PAUL A. GOSAR, D.D.S.
Ninth District, Arizona

2057 Rayburn House Office Building
Washington, D.C. 20515
(202) 225-2315

Congress of the United States
House of Representatives
Washington, DC 20515

1300 S. Litchfield Road, Suite 115-H
Goodyear, AZ 85338
623-707-0530

WWW.GOSAR.HOUSE.GOV

May 12, 2023

Director Tracy Stone-Manning
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

RE: *Opposition to Proposed Rule "Conservation and Landscape Health"*

Dear Director Stone-Manning:

I write to express my strong opposition to your recently proposed rule titled "Conservation and Landscape Health." I have been contacted by many constituents with grave concerns about this proposed rule that exceeds any Congressional authority. This proposed rule would significantly and negatively change the way the Bureau manages the 245 million acres of land it oversees, most of it in Western states.

The provisions proposed in this rule include adding conservation to the list of uses within the Federal Land Policy Management Act's (FLPMA) multiple-use framework, creating "conservation leases," applying land health standards to all BLM-managed lands, not just grazing allotments, and opening the door to expanded use of Areas of Critical Environmental Concern (ACECs) as a conservation tool.

While the proposal argues that it merely "clarifies that conservation is a use on par with other uses of the public lands under FLPMA's multiple-use and sustained-yield framework," it appears to be directly at odds with the plain language of Section 103(l) of the statute. The statute clearly limits the term "principal or major uses" to domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

"Conservation as a land use" is an oxymoron and completely at odds with the Congressional intent of this Act as well as the plain meaning of the Act. There are millions of acres of federal lands Congress has authorized to be managed for their "conservation" use, and these are generally called National Parks or Wildlife Refuges.

BLM lands, on the other hand, are congressionally mandated to be used for as many opportunities as possible, primarily for economic uses. This includes cattle and other grazing and ranching, mining of all types, forestry and lumber harvesting, recreation, hunting and fishing, and hiking.

Indeed, it is no accident that “conservation” is not a listed use. This is not an oversight by Congress. To the contrary, Congress has approved of these activities and “conservation” values do not play a role as a “use.”

The proposed rule's approach to using ACECs as a conservation tool appears to be an attempt to accomplish this regulatory "clarification" (that conservation is a principal or major use) when in fact that is a major amendment to the governing statute. This approach goes against the intent of Congress when it established the framework for managing public lands.

“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Davis v. Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989). Where the statute is one that confers authority upon an administrative agency, that inquiry must be limited to whether Congress in fact meant to confer the power the agency has asserted. *FDA v. Brown & Williamson Tobacco Corp*., 529 U. S. 120, 159 (2000).

As explained by the Supreme Court in *West Virginia v. EPA*, 597 U.S. ___ (2022); 2022 WL 2347278 “to convince us otherwise, something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to ‘clear congressional authorization’ for the power it claims.” In this case, the Department has no clear congressional authorization. Even worse, Congress has directly contradicted the Department’s proposed rule as it has expressly set forth what multiple use means, and it does not mean “non-use” or conservation.

To re-write this law is well outside of the Department’s ability. “A decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body.” *West Virginia v. EPA.*

As a Representative of a district with a vast amount of land under the jurisdiction of BLM, I strongly oppose the proposed rule "Conservation and Landscape Health," which would profoundly affect project development on BLM lands in Arizona if adopted in its current form. I recommend that the Bureau withdraw this proposed rule and work with Congress to ensure that any future rulemaking is consistent with the language and intent of the Federal Land Policy Management Act.

Proceeding with this ill-conceived rule will likely result in litigation by impacted parties and a court decision striking this rule as outside the scope of the law.

Finally, I ask BLM to consider working cooperatively with the ranchers, miners, hunters and fishers and all multi-use groups to maximum the use of federal lands. Anyone who wants to preserve federal lands in their natural state needs to work through the park system and leave the economically designated lands to their use.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me. Please adhere to all rules and regulations applicable to this request when reviewing my comments.

Sincerely,

Paul A. Gosar, D.D.S.
Member of Congress
9th Congressional District, Arizona

Cc: Steve Trussel, Arizona Rock Products/Arizona Mining Assoc.
Andy Groseta, Yavapai Cattlemen's Association
Patrick Bray, Arizona Farm and Ranch Group
Rick Grinnell, SABC
Joe Bardswich
Richard Bark
Jim Carlson
National Shooting Sports Foundation
Safari Club
Austin Bone, National Sand and Gravel