

## Submit effective comments on BLM's proposed "conservation" rule before June 20, 2023

by Cindy Coping

The Bureau of Land Management (BLM) has proposed a new regulation (rule) that allows the agency to convert expiring grazing permits to cattle-free "conservation leases." The comment deadline is June 20, 2023. You can file comments electronically at

<https://www.regulations.gov/document/BLM-2023-0001-0001>. The Western Congressional and Senate Caucuses oppose the rule. They introduced [S.1435](#) and [H.R.3397](#) to force the BLM to withdraw it. The bills will likely die quietly. Contact your representatives anyway because the squeaky wheel gets the grease.

To assist you in commenting, a copy of the rule, copies of relevant laws, op-eds and example comments can be downloaded from the SACPA website at

[https://sacpaaz.net/news\\_education/2023-blm-rule/](https://sacpaaz.net/news_education/2023-blm-rule/) .

Predictably, someone will sue the BLM once this rule is final. You will partially fund most or all sides of the litigation in direct legal fees, taxation and inflation. Write your comments in a format that will save the attorneys' time.

Be respectful. Be brief. Avoid big words. Write short sentences. Address only one topic per submission. Try to limit each submission to a page or two. Double-space if room allows. Make as many comment submissions as you wish.

If someone else's comment or op-ed represents your viewpoint, submit a short comment stating so. State that it is incorporated into your comment by reference and by attachment. Attach a .pdf of their comment to your statement and submit it.

Organize your comments into four time-efficient parts:

1. "Issue: ..." (one *substantive* sentence stating more than mere support or opposition to the rule.)
2. "Remedy Requested: ..." *Always* ask for a remedy. Examples: "Extend the comment period to 180 days," or, "Withdraw the rule," or, "Cooperate with grazing permittees as vested land stewards and your strongest partners in conservation."
3. "Potential Harm the Rule Causes:..." (one or two sentences) At least one comment submission should state how the rule impacts you *personally*. Example: "The rule reduces the enjoyment I receive from seeing cattle and sheep on the public lands." This meets the minimum legal threshold of substantive harm.
4. "Discussion: ..." Explain parts 1-3. Write multiple paragraphs if needed. Cite, state "included by reference and in attachment," and attach .pdfs of any supporting evidentiary documents you have.

To achieve "standing" for judicial review of a bad rule, you'll need to have submitted a substantive comment *during* the public comment period; you need to have stated how the rule might harm you; and you will need to have suffered substantive harm from the *final* rule.

Time is money. Prioritize your comment submissions. Here's a suggestion.

Submission #1: Request the maximum, legally allowed comment period extension. Even if you don't need it, someone else does. Their comments might help you more than your own.

Submission #2: Download the rule as a.pdf (for swift word-searches), print it out, and carefully read the proposed rule while you mark it up with color-coded pens. Highlight the important parts. Underline, in red, the parts that "raise red flags." Draw boxes around specific requests for information. Make notes. Then write your comment. Comment on the part of the rule that does you the most harm. Make your comment very personal. Humanize yourself to the readers. Appeal to their nobler emotions and arouse their empathy.

Submissions #3 and beyond: Show how the rule offends an existing federal law or the underlying intent of Congress. This is the Achilles' heel of bad regulations. Unelected civil servants cannot legally amend laws via regulation. The Administrative Procedure Act (APA) directs reviewing courts to, "hold unlawful and set aside any final agency action, findings, and conclusions" that violate the law or are otherwise "arbitrary and capricious."

According to the Congressional Research Service and case law, "courts will find an agency decision to be arbitrary or capricious if the agency has relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. Abuse of discretion exists when an agency's decision is based on an erroneous conclusion of law or when the record contains no evidence on which agency could have rationally based its decision."

With that in mind, download .pdfs of the laws and print out and highlight copies of the major laws that govern the agency. For example, the BLM rule states in the first sentence that it "falls within the framework of the Federal Lands Policy and Management Act (FLPMA)." Is that verifiable? Does FLPMA's inflexible framework for "major uses" of land include or omit nonproductive "conservation?"

Quote questionable statements from the proposed rule and cite the Federal Register page numbers. Cite and quote the conflicting clauses in the laws.

You should also submit comments if you believe the agency's rule-making process sidestepped or offended administrative process laws, e.g. the National Environmental Policy Act (NEPA).

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