

December 7, 2023

Securities and Exchange Commission  
Secretary Vanessa Countryman  
100 F Street NE  
Washington, DC 20549-1090

**Submitted via rule-comments@sec.gov**

RE: SR-NYSE-2023-09, Proposed Rule Change To Amend the NYSE Listed Company Manual To Adopt Listing Standards for Natural Asset Companies

Dear Secretary Countryman,

My name is Darrell Brown and I am the President of the Otero County Cattleman's Association (OCCA) in New Mexico. On behalf of the members of OCCA, I am writing in regards to the Notice published in the Federal Register / Vol. 88, No. 191 / Wednesday, October 4, 2023 / Notices, SR-NYSE-2023-09, Proposed Rule Change To Amend the NYSE Listed Company Manual To Adopt Listing Standards for Natural Asset Companies.

On October 4, 2023, the Securities Exchange Commission (SEC) issued a proposed rule to approve the creation of a new investment vehicle, a "Natural Asset Company" (NAC). The SEC issued Release No. 34-98879; File No. SR-NYSE-2023-09 on November 7, 2023 extending the comment period to January 2, 2024.

The SEC is proposing to give unconstitutional authority and jurisdiction over land uses to an unelected, unaccountable corporation by creating a new type of public company called a Natural Asset Company.

First and foremost, OCCA believes in private property and private rights. It is a private landowners right and prerogative to enter willingly into a license agreement with a Natural Asset Company (NAC) if they so choose. Although, the landowner should not be bribed, coerced, or threatened by any person, entity, or government agency into signing any license agreement.

From verbiage contained in the proposed rule, it appears that bribery is one means that will be used to attain this goal. From the proposed rule notice: *"In order to align the interests of local communities with the objectives of maximizing the value of natural assets and the production of ecosystem services, a NAC would also **be able to use its funds for activities that support local community well-being** (e.g., education, health), provided that such activities are sustainable."* (Emphasis added)

The proposed rule states: *"In conducting its revenue-generating operations, a NAC could monetize ecosystem services that have markets (e.g., through the sale of carbon credits)..."* Does the NAC reap any and all revenue generated from the land, air, and water? What happens to the individual(s) or entity that the NAC has entered into a license agreement with? Are they

now without income and/or a home and livelihood? Do they become a serf? Who pays the operational expenses? Who pays the taxes?

In reading the proposed rule, it appears that the SEC strives to change the complexion of land use and land management nationwide. It also appears that the SEC is trying to “make new law” through the regulation/rule process. The courts have held that federal agencies (government entities) cannot make new law through regulations/rules and that their actions must stay within the confines of Congressional intent and authorization.

One such case is the National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration, 595 U.S. \_\_\_ (2022) considered whether the OSH Act of 1970 plainly authorized the emergency temporary standard (ETS) regarding vaccination and testing for COVID-19 for employers with 100 or more employees. The Court maintained that the statute authorizes the agency to establish only workplace safety standards and not “broad public health measures,” which, according to the Occupational Safety and Health Administration (OSHA), would impact approximately 84.2 million employees. The Court indicated that, although COVID-19 is a risk that occurs in many workplaces, it is also transmissible “at home, in schools, during sporting events, and everywhere else that people gather.” The Court therefore held that COVID-19 is not an “occupational” hazard in most workplaces and that it did not justify a significant expansion of OSHA’s authority without **clear congressional authorization**.

(Emphasis added)

Another example is when the Supreme Court held in the West Virginia ET AL. v. Environmental Protection Agency ET AL. 597 U.S. \_\_\_ (2022) case, using the major questions doctrine that: “[I]n certain extraordinary cases, both separation of powers principles and a practical understanding of legislative intent make us “reluctant to read into ambiguous statutory text” the delegation claimed to be lurking there. Utility Air, 573 U.S., at 324. 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.”

(Emphasis added)

Congress has not **authorized** the change of purpose and use of federal land.

The proposed rule states: “*While a core purpose of a NAC is to maximize ecological performance, under the proposed rules, a NAC would also be required to seek to conduct sustainable revenue-generating operations (e.g., ecotourism in a natural landscape or production of regenerative food crops in a working landscape) provided that such operations are consistent with the NAC’s charter and do not cause any material adverse impact on the condition of the natural assets under the NAC’s control and seek to replenish the natural resources being used. Therefore, all NACs are prohibited from directly or indirectly conducting unsustainable activities, **such as mining**, that lead to the degradation of the ecosystems it is trying to protect.*” (Emphasis added)

Federal law guarantees that mining is an authorized use on federal land as well as many other authorized uses. Should this proposed rule be implemented, the SEC, and others, will be in

direct conflict and violation of current laws that dictate the uses and management on the federal lands. Some of those laws are The Mining Act of 1866, The Organic Act of 1916, The Forest Reserve Act of 1891, The Taylor Grazing Act of 1934, The Multiple Use Sustained Yield Act of 1960, The National Environmental Policy Act of 1970, and The Federal Land Policy Management Act of 1976 just to name a few. How can it be legal in that this proposed rule is to grant a private investment company management authority over federal lands that Congress has the exclusive Constitutional jurisdiction and authority to manage and upon which Congress has delegated that authority to the land management agencies?

Employees of any government entity/agency that implements the SEC's proposed rule is in violation of Title 5 the Code of Federal Regulations (CFR)-ADMINISTRATIVE PERSONNEL, CHAPTER XVI-OFFICE OF GOVERNMENT ETHICS, SUBCHAPTER B-GOVERNMENT ETHICS, PART 2635-STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH, Subpart A-General Provisions, §2635.101-Basic obligation of public service and are subject to penalties.

Employees who perform the implementation of the proposed rule may also be in violation of Title 18, Part I, Chapter 115, Section 2383, more specifically “**insurrection against** the authority of the United States or **the laws thereof** “ and shall be subject to fines or imprisonment and be incapable of holding any office under the United States. (Emphasis added)

Federal lands have been mandated, through statutes passed by Congress and signed by Presidents, to be managed by federal agencies for specific purposes, none of which align with the SEC's proposed rule. Any government entity that goes outside the scope of their delegated authority/management is in violation of numerous federal laws/statutes/regulations and is subject to penalties.

Government entities/agencies must abide by Congressional laws/statutes and uphold their fiduciary duty to the American people. The SEC, nor any other entity, has the authority or jurisdiction to make an agreement with anyone that changes the uses and/or management on federal lands. These uses are codified in law. Such changes can only lawfully be made by Congress.

For the above stated reasons, OCCA respectfully urges that the Securities and Exchange Commission withdraw SR-NYSE-2023-09, the Proposed Rule Change To Amend the NYSE Listed Company Manual To Adopt Listing Standards for Natural Asset Companies.

Thank you for the opportunity to comment.

Sincerely,  
/s/Darrell Brown  
President of the Otero County Cattleman's Association  
PO Box 595  
Weed, New Mexico 88354

cc: Board of Otero County Commissioners  
Otero County Attorney, R.B. Nichols  
Senator Martin Heinrich  
Senator Ben Lujan  
Representative Gabe Vasquez  
Yvette Herrell