

**United States Senate**  
WASHINGTON, DC 20510

June 22, 2023

The Honorable Tracy Stone-Manning  
Director, Bureau of Land Management  
U.S. Department of Interior  
1849 C Street, NW  
Washington, D.C., 20240

Dear Director Stone-Manning,

We write to express our concerns regarding the impact the Bureau of Land Management's (BLM) proposed Public Lands Rule entitled, "Conservation and Landscape Health," published on April 3, 2023, will have on small businesses operating on BLM land.<sup>1</sup> Small businesses are key and meaningful users of our public lands. Unfortunately, the BLM's proposed rule has failed to take account of how it threatens the livelihoods of the many small businesses – including ranchers, miners, energy producers, and others – who productively use these lands.

The Regulatory Flexibility Act (RFA) requires that when an agency publishes a proposed rule in the *Federal Register*, it must solicit feedback from affected entities and the Small Business Administration's Office of Advocacy and publish an initial regulatory flexibility analysis demonstrating the rule's impact on these entities.<sup>2</sup> BLM has ignored these requirements and improperly certified the rule would have no significant economic impact on a substantial number of small entities.<sup>3</sup> BLM did so without any demonstration of data or proper factual basis supporting this assertion. This is only further underscored by BLM's extremely narrow Economic and Threshold Analysis. The Analysis asserts "the magnitude of the impact on any individual or group, including small entities, is expected to be negligible," without any demonstration the agency considered or communicated with small businesses who utilize public land. By not considering the impact of the proposed rule on all affected small business sectors, the BLM's analysis fails to meet the standards Congress requires of the agency.

To date, BLM has not substantively solicited feedback from the small businesses that will be impacted by this proposed rule. BLM has neither held nor planned in-person public meetings in the vast majority

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<sup>1</sup> Conservation and Landscape Health, 88 Fed. Reg. 19583 (Apr. 3, 2023) (to be codified at 43 C.F.R. pts. 1600, 6100), <https://www.govinfo.gov/content/pkg/FR-2023-04-03/pdf/2023-06310.pdf>.

<sup>2</sup> 5 U.S.C. §§ 609(a)-(b); 5 U.S. Code § 603(a) ("Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule...the agency shall prepare and make available for public comment an initial regulatory flexibility analysis.").

<sup>3</sup> 88 Fed. Reg. at 19594 ("For the purpose of conducting its review pursuant to the RFA, the BLM believes that the proposed rule would not have a 'significant economic impact on a substantial number of small entities,' as that phrase is used in 5 U.S.C. 605.").

of states where the agency manages land. Further, while the agency has hosted a limited number of virtual briefings about this rule, they have not provided any opportunity for our constituents to ask questions. The agency's stonewalling of the ability for small businesses to ask questions about, or provide feedback on, this proposed rule is entirely unacceptable.

Because BLM has failed to work with our constituents and small businesses in our states, they have turned to the SBA Office of Advocacy (Advocacy) to represent their interests. In this process, Advocacy has found that "BLM's RFA certification lacks a factual basis and does not adequately consider the economic impacts of the rule on small businesses."<sup>4</sup> Advocacy also expressed concerns that BLM's proposed rule has unintended consequences that are contrary to the agency's goals and mandate under the Federal Land Policy and Management Act 1976 (FLPMA), which set statutory requirements for how BLM must ensure productive use of public lands.<sup>5</sup> As the proposed rule does not properly explain how conservation leases are compatible with the multiple use land management mandated by FLPMA,<sup>6</sup> the many multiple use industries and the subsequent small businesses that are associated with them must be considered.

BLM boasts they support 783,000 jobs and contribute \$201 billion to the economy.<sup>7</sup> In our states, this equates to thousands of small businesses that engage in mining, energy development, agriculture, recreation, and more. Cattle and sheep ranching—often multigenerational family businesses—contribute over \$2.6 billion in economic output just via grazing on the agency's land.<sup>8</sup> The recreation industry has reported that 15,000 small outfitter and guide businesses operate on federal lands.<sup>9</sup> Mining industry representatives reported to Advocacy that close to 80% of their member companies are small businesses.<sup>10</sup> This only represents a snapshot of the type of data that BLM is required to consider under the RFA for a rule that is so impactful to small businesses.

Small businesses are the backbone of our economy. They deserve a seat at the table, especially when agencies unilaterally impose policy that will significantly impact their livelihood. By flouting the requirements established by the RFA, BLM is denying our constituents the right afforded to them by Congress to participate in the rulemaking process.

Because the proposed rule would upend BLM's multiple use mandate and local western economies, we implore the agency to permanently withdraw this disastrous proposal. Short of that, we urge the agency to do the following, in coordination with the SBA Office of Advocacy and small businesses:

- (1) Withdraw the certification and the proposed rule and repurpose it only after BLM completes its obligations under the Regulatory Flexibility Act;

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<sup>4</sup> U.S. Small Business Administration Office of Advocacy, Comment Letter on BLM's Proposed Public Lands Conservation Rule (June 13, 2023), <https://advocacy.sba.gov/wp-content/uploads/2023/06/BLM-Conservation-Letter-FINAL.pdf>.

<sup>5</sup> 43 U.S.C. § 1701(a)

<sup>6</sup> 43 U.S.C. § 1701(a)(7)

<sup>7</sup> Bureau of Land Management, *The BLM: A Sound Investment for America 2022* (last visited June 15, 2023), <https://www.blm.gov/sites/default/files/docs/2022-12/2022-SoundInvestment.pdf>.

<sup>8</sup> *Ibid.*

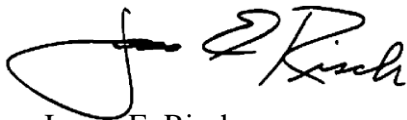
<sup>9</sup> Letter from America Outdoors to Senators Mitch McConnell and Chuck Schumer (Mar. 18, 2020), [https://www.americaoutdoors.org/assets/1/27/AO\\_letter\\_to\\_Senate\\_leadership\\_re\\_coronavirus\\_relief.pdf?6482](https://www.americaoutdoors.org/assets/1/27/AO_letter_to_Senate_leadership_re_coronavirus_relief.pdf?6482).

<sup>10</sup> U.S. Small Business Administration Office of Advocacy, Comment Letter on BLM's Proposed Public Lands Conservation Rule (June 13, 2023), <https://advocacy.sba.gov/wp-content/uploads/2023/06/BLM-Conservation-Letter-FINAL.pdf>.

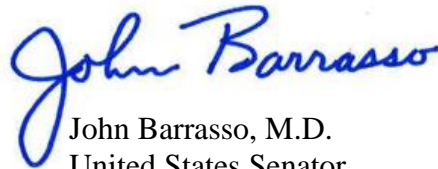
- (2) Perform an Initial Regulatory Flexibility Analysis that properly analyzes the costs on small businesses in each industry impacted by the proposed rule;
- (3) Convene a roundtable with impacted small businesses and the Senate Committees on Energy and Natural Resources and Small Business and Entrepreneurship to hear concerns and develop regulatory alternatives for consideration that are less burdensome; and
- (4) Comply with the letter of the BLM's mandate under FLPMA so as to avoid passing unintended burdens to small businesses engaged in productive multiple use.

Please respond no later than June 30, 2023.


Sincerely,



James E. Risch  
United States Senator



John Barrasso, M.D.  
United States Senator



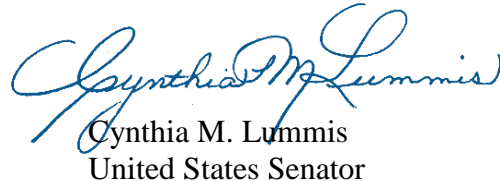
Joni K. Ernst  
United States Senator



Steve Daines  
United States Senator



John Hoeven  
United States Senator



Cynthia M. Lummis  
United States Senator



Mike Crapo  
United States Senator



John Thune  
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M. Michael Rounds  
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Dan Sullivan  
United States Senator