Honorable Vanessa Countryman Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the NYSE Listed Company Manual to Adopt Listing Standards for Natural Asset Companies
SEC No. SR-NYSE-2023-09

Statement of the
SALT LAKE COUNTY FARM BUREAU

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Board Member
May 2023

THE PROPOSED RULE

The stated intent of the Proposed Rule is "…to adopt a new subsection of Section 102 of the NYSE Manual (to be designated Section 102.09) to permit the listing of common equity securities of Natural Asset Companies (or "NACs") The Proposed Rule further states: "The value of nature to life on earth is readily apparent. Healthy ecosystems produce clean air and water, foster biodiversity, regulate the climate, and provide the food on which our existence depends…These and other benefits derived from ecosystems are called ecosystem services, and in aggregate, economists estimate their value at more than US$100 trillion dollars per year".

Salt Lake County Farm Bureau (SLCFB) agrees with ensuring the continuity of these essential ecosystems and the value they provide. However, it is critically Important to recognize Utah's farmers and ranchers are a significant and critical part of the natural ecosystems contributing to the economic well-being of the citizens of the State of Utah and providing high quality, affordable, sustainable food and fiber from the land while being good stewards.

CRITICAL BACKGROUND & INTRODUCTION

Cattle and sheep ranching is one of the traditional uses of the vast rangelands of the western United States. Grazing is recognized as one of the "multiple uses" authorized by the United States Congress and within the policies of the federal land management agencies.

The federal government is the largest landowner in the 11 western public lands states with about 42% of the total land base federally controlled. That figure varies from 22% in Washington to a high of 81% (some reports as high as 86%) in Nevada. The Bureau of Land Management (BLM) of the Interior Department and the United States Forest Service (FS) of the Agriculture Department manage most of the lands where livestock grazing occurs.

Local communities have been established and evolved throughout the rural parts of the western United States with varying degrees of dependence on the ranching industry. This unique business model combining private base property and privately held water rights with historic access to public land grazing on BLM and US Forest Service has grown around the seasonal harvest of annually renewing rangeland forage.

Federal Land Ownership:

The federal government owns between 535-640 million acres making up approximately 28% of the total land mass of the United States. Four agencies administer 609 million acres of this land:

- The BLM administers 248 million acres
- The FS administers 193 million acres
- The U.S. Fish & Wildlife Service administers 89 million acres
- The National Park Service administers 80 million acres

The BLM and FS manage a combined 441 million acres with a “multiple use, sustained yield” mandate from Congress. Multiple use and sustained yield relates to various products and services including: grazing livestock, timber harvest, recreation, watershed protection, fish and wildlife habitat. Management, or mismanagement, has elevated the priority of wildfire protection with far-reaching economic and environmental impacts in recent years.

Federal land ownership is concentrated in the West. In the contiguous 11 western states, the federal government owns 47% of the land. By contrast, the federal government owns only about 4% of the lands in the other states. This disparity has become a major area of conflict with many western states arguing they are not equals to the eastern states based on the “Equal Footing Doctrine.”

Throughout America’s history there has been a level of conflict between the obligation to dispose of lands for the establishment of new, independent states and keeping some lands under federal control.

The Taylor Grazing Act (TGA) of 1934 underscored the fundamental founding constitutional principle in Article 1 Section 8 that limits federal ownership of land in the states and requires state legislatures to authorize the same.

TGA was passed to “ensure the highest use of the public lands **pending final disposal**.”

CONGRESSIONAL ACTIONS AND LIVESTOCK GRAZING

Taylor Grazing Act of 1934:

In the Taylor Grazing Act, Congress gave the BLM, at the local, state and national levels, the obligation and responsibility to protect and safeguard livestock grazing rights. Any decision by the agency that would impact the economic contribution, jobs, culture and historic use must be consistent with Congressional mandates. Congress provided the doctrine of "chiefly valuable for grazing" as fundamental to TGA and public lands livestock ranching.

Solicitor William Myers III found that the Secretary of Interior (BLM) cannot "establish, eliminate or modify the boundaries of a grazing district without determining that the affected ground displaced from grazing is no longer chiefly valuable for grazing."

When Congress began to regulate livestock grazing on federal lands in 1934 with the passage of the TGA, a key component of the regulatory focus was "the economic stability of the ranching community". The BLM manages nearly 250 million acres across the West. Rural communities depend on the economic contributions and annual new wealth generated by livestock ranching operations and harvesting annually renewing forage. Historically and culturally, it is a way of life. Ranchers are good stewards of the land they use. Ranchers must be good stewards to maintain productive, viable operations.

As a condition of TGA, grazing rights were awarded based on private lands (base property) and water rights. Economically viable ranching operations were developed through a mix of private lands, private water rights and public grazing rights. Ranchers and rural communities rely heavily on this partnership between livestock producers and public land managers. When public land access and use is denied, the limited private lands are generally sold off. This adversely impacts quality of life, wildlife habitat and long-term economic contributions to the local economy.

Multiple Use and Sustained Yield Act of 1960:

Since 1960, the lands managed by the FS have been governed by the Multiple Use and Sustained Yield Act (MUSY). MUSY mandates that the national forests be "administered for outdoor recreation, range, timber, watershed and wildlife and fish purposes." The Act codified what the FS was doing and identified the multiple uses. The Act stated that no specific use could predominate and that a high level of annual output should be maintained without impairment of the productivity of the land.

Although not specifically in the Act, the discussion of the time was stability of rural communities, economic opportunities and jobs. Initially there was little conflict. The idea of multiple use and competing interests based on resource use values and non-use or single interest groups has proliferated management gridlock. Debate around multiple use and the Equal Access to Justice Act (EAJA) has created a conflict industry where the antagonist's ultimate objective is to restrict or eliminate resource use by ranchers. The Western Watersheds Project uses EAJA as a vehicle to accomplish their radical objective of "No Livestock Grazing on Public Lands."

Millions of dollars of investment have been made by livestock producers and other businesses - trucking, fuel, chemicals, retail, etc., all dependent on livestock ranching and multiple-use

activities on these public lands. Drought, wildfires, fluctuating commodity prices make ranching a challenging endeavor. In recent years, agency actions and lawsuits by anti-grazing groups have added greatly to the challenge.

SYSTEMATIC DISMANTLING OF LIVESTOCK RANCHING

Federal land ownership patterns and federal land management agencies in the 11 western public lands states have had a dramatic impact on the success of the livestock ranching industry. Ranching businesses are compelled to develop operations based on private property, privately held water rights and federal rangelands for grazing. The guiding multiple use principles that Congress laid down haven't changed, while the management philosophies of the agencies has based on politics of the day and management by court decree or settlement agreements.

Ranchers, like any American business, need certainty to make decisions. The federal land management philosophy of the FS and the BLM and their on-the-ground decision-making dictates an uncertain future for public lands ranching. Much of the land currently under federal ownership and management was lands held in common during pioneer settlement and used for the benefit of the community. Those historic grazing rights of pioneer settlers underpinned rural economies then and today.

Federal land ownership and management determines the success of livestock ranching in the western public lands states. Federal ownership as a percent of each state:

Eleven Western Public Lands States Federal Ownership:

State	Total Federal Land Acreage	Total Acreage / State	% of State
AZ	30,741,287	72,688,000	42.3
CA	47,797,533	100,206,720	47.7
CO	24,086,075	66,485,760	36.2
ID	32,635,835	52,933,120	71.7
MT	26,921,861	93,271,040	28.9
NV	56,961,778	70,264,320	81.1
NM	27,001,583	77,766,400	34.7
OR	32,665,430	61,598,720	53.0
UT	35,033,603	52,696,960	66.5
WA	12,173,813	42,693,760	28.5
WY	30,043,513	62,343,040	48.2
	356,062,311	752,947,840	47.3

Source: Congressional Research Service 2012

GRAZING RIGHTS & WATER RIGHTS

Water was developed historically for the production of food and fiber to meet man's most basic need. According to water rights experts, farmers, ranchers and agriculture interests own and control the majority of western water rights.

Scarcity of water in the Great Basin and much of the western United States led to the development of a system of water allocation and water rights that is very different from how water is allocated in regions graced with abundant moisture. Rights to water are based on actual use of the water and its continued use for beneficial purposes as determined by state laws. Water rights across the west are treated similar to property rights, even though the water is the property of the citizens of the states. Water rights can be and often are used as collateral on mortgages as well as improvements to land and infrastructure.

The principles of western water law are very different from an eastern riparian interest in water. Western water law determines water rights based on the Doctrine of Prior Appropriation (first in time, first in right) and beneficial use, not a property relationship with the waterway. However, under either style of appropriation if the federal land management agency asserts control of private water rights, it violates constitutional protections against government takings without due process and just compensation.

Livestock water rights are critical to the success and well-being on ranchers across the western public lands states. Water for livestock has been developed across the vast western rangelands since pioneer settlement and before the establishment of the BLM or the FS.

Growth and opportunity in the public lands states continues to be adversely impacted by federal control of the lands coupled with the aggressive actions of federal agencies on the region's water resources. Legal actions and federal water claims create uncertainty and imperil historic state water laws and private property rights.

Western Water Law – The Doctrine of Prior Appropriation:

The Doctrine of Prior Appropriation, or "first-in-time, first-in-right," establishes that water rights are obtained by diverting water for "beneficial use" as determined by state law. Those uses include irrigation, livestock watering (including water developed and used for livestock watering on the federally owned land), domestic use, municipal use, manufacturing, mining, oil and gas development, power generation and in some cases fish, wildlife and recreation based on state law. The amount of the water right is the amount of water diverted and put to beneficial use. Western states adopted the doctrine of prior appropriation and beneficial use to manage the development and to make sure of the judicious use of state's precious waters.

CONGRESS GRANTS WATER TO THE STATES

To effectively and efficiently deal with water issues, settlers in the arid west developed their own customs, laws and judicial determinations to deal with mining, agriculture, domestic and other competing uses recognizing the Doctrine of Prior Appropriation or first in time, first in right. Out of this grew a fairly uniform body of laws and rights across the western states. The federal government was original sovereign and owner of the land and water. Congressional actions ultimately granted water ownership to the sovereign states and acquiesced to the states on all matters of adjudication. Congress was clear on who controlled, managed and allocated water through a series of actions. Congress deferred to the western states through numerous actions in matters of the state's waters recognizing the local laws, customs and judicial decisions including:

Act of July 26, 1866:

The United States Congress passed the Act of July 26, 1866 [subsequently referred to as the Mining Act or Ditch Act of 1866] that became the foundation for what today is referred to "Western Water Law." The Act recognized the common-law practices that were already in place as settlers made their way to the western territories including Utah. Congress declared:

> *"Whenever, by priority of possession, rights to the use of water for mining, agriculture, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected" (43 USC Section 661)*

This Act of Congress obligated the federal government to recognize the rights of the individual possessors of water. But as important, the Act recognized "local customs, laws and the decisions of the state courts."

The Desert Land Act of 1877:

> *"All surplus water over and above such actual appropriation and use….shall remain and be held free for appropriation and use of the public for irrigation, mining and manufacturing…"*

The Taylor Grazing Act of 1934:

> *"nothing in this Act shall be construed or administered in a way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacturing and other purposes…"*

The McCarran Amendment of 1952:

Congress established a unified method to allocate the use of water between federal and non-federal users in the McCarran Amendment. (43 USC Section 666) The McCarran Amendment waives the sovereign immunity of the United States for adjudications for all rights to use water:

> "waives the sovereign immunity of the United States for adjudications for all rights to use water."

The 1976 Federal Land Policy Management Act (FLPMA):

TITLE VII. Effect on Existing Rights…
Sec. 701 [43 U.S.C. 1701 note]

> *(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or –*
>
> *(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources, development or control;*

United States Supreme Court:

In *Tarrant Regional Water District vs. Hermann* (2013) the U.S. Supreme Court (SCOTUS) concurred with Congress on the matter water and the sovereign rights of the states. SCOTUS said:

> *"The power to control public uses of water is an essential attribute of [state] authority."*

SECURITIES AND EXCHANGE COMMISSION

LISTING STANDARDS FOR NATURAL ASSET COMPANIES SEC

PROPOSED - Ecological Performance Rights:

If a potential Natural Asset Companies (NAC) meets the proposed definition, then the new NACs are expected, under the Proposed Rule, to hold what are being referred to as "ecological performance rights" which are defined as "the value of natural assets and production of ecosystem services". The NACs are expected to:

> "…acquire the ecological performance rights of a designated area by entering into an agreement with the natural asset owner (e.g., a governmental entity or private landowner) to obtain a license with respect to such rights."

SLCFB is concerned that this proposed obligation is in direct opposition to the Congressionally mandated multiple use sustained yield presented previously. The Proposed Rule states that the NAC would acquire ecological performance rights (EPRs) by obtaining a license concerning such rights from a government entity or a private landowner. This is extremely concerning to the State in light of the BLM's recently proposed "Public Lands Rule" or "Conservation and Landscape Health Rule." Under the BLM's "Conservation Rule," the BLM would be allowed to redefine multiple use of BLM land to include "conservation" as a use (unilaterally bypassing the Congressional mandate). To further "conservation" as a use, the BLM would then issue "conservation leases" to businesses, individuals, and arguably government bodies, who would hold the leases to further the conservation purposes. The legality of both adding conservation as a use and the issuance of conservation leases violates multiple use sustained yield mandates. SLCFB is adamantly opposed to the BLMs Conservation Rule and its leasing provisions that would eliminate critical multiple use activities like livestock grazing, logging, mining, recreation and other Congressionally approved activities. Rural communities in Utah, a state with 66% federally controlled lands, depend on multiple use activities for their economic futures.

PROPOSED - Unsustainable Activities:

The Proposed Rule imposes various reporting requirements on potential NACs, as well as ongoing restrictions on what types of activities may be engaged in by the NAC. For example, the Proposed Rule states:

> "The NAC will be prohibited from engaging directly or indirectly in unsustainable activities. These are defined as activities that cause any material adverse impact on the

> condition of the natural assets under its control, and that extract resources without replenishing them (including, but not limited to, traditional fossil fuel development, mining, unsustainable logging, or perpetuating industrial agriculture). The NAC will be prohibited from using its funds to finance such unsustainable activities."

If an NAC willfully or unwillingly is to venture into one of these "unsustainable activities", then according to the Proposed Rule, "the NAC will be subject to delisting from the NYSE." SLCFB is concerned with the ambiguity found in the definition of these "unsustainable activities". It is here, the SEC has thrown out four broad categories of extractive industries, including industrial agriculture which ultimately creates "grey areas." The phrase "perpetuating industrial agriculture" facilitates much confusion and a vision of something bad or even sinister. What exactly is "industrial agriculture"? Do the actions taken by food producers using cutting edge genetics, fertilizers and methods to meet mankind's basic need categorize them as industrial agriculture? Or are they the good stewards and hard-working families we should be embracing as a society? The SEC should recognize and encourage the continued use of livestock grazing for numerous environmentally enhancing activities which specifically includes carbon sequestration.

Agricultural production, especially livestock grazing, is often falsely viewed negatively when discussing climate change. Instead of dismissing the positive contributions, the SEC should safeguard agriculture, especially livestock grazing on the public lands. Sadly, American agricultural is under attack. We see a generation of Americans who have full stomachs, with the grocery shelves full and plenty of affordable opportunities at innumerable retail food options. Diverse opinions, including that of the SEC, on public lands livestock grazing and U.S. domestic food production with people's most basic need affordably met, should be viewed simply as ignorance or arrogance!

In addition to produced food and various products from livestock, grazing animals can be an important factor in maintaining balanced and diverse ecosystems. Livestock grazing on the vast federal lands plays a critical role in rural economies. Specifically, it plays a key role in Utah's economy providing one percent of all jobs and produces more than $2,085,535,000 in cash receipts annually. Of that total, $377,979,000 or nearly 20 percent comes from the sale of cattle and calves. These dollar amounts underscore the importance that agriculture, and particularly livestock grazing, plays in the Utah economy.

With urbanization swallowing up available, but limited, private agricultural land within the state, livestock grazing on federally administered lands becomes even more important to agriculture in the State. Of the 45 million acres of grazing lands within the State of Utah, 73 percent is federally owned, 9 percent is state owned, and 18 percent is privately owned.

Because Utah is burdened with one of the highest levels of federal land ownership, the continued success of livestock grazing in Utah is dependent on continued access. Livestock grazing on federal lands has declined precipitously over the past century dropping 66 percent on BLM Lands and 50 percent on Forest system lands. Because of limited private grazing lands in Utah it becomes even more important public lands remain available to sheep and cattle ranchers.

From a positive environment standpoint, livestock grazing contributes to carbon sequestration through properly grazed landscapes. Closely managed grazing systems are used to control the

time, timing, and intensity of grazing which results in a healthy rangeland resource while storing carbon. Properly grazed landscapes result in higher amounts of carbon being stored in the soil than ungrazed landscapes. Livestock grazing contributes to removing large amounts of carbon each year by grazed landscapes being able to use photosynthesis to store carbon in the soil and green plants. The removal of noxious and invasive weeds also contributes to landscapes being able to store more carbon. Livestock grazing is an effective management tool used to remove noxious and invasive weeds. Utilizing livestock grazing as a management tool is significantly less expensive and environmentally friendly than other management options. Ultimately, using livestock grazing as a tool for carbon sequestration will benefit rural economies and communities, and should be included in terms of positive ecosystem services contemplated by the SEC's Proposed Rule. Further, instead of targeting all "industrial agriculture" as an unsustainable activity, the SEC should recognize its positive contributions and avoid unintended consequences. Like inadvertently targeting economically rewarding and environmentally sustainable grazing.

The term "perpetuating industrial agriculture" as identified by the SEC as "unsustainable activities" is troubling and misleading. Use of "perpetuating" could lead to misinformation and far-reaching consequences for agricultural suppliers and dealers who provide support to food producers and employ thousands of people in Utah. Is the SEC attempting to vilify fertilizer or seed dealers who sell to farmers or feed dealers who sell to livestock ranchers? Or the family rancher whose operation depends on access to federal grazing land and is intended to be passed to the next generation? Is this perpetuating industrial agriculture?

It appears in an examination of the SEC definition of unsustainable activities they are somehow finding and categorizing "industrial agriculture" as morally wrong. This unwarranted reference could create a litany of unintended consequences the SEC knows nothing about and jeopardize the abundance and affordable food Americans today enjoy!

CONCLUSION

The SLCFB recommends that the SEC should reconsider and recognize its lack of expertise and understanding related to "sustainable" land use activities and focus on the SEC's mission area and expertise as relates to regulation of securities. And not American agriculture and Western US public lands ranching!

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