Balancing Existing Rights with Restoration and Mitigation Leases

by Shawn Regan

Context:

Under the 2024 Conservation and Landscape Health Rule, known as the Public Lands Rule, the Bureau of Land Management (BLM) introduced restoration and mitigation leases, which create a mechanism to restore degraded public lands and offset environmental impacts caused by development elsewhere. Key questions are how these leases interact with current rights holders, such as grazing permittees, and what mechanisms can ensure that existing interests are protected while fostering restoration goals. Understanding these dynamics is crucial to the success of the Public Lands Rule and preserving the principles of multiple use and sustained yield by which the BLM manages its lands.

Conclusions:

1. Existing rights holders retain their valid rights but must navigate overlapping restoration goals and activities.
2. Compatibility assessments are central to lease approvals but require robust stakeholder engagement to address concerns effectively.
3. Strengthening partnerships with existing permittees through mechanisms like mandatory consultations, or by integrating restoration principles into broader regulatory frameworks, can foster trust and collaboration.

Implications:

Decision-makers should enhance transparency and stakeholder engagement in lease applications. Mechanisms such as mandatory pre-application consultations, clear compatibility criteria, and shared management frameworks can support co-benefits and reduce conflict. Addressing these will promote a balanced approach to incorporating restoration leasing into public land management.

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Background

BLM lands are managed under the principles of multiple use and sustained yield as mandated by the Federal Land Policy and Management Act (FLPMA). The act emphasizes balancing competing uses to meet present and future needs and grants the Secretary of the Interior broad discretion to manage BLM lands for resource extraction, recreation, conservation, and protection of ecological and economic values.

The BLM has a well-established regulatory framework for traditional uses such as grazing, mining, and energy development, with extensive rulemaking governing how these activities are authorized and managed. More recently, in an effort to formalize the conservation component of FLPMA, the agency introduced restoration and mitigation leases under the Public Lands Rule. These leases allow third parties to lease BLM land for the purpose of restoring degraded ecosystems and offsetting environmental impacts caused by development elsewhere.

Such leases could take a number of forms. For example, a restoration lease might involve replanting native vegetation to improve habitat for wildlife, while a mitigation lease could be used to compensate for habitat loss from infrastructure projects by restoring similar ecosystems in another location. Environmental advocates see these leases as important tools for addressing habitat loss, climate change impacts, and resource degradation, helping to maintain or enhance broader ecosystem functions.

In order to preserve the principle of multiple use—a fundamental aspect of the BLM's mandate—one key challenge lies in ensuring that restoration and mitigation leases do not conflict with existing rights or displace traditional land uses. Grazing permittees, in particular, have raised concerns about how restoration activities might limit their operations or create restrictions on their use of public lands. Similarly, restoration activities may impose new regulatory hurdles or reduce available land for energy development, raising questions about the potential economic impacts on the energy sector. Balancing the rights and interests of existing users with the broader goals of environmental stewardship is critical if restoration and mitigation leases are to be successful.

Striking a balance

Several safeguards already exist to help ensure that restoration and mitigation leases do not interfere with existing land uses and rights. First, restoration and mitigation leases must conform to BLM-approved land use plans, which guide how specific areas of public land should be managed, including permitted uses and resource protections. This means that leases must align with existing land management priorities and cannot arbitrarily displace valid uses such as grazing, energy development, or recreation.

The Public Land Rule and the BLM's guidance and instructional memoranda also emphasize the need for compatibility assessments to ensure that new leases do not unduly interfere with existing valid rights. These assessments help determine how restoration and mitigation goals interact with ongoing uses, such as grazing, recreation, and resource extraction. While compatibility assessments are a required part of the process, the extent to which they affect existing uses depends on how compatibility is assessed and applied in practice.

Applicants are also encouraged to provide evidence of outreach to affected parties, including grazing permittees, adjacent landowners, and other stakeholders. Their input is crucial for identifying and addressing potential conflicts. Furthermore, lease applications must include detailed plans to minimize or eliminate conflicts that could arise between restoration activities and existing uses. By incorporating these safeguards, the BLM aims to balance restoration objectives with the interests of existing rights holders.

While tensions between restoration leases and existing rights holders are likely to arise, the rule also envisions the possibility that such leases could enhance the quality and productivity of the land, thereby aligning with the values of traditional users. Restoration leases aim to assist the recovery of degraded ecosystems, which could lead to improved forage availability and rangeland resilience. For example, restoration strategies such as fencing off a riparian area for a limited time could improve water availability and forage quality, indirectly benefiting grazing permittees. When assessing new restoration leases, the BLM will evaluate whether the proposed lease will support or hinder existing authorized uses, and leases that complement current land uses are more likely to be approved.

Stakeholder concerns

Despite these safeguards, concerns persist among stakeholders. The compatibility assessment lacks clear, measurable criteria and depends on agency discretion. This flexibility has led to concerns about consistency in implementation across different field offices and uncertainty over how future administrations might interpret compatibility criteria. And while outreach to other stakeholders is encouraged—but not strictly required—the absence of veto power for existing rights holders has created uncertainty about how conflicts will be resolved in practice.

Overall, while the Public Lands Rule provides a framework, its implementation depends heavily on agency officials' interpretation. This creates both opportunities and challenges. On the one hand, flexibility allows for innovative approaches to restoration and mitigation. On the other, stakeholders such as grazing permittees and energy developers worry that the significant discretion in implementation means that even if there is a workable approach now, the rule could be used differently in the future to undermine their interest, particularly if shifting priorities under future administrations lead to more restrictive interpretations of the rule.

Grazing permittees, in particular, have expressed fears that restoration leases might lead to permanent restrictions on their operations. For example, fencing to protect riparian areas could limit access to water sources, even if the restrictions are temporary. These concerns are rooted in a lack of clarity in lease terms and the perception that restoration objectives could ultimately override traditional uses. This uncertainty highlights the need for well-defined lease agreements and transparent communication.

Many rural economies depend on activities such as grazing and energy development, making potential restrictions on these uses particularly concerning in some areas. Changes in land use could disrupt local livelihoods and reduce economic stability. For instance, a community reliant on grazing may face cascading effects on supply chains, local businesses, and employment opportunities if restoration leases impose

significant restrictions on livestock grazing. Moreover, historical tensions between land users and federal agencies have created a trust deficit that complicates the implementation of restoration leases. Building trust requires transparency in decision-making and safeguards that actively protect existing rights.

Implications for decision-makers

Successfully integrating restoration and mitigation leases into public land management requires thoughtful consideration from agency officials, conservation groups, and the broader policymaking community. This analysis highlights several key implications for these decision-makers, emphasizing the need for transparency, collaboration, and regulatory refinement.

To successfully balance multiple uses, the BLM must recognize that a "trust us to do the right thing" approach is insufficient. Clear processes and consistent application of compatibility assessments are critical to ensuring that restoration leases do not conflict with valid existing uses. These assessments play a vital role in balancing restoration goals with the rights of current users such as grazing permittees and energy developers. Transparent processes, including clarifying assessment methods, will be crucial in building trust with other stakeholders and ensuring broad support for restoration initiatives.

While the Public Lands Rule strongly encourages stakeholder outreach during the lease application process, the specific mechanisms for such outreach remain somewhat unclear. Moreover, questions persist about how binding the outcomes from such outreach are and what form they should take to provide truly meaningful input from stakeholders. Strengthening these mechanisms is essential to ensuring that restoration and mitigation leases are implemented fairly and effectively.

Agency decision-makers might also consider additional mechanisms to strengthen partnerships, specifically with current rights holders. One option is to formally require permission from existing permittees before a restoration lease can proceed, offering an added layer of security for their interests. Alternatively, outreach to existing users could be made a mandatory part of the application process, with clear documentation of outcomes required for lease approval. Such steps would ensure that the concerns of grazing permittees, energy developers, and other users are sufficiently addressed.

For groups engaging in restoration leases, it is essential to build strong relationships with current stakeholders and demonstrate how such leases align with both restoration goals and traditional land uses, or could even benefit traditional land users by restoring degraded landscapes. Doing so would help alleviate concerns and facilitate buy-in from affected parties. As for local communities, while these leases may generate long-term ecological and economic benefits, such as improved ecosystem services and enhanced land productivity, they can also pose short-term disruptions for communities reliant on grazing or energy development. Conservation groups must consider these dynamics and explore co-benefits, such as integrating rotational grazing or collaborating with energy developers to align restoration projects with ongoing operations. These partnerships can strengthen the case for restoration leases and broaden their appeal.

For policymakers, another avenue for improvement—especially in light of future challenges to the Public Lands Rule—is to incorporate the principles of restoration and mitigation leases into broader regulatory frameworks. For instance, future revisions to grazing rules under the new administration could integrate similar concepts from the rule to advance restoration leasing opportunities and partnerships with existing rights holders. Additionally, moving toward a system where grazing permits are treated more like leases could also address some concerns from existing users. Leases typically offer greater security and long-term predictability compared to permits, which might alleviate fears that restoration objectives could displace traditional uses. By providing a more stable framework for permittees, this approach could build trust and encourage collaboration between stakeholders and the BLM.

In conclusion, addressing these policy implications requires a commitment to refining existing processes and exploring innovative solutions that integrate restoration objectives with the needs of current users. By ensuring clarity, consistency, and collaboration, decision-makers can enhance the effectiveness of restoration leases while fostering trust and support from stakeholders.