

The Economics of Restoration and Mitigation Leasing on Public Lands

by Daniel Kaffine

Context:

Restoration and mitigation leasing, as proposed by the Bureau of Land Management's (BLM) Conservation and Landscape Health rule, known as the Public Lands Rule, may offer a valuable pathway to achieving conservation goals on public lands by leveraging private sector investment. However, important questions remain regarding how to maximize the potential value of these leases, and the extent to which they may impact existing uses, such as grazing or energy development. The economic feasibility and potential impact of these new lease mechanisms depends on the demand for them, the costs and pricing structure, potential tradeoffs with other public land uses, and other considerations.

Conclusions:

First, there are markets for restoration and mitigation leases that are likely to be different, with restoration leasing more likely to be pursued by traditional nonprofit conservation groups, whereas mitigation leases might be more appealing to private industry. Second, beyond the fair-market-value rental rate and administrative costs, restoration and mitigation leases may be discouraged by the considerable non-monetary costs associated with delays in the decision-making process. Third, the extent to which restoration and mitigation might crowd out existing uses varies, and there is potential for win-win collaboration and bargaining between competing uses, similar to that observed on private land. Finally, it is important to consider long-term time horizons and temporal tradeoffs of public land use.

Implications:

There are several barriers that may limit the adoption of restoration and mitigation leases and their ultimate value for meeting demand for environmental goods. Reducing the lengthy time delays that lease applicants may face can ensure that promising restoration and mitigation projects are not dissuaded from applying. Removing barriers that limit private contracting and collaboration between existing users and groups interested in restoration and mitigation leases can facilitate restoration and mitigation efforts while protecting existing interests. Finally, long-term considerations of future values and opportunity costs should be embedded in both site-specific decision-making and broader regional planning.

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Background

With its multiple-use and sustained yield mandate, the BLM's vast acreage hosts a number of familiar markets. Ranchers, logging companies, miners, and oil and gas developers are economic producers, who create goods like beef, wool, timber, hard rock minerals, and fuel. Consumers like grocery stores, textiles companies, and refineries purchase these goods. Public lands also provide environmental goods like clean air and water, open space, and wildlife. Some consumers, like donors who value landscape health, or private firms with sustainability commitments, are interested in being able to purchase these environmental goods directly, and frequently do so on private land in the form of things like wetland restoration and carbon offsets. But no formal mechanism existed to allow the purchase of these goods from public lands, until the Public Lands Rule.

Under this rule, potential consumers could pay producers like environmental NGOs to perform restoration or mitigation activities, thereby producing the desired environmental good. Specifically, restoration leases would be used to restore degraded public land, while mitigation leases are intended to offset the impacts of other land use authorizations.

Importantly, the market demand for environmental goods associated with restoration may be different from mitigation, and the producers associated with each lease may also be different. Restoration leases are more likely to be undertaken by nonprofit conservation groups who might create high quality habitat because their members value wildlife. Mitigation leases are more likely undertaken by private industry or start-ups looking to sell mitigation credits to firms that need, or want, to offset their land impacts elsewhere.

Like any market, what end-consumers are willing to pay for the environmental goods produced by restoration and mitigation efforts will ultimately determine the demand for restoration and mitigation leases. The costs associated with these leases, monetary and otherwise, are another important factor to consider. Because these leases are occurring on public lands, there are also some considerations unique to this kind of market, particularly the question of how to price the leases, and what tradeoffs and consequences there might be for other public land uses, both contemporaneously and over time. The aim in answering these questions is to provide insight into the economics underlying these leases, so that policymakers can make informed decisions, and the public can understand how these leases might affect existing users and local communities.

Costs of restoration and mitigation leasing

The cost of producing restoration and mitigation goods is a combination of the cost to do the work itself—for example, paying for herbicide and the labor costs to distribute it for cheatgrass management—and the cost of the lease to use the land. When operating on private land, the cost of using land is determined by market forces, but in the context of federal public lands, federal agencies are required by law to determine an appropriate lease price to ensure a fair return to the American public. The BLM's multiuse mandate makes this calculation more complicated than simple revenue maximization, which is generally the objective on private and state trust lands. Broadly speaking, though, lease pricing is driven by a combination of land value and the cost of administering the lease.

In practice, the BLM will use principles of fair market value when determining lease prices for restoration and mitigation leases. While processes are still being developed and refined, standard Department of the Interior practice for assessing fair market value for projects over 1600 acres is an appraisal by the Appraisal and Valuation Services Office, which can be a lengthy process. By contrast, for smaller projects under 1600 acres, rental rates may be based on an expedited process of using county-level assessments by the National Agricultural Statistical Service. In either case, these rental fees are paid to the United States Treasury and can be thought of as payments to the American public for the use of their public lands.

In addition to the rental fees, there are also agency costs associated with the lease that may need to be recovered. These costs can include filing fees, administrative costs, and costs associated with conducting National Environmental Policy Act (NEPA) analysis. One important distinction between restoration and mitigation leases is that, according to BLM guidance, some or all of the cost recovery may be waived for restoration leases to nonprofit organizations. By contrast, for-profit mitigation leases that generate revenue through the sale of mitigation credits would have to pay the full cost recovery on their leases.

An additional, and significant, challenge with NEPA analyses is the time delay on top of the direct monetary costs. While the 2023 Fiscal Responsibility Act shortened the maximum timeline to two years for a full Environmental Impact Statement, this still represents a substantial disincentive for conservation groups seeking to implement timely projects. Because of this time delay, many conservation groups simply look to private lands for their projects. Other organizations and companies hoping to use public land pay third parties to conduct NEPA analyses, but it is unclear whether the BLM will accept proponent-driven NEPA analyses for restoration leases. If left unaddressed, these non-monetary costs may serve as a deterrent to increased use of restoration leases.

Tradeoffs across space

One of the more contentious aspects of restoration and mitigation leasing is the perceived potential for conflict with existing uses, such as grazing, logging, and oil and gas development. The true extent of this conflict will depend on the degree to which restoration and mitigation leasing might coexist with, or crowd out, other uses.

On one extreme, restoration and mitigation leases have no impact on existing uses and can be stacked onto existing leases or simply occur in areas without any existing uses. This case, which economists would call full additionality, is a win-win, where the BLM collects revenue from both the existing use and the restoration or mitigation lease, and restoration and mitigation lease holders get to provide environmental goods to their consumers. At the opposite extreme, restoration and mitigation leases could completely preclude other uses. Between these two extremes, there is a broad middle ground in which there is some additionality, and some crowd-out or impingement on existing uses. This raises the difficult question of how to adjudicate these tradeoffs.

On private land, landowners frequently operate in this space of needing to decide how to best allocate their land amongst a variety of uses. Generally, they work to optimize their land-use, often for revenue

generation. For example, they might determine if the payments associated with setting aside some acreage for habitat restoration offsets the loss from foregone agriculture or grazing use. But in the case of public lands, agencies have complex, multiuse driven management objectives that determine the “highest and best use”. For the BLM, this determination occurs through the NEPA analysis and regulatory process, which must balance increased demands for competing uses of public lands.

Outside of formal agency processes, these partial additionality cases present opportunities for private collaboration, agreements, and contracting that move them closer to win-win situations, similar to what occurs regularly on private property. For example, an agreement between a conservation group and a livestock grazer could restrict some types of uses in certain sensitive areas, while still allowing grazing in other areas. Removing or minimizing barriers to this kind of negotiated, mutually beneficial agreement would help minimize potential trade-offs between current users and restoration and mitigation leasing.

Tradeoffs across time

In addition to potential tradeoffs across space, decisions about land use today can impact future uses of the land both positively and negatively. As above, one end of the additionality spectrum features very little tradeoff, for example restoration activities that improve rangeland health and result in better future grazing opportunities. At the other end, longer and more stringent leases raise the opportunity cost and sharpen the tradeoffs in terms of foregone other uses of the land. It is likely that longer-lasting, more “durable” leases that preclude other uses may be more valuable to conservation groups and consumers of environmental goods as they protect the conservation investment for a longer period of time.

At present, it is unclear if BLM processes for specific sites appropriately account for these longer, 30-to-50-year values and opportunity cost concerns, and this may be an important area for future policy and discussion to consider. For broader areas, long-run aspects are considered to an extent in BLM Resource Management Plans. While some may find planning to be slow and cumbersome, there are benefits to the process. For example, uncertainty can hinder economic decision-making and planning can provide certainty and stability to firms looking to make long-run investments in their operations. They can also identify potential at scale for positive or negative impacts between multiple sites and jurisdictions over time, in ways that the site-specific NEPA process may overlook.

At present, restoration and mitigation lease plans have not been included in Resource Management Plans. Going forward, there may be benefits to more structured planning efforts by the BLM for restoration and mitigation leases; this may encourage holistic approaches to restoration activities to take advantage of the value of contiguous activities, as opposed to random acts of restoration.

Conclusion

This short policy brief examines the economics of restoration and mitigation leases, with a particular focus on the market structure of these leases, key factors influencing their pricing, and potential challenges related to trade-offs between competing uses. This analysis provides important insight into barriers that

might limit the adoption of restoration and mitigation leases and their ultimate value for meeting demands for environmental goods. Several key takeaways deserve emphasis.

First, there is a market for the production of environmental goods on public lands, though the markets for restoration leases and mitigation leases are likely to differ. Restoration leasing is more likely to be pursued by traditional nonprofit conservation groups, whereas mitigation leases might be more appealing to private firms. Second, in addition to the fair-market-value rental rate and administrative costs, delays in decision-making can create considerable non-monetary costs that may discourage interest in restoration and mitigation leases. Reducing the lengthy time delays that lease applicants may face could ensure that promising restoration and mitigation projects are pursued.

Third, the extent to which restoration and mitigation leases conflict with existing uses may vary from not at all to completely, with a broad middle ground in which there is some crowd out and some additionality. Removing barriers that limit private contracting and collaboration between existing users and groups pursuing restoration and mitigation leases can create opportunities for win-win solutions that facilitate restoration and mitigation efforts as well as protect existing interests.

Finally, it is important to consider longer time horizons and temporal tradeoffs of public land use, whether it be explicitly accounting for future values and opportunity costs associated with alternative land uses, or through more holistic planning for landscape-scale restoration and mitigation activities. These considerations may be embedded in both site-specific decision-making and broader regional planning.