors bring needed dollars to cities and towns that have recreation assets like rivers, trails, and other outdoor spaces where fishing, hunting, boating, hiking, skiing, biking, climbing, and a long list of other outdoor activities take place. Companies and businesses across a range of industries, both large and small, are choosing to locate in these communities because their employees want to live in places with access to the great outdoors. Across the country, communities that have previously depended primarily upon resource extraction have begun to diversify their economies into the recreation sector. However, better management and regulation is needed to protect outdoor recreation experiences and to foster outdoor recreation economies.

Our organizations strongly support the BLM’s efforts to protect the interests of outdoor recreation by directly considering recreation when overseeing oil and gas leasing activities. By integrating recreation more clearly into the rule, as suggested below, the BLM will be able to protect more outdoor places, including those of particular importance for recreational use, alleviate unnecessary conflict between outdoor recreation and the oil and gas industry, and build public support for strong conservation action. Our organizations firmly believe that these considerations are essential, and the proposed rule should be strengthened to ensure that recreation is protected to the fullest extent.

Specifically, we ask that BLM:

- Clarify filtering criteria, apply an expansive definition of recreation, and ensure public input and accountability for filtering decisions; and
- Implement proposed reforms related to bonding and fiscal reforms

⁷ In 2021 the outdoor recreation economy accounted for \$454 billion of gross domestic product for the nation. See “Outdoor Recreation Satellite Account, U.S. and States, 2021,” Bureau of Economic Analysis (2022), found at <https://www.bea.gov/data/special-topics/outdoor-recreation>.



Comments

The outdoor recreation community strongly supports BLM’s proposed reforms related to speculative leasing and bonding because they will focus land management resources to protect and enhance recreation, protect the environment, and limit cleanup costs to taxpayers. Our comments below, however, primarily focus on the important reforms in the proposed rule that would direct oil and gas leasing to “appropriate locations” by incorporating “preference criteria” when evaluating sale parcels to mitigate “conflict with sensitive cultural, wildlife, and recreation resources.”

Leasing Preference Criteria

Under the proposed rule, when determining whether the BLM should offer lands specified in an expression of interest at a lease sale, the BLM would evaluate its obligations under FLPMA to manage public lands for multiple use and sustained yield and give preference to lands upon which a “prudent operator” would seek to expand existing high potential operations, while also avoiding parcels with: 1) important fish and wildlife habitats; 2) historical properties, sacred sites, and other lands with high value cultural significance; and 3) “the presence of recreation and other important uses or resources, giving preference to lands that would not impair the value of such uses or resources.”⁸

The Outdoor Recreation Groups strongly commend the BLM’s effort to include recreation considerations in the proposed rule, but we urge the BLM to clarify the proposed filtering criteria and define “recreation” to ensure that the rule effectively protects recreational lands and waters from oil and gas leasing impacts. While extensive data exists regarding the presence of wildlife habitat, cultural resources, and producing and/or high potential lands for oil and gas developments, the BLM’s data regarding the presence of recreation assets—and what the agency would actually consider a recreation asset—remains incomplete. Many important recreation experiences are not acknowledged in BLM resource management plans, and as visitor use patterns evolve and expand it is critical that the BLM develop a broad definition of “recreation” to include discrete recreational resources such as developed recreation sites, climbing areas, river access points, and trails, but also landscapes important to wildlife-dependent recreation, rivers, canyoneering areas,

⁸ Fluid Mineral and Leasing Process, 88 Fed. Reg.447562 (July 24, 2023).

and landscapes suited for unconfined recreation and off-trail use. We ask the BLM to establish guidelines for designating lands that meet the specific recreation preference criteria and at a minimum ensure the following areas are included when determining “the presence of recreation and other important uses or resources”:

- Developed recreation sites such as campgrounds, boat ramps, bike trails and other “fixed” locations;
- Documented locations with “activity-based” recreation opportunities such as canyoneering and off-trail hiking;
- Special recreation management areas (SRMAs) and extensive recreation management areas (ERMAs);
- Recreation focus areas;
- Locations where recreation has been protected/enhanced/supported by funding from the Land and Water Conservation Fund;
- Locations where the BLM has issued a special recreation permit; and
- Important viewsheds and soundscapes for these locations.

In order for the BLM to ensure that it has the most comprehensive understanding possible of the presence of recreation activities, the agency should partner with key stakeholders such as Outdoor Alliance, which possesses the most extensive recreation data set in the country.⁹ Such a collaboration would help the BLM accomplish its goal to “expand and diversify its engagement with partner groups to achieve our shared goal of maintaining or enhancing visitor service and infrastructure in the face of rising visitation.”¹⁰ Moreover, in order to gain a more complete understanding of where outdoor recreation resources are located, the BLM should prioritize the funding and development of “The Bureau of Land Management’s Blueprint for 21st Century Outdoor Recreation”¹¹ that “presents several major shifts in how the agency prioritizes and supports outdoor recreation.” According to the BLM, this Blueprint includes the “core strategy” of prioritizing “recreation investments and to carefully consider current and future recreation demands and program needs by developing national- and state-level action plans.” These national and state action plans would provide a “bureau-wide assessment of

⁹ See for example the Outdoor Alliance’s maps and data website found at <https://www.outdooralliance.org/maps-and-apps>.

¹⁰ See “The Bureau of Land Management’s Blueprint for 21st Century Outdoor Recreation” (2023), found at <https://www.blm.gov/sites/default/files/docs/2023-08/Blueprint%20for%2021st%20Century%20Outdoor%20Recreation508.pdf>.

¹¹ *Id.*

recreation program needs, including prioritized projects, and data.” The Outdoor Recreation Groups ask the BLM to aggressively pursue these plans to better meet the needs and desires of outdoor recreation enthusiasts and local communities. For both this oil and gas rulemaking and the BLM’s Blueprint for Outdoor Recreation to be successful, the agency must ensure it has the most robust understanding of local recreation locations and use patterns, while also acknowledging an expansive definition of what constitutes “outdoor recreation.”

In addition, we believe that the BLM should take steps to engage with local outdoor recreation groups and interests anywhere that it is proposing oil and gas leasing to ensure that the agency understands proposal impacts to recreation experiences and local economies. As part of every environmental assessment analyzing oil and gas leasing proposals, the BLM should require an intentional step of researching and consulting with local stakeholders with an interest in outdoor recreation to ensure informed decision making.

The BLM should require the following additional stipulations and conditions for leases in proximity to the above noted locations to protect and enhance important recreation experiences and economies:

- No surface occupancy (NSO) within 2 miles of developed recreation sites, such as overlooks/viewpoints, campgrounds, and trailheads.
- 1-mile NSO setback from key routes, trails, climbing, canyoneering, boating, camping (including popular dispersed camping sites), and filming locations.
- Increase protections along river recreation opportunities to protect water quality, scenic values, and archeological resources.

We understand that even the existence of recreation assets will not necessarily preclude the leasing of such parcels, especially where existing ongoing developments are adjacent to proposed leases and there is a high potential for productive oil and gas development. The BLM states in the proposed rule that the agency “does not intend that parcels must meet all five of the preference criteria in order to be available for leasing, and the term ‘preference’ should not be interpreted to mean ‘absolute.’” For this reason, our organizations are concerned with the apparent latitude given to individual BLM field offices to apply the criteria, as these offices may fail to actually defer parcels from leasing that are in conflict with other important public lands values or may lend deference to one preference criteria over another.

Therefore, it is important for BLM planners to actually engage in this preference criteria process to ensure a low preference for proposed leases where outdoor recreation exists, and such a process should include a reviewable standard of applying the preference criteria. In order to review the discretionary weight of the factors listed, our organizations strongly encourage the BLM to adopt a rule that requires BLM to report on the factors weighed when making a determination related to a specific parcel of land. This report—included in every lease sale environmental assessment—should list any and all factors, as listed in the rule, that have been considered and reasons for determining whether any preference criteria exists on proposed leases, as well as the reasons for moving forward (or not) with such lease. Our organizations believe that this requirement would ensure meaningful assessment of the preference criteria and also provides a method for review of these discretionary decisions.

If BLM planners do elect to pursue leases where preference criteria exist, the Outdoor Recreation Groups ask that BLM amend the proposed rule to require that leasing proposals with recreation assets include a “recreation preservation alternative” in decision documents. Such a planning alternative has precedent¹² and would assist the BLM in accomplishing its goal of better understanding what “experiences, benefits, and values public lands offer.”¹³

Limiting Speculation and Strengthening Bonding

In addition to the key reform that would establish a low preference for leasing lands with recreation assets, the Outdoor Recreation Groups also support the BLM proposals that would disincentivize speculation by oil and gas operators and strengthen bonding that would limit ongoing air quality pollution while also mitigating the burden on taxpayers for cleaning up abandoned and orphaned wells.

Speculative leasing prioritizes oil and gas operations over other public land multiple uses such as outdoor recreation, even where recreation interest is high and the potential for oil and gas development is low. This results in the diversion of limited

¹² Blog: In Utah, The BLM Offers a First-Of-Its-Kind Proposal for Balancing Recreation and Development (2021), found at <https://www.outdooralliance.org/blog/2021/11/30/in-utah-the-blm-offers-a-first-of-its-kind-proposal-for-balancing-recreation-and-development>.

¹³ “The Bureau of Land Management’s Blueprint for 21st Century Outdoor Recreation” (2023), found at <https://www.blm.gov/sites/default/files/docs/2023-08/Blueprint%20for%2021st%20Century%20Outdoor%20Recreation508.pdf>.

land management resources away from other beneficial uses such as outdoor recreation and conservation. Many BLM field offices have very limited resources, and they are often much more likely to expend such resources on managing even low potential oil and gas leases where they could be using their resources towards protecting and enhancing high value outdoor recreation opportunities. This dynamic results from the fact that ninety percent of Western public lands are open to leasing, and it is historically very cheap to nominate parcels. Add in antiquated policies such as anonymous lease nominations, noncompetitive leasing, under-market lease and rental rates, easy lease extension and renewal terms, insufficient bonding, and the leasing of “low potential lands,” and the result is low potential leases dominating landscapes where other beneficial uses—including those that are economically productive—could occur but for these cheap leases. To address these concerns, our organizations support the BLM’s reform proposals that increase royalty rates, annual rental rates, and minimum lease bids, as well as the requirement of a new lease nomination fee. These measures will ensure a more balanced multiple use management of our public lands.

Our organizations also strongly support the BLM’s proposed rules on bonding,¹⁴ which revise minimum bonds for the first time since the mid-1900s, no longer authorize nationwide and unit operator’s bonds, and require surface owner protection bonds. We support provisions of the BLM’s proposed rule to increase the minimum bond amount to ensure that reclamation costs reside with the lessees, owners, and operators rather than the taxpayers, as well as the BLM’s proposed measures to protect taxpayers from reclamation-related liabilities by enhancing oversight of idled wells. The Outdoor Recreation Groups believe these provisions will help ensure that taxpayers do not incur the substantial costs of well plugging and remediation on orphaned and abandoned well sites in the future and will facilitate more efficient program administration.

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Our organizations strongly support the BLM’s effort to reform its oil and gas leasing practices with the proposed rule and welcome overdue efforts to improve the management of oil and gas leasing of our public lands and waters. We encourage

¹⁴ Inactive Oil and Gas Wells on Federal Lands and Minerals: Potential Costs and Conflicts (2021), found at https://publiclandsolutions.org/wp-content/uploads/2021/03/03-17-21_Inactive-Oil-and-Gas-Wells-on-Federal-Lands-and-Minerals-Report.pdf.



the BLM to strengthen the rule to ensure greater protections for outdoor recreation, a “principal or major” use under FLPMA. By better integrating recreation into the proposed rule and establishing clearer standards and guidelines, the BLM can improve the lives of Americans and deliver sustainable and durable results for the environment on which we all depend. We look forward to working with the BLM towards the rule’s finalization and implementation.

Sincerely,



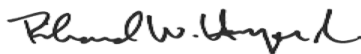
Louis Geltman
Vice President for Policy and Government Relations
Outdoor Alliance



Jason Keith
Managing Director
Public Land Solutions



Shoren Brown
Vice President, Public Affairs
The Conservation Alliance



Rich Harper
Director of Government Affairs
Outdoor Industry Association



Cc: Deborah Haaland, Secretary of the Department of the Interior
Tommy Beaudreau, Deputy Director, Department of the Interior
Steve Feldgus, Deputy Assistant Secretary, Land and Minerals Management,
Department of the Interior
Nada Culver, Deputy Director of Policy and Programs, Bureau of Land
Management

Our Organizations

Outdoor Alliance is a coalition of ten member-based organizations representing the human powered outdoor recreation community. The coalition includes Access Fund, American Canoe Association, American Whitewater, International Mountain Bicycling Association, Winter Wildlands Alliance, The Mountaineers, the American Alpine Club, the Mazamas, Colorado Mountain Club, and Surfrider Foundation and represents the interests of the millions of Americans who climb, paddle, mountain bike, backcountry ski and snowshoe, and enjoy coastal recreation on our nation’s public lands, waters, and snowscapes.

Public Land Solutions is a non-profit organization dedicated to providing comprehensive recreation planning and stakeholder coordination to support effective and sustainable public land solutions. PLS has been involved at the local, regional, and national level regarding the BLM’s planning and permitting proposals related to oil and gas leasing; however, our primary focus is the protection and enhancement of recreation assets and opportunities to develop durable and robust recreation economies. PLS’s advocacy efforts to protect and enhance recreation assets on public lands include organizing stakeholder workshops, providing detailed comments and proposed maps during the BLM’s comment periods, delivering presentations to local and state governments, and communicating with a wide range of interested stakeholders.

The Conservation Alliance is an organization of like-minded businesses whose collective contributions support grassroots environmental organizations and their efforts to protect wild places where outdoor enthusiasts recreate. Alliance funds have played a key role in protecting rivers, trails, wildlands and climbing areas. Membership in the Alliance is open to all companies who care about protecting our most threatened wild places for habitat and outdoor recreation. Since its inception in 1989, The Conservation Alliance has contributed more than \$21 million, helped to protect more than 51 million acres of wildlands; protect 3,107 miles of rivers; stop or remove 34 dams; designate five marine reserves; and purchase 14 climbing areas. For complete information on The Conservation Alliance, see www.conservationalliance.com.

Based in Boulder, Colorado, with offices in Washington, D.C., **Outdoor Industry Association** (OIA) is a catalyst for meaningful change. A member-based collective, OIA is a passionate group of business leaders, climate experts, policy makers, and outdoor enthusiasts committed to sustainable economic growth and climate



positivity while protecting—and growing access to—the benefits of the outdoors for everyone. For more than 30 years, OIA has catalyzed a thriving outdoor industry by supporting the success of every member company across four critically aligned areas: market research, sustainability, government affairs, and inclusive participation. OIA delivers success for its members through education, events, and business services in the form of solutions and strategies, consultation, collaboration, and opportunities for collective action. For more information, visit outdoorindustry.org.