



Montana Natural Resource Coalition

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January 18th, 2024

Sherry R. Haywood, Assistant Secretary
Securities and Exchange Commission
100 F St., NE
Washington, D.C. 20549-1090

RE: Proposed Rule Change to Amend the New York Stock Exchange Listed Company Manual to Adopt Listing Standards for Natural Asset Companies – File Number SR-NYSE-2023-09

Dear Assistant Secretary Haywood,

The Montana Natural Resource Coalition (MtNRC) is a network of eighteen (18) counties who have county governmental jurisdiction over 53,814 square miles in the State of Montana. MtNRC's mission is to inform federal agency rulemaking pertaining to land use, natural resource planning, and advocating on behalf of our membership. Current MtNRC members include Beaverhead, Blaine, Fergus, Garfield, Liberty, Madison, McCone, Musselshell, Pondera, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Sweet Grass, Valley, and Wibaux Counties.

Please find below our comments regarding this proposed rule change. We are very concerned with such novel monetary frameworks in light of multiple federal agency rules which seek to fundamentally change the way in which federal lands are managed and inventoried. These rules together constitute a group of concerted actions which break from long extant statutes, the impacts of which have not been thoroughly assessed under relevant authorities.

John Fahlgren
Valley Co. Commissioner

Ross Butcher
Fergus Co. Commissioner

Miles H. Hutton
Blaine County Commissioner

William Wallace
Sweet Grass Co. Commissioner

Shane Gorder
Richland Co. Commissioner

Background

The Securities and Exchange Commission as the top financial regulator issued a rule April 11, 2022, to require publicly traded companies to disclose “*climate-related risks that are reasonably likely to have a material impact on its business, results of operations, or financial condition.*”¹ Under the proposed rules, “*certain climate-related financial metrics would be required in a registrant’s audited financial statements.*” The SEC extended the comment period on the proposed rule to June 17, 2022.² May 31, 2022, 16 Governors signed a joint letter³ strongly urging the Biden administration to withdraw the proposed rule stating:

“...The SEC’s congressionally directed mission is to protect investors, facilitate capital formation, and maintain fair, orderly, and efficient markets. The proposed rule degrades and undermines that mission by injecting subjective political judgments on climate policy into corporate disclosures, in a manner calculated to harm the states that provide for America’s energy security. . .”⁴

And that,

“...The proposed rule appears part of an ongoing effort across the federal government to penalize companies involved in traditional energy development. . .”

Furthermore, the Senate Committee on Banking, Housing, and Urban Affairs issued [public input on climate change disclosures June 13, 2021](#),⁵ almost 10 months prior to the SEC issuing its rule regarding [The Enhancement and Standardization of Climate-Related Disclosures for Investors](#). The Senate Committee made its input clear on the issue stating:

“We do not believe that any further securities regulations to specifically address global warming are necessary or appropriate, and will only serve to further discourage firms from becoming publicly traded, thus denying significant investment opportunities to retail investors.”

It was recognized that the current push for more disclosure relating to global warming fails to provide material information for investment purposes.

¹ The Enhancement and Standardization of Climate-Related Disclosures for Investors (87 FR 21334, April 11, 2022). [Federal Register :: The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)

² Press Release. SEC Extends Comment Period for Proposed Rules on Climate-Related Disclosures, Reopens Comment Periods for Proposed Rules Regarding Private Fund Advisers and Regulation ATS. May 9th 2022. [SEC.gov | SEC Extends Comment Period for Proposed Rules on Climate-Related Disclosures, Reopens Comment Periods for Proposed Rules Regarding Private Fund Advisers and Regulation ATS](#)

³ Joint Governors’ Comment on SEC Release Nos. 33-11042 & 34-94478. The Enhancement and Standardization of Climate-Related Disclosures for Investors. 87 Fed. Reg. 21,334 (File No. S7-10-22). May 31, 2022. [Joint-Governors-Letter-on-SEC-Climate-Disclosure-Proposal-5-31-22.pdf\(idaho.gov\)](#) “The unprecedented level of federal overreach makes your proposed rule an especially dangerous step. The SEC’s congressionally directed mission is to protect investors, facilitate capital formation, and maintain fair, orderly, and efficient markets. The proposed rule degrades and undermines that mission by injecting subjective political judgments on climate policy into corporate disclosures, in a manner calculated to harm the states that provide for America’s energy security.”

⁴ All bold in this document is our emphasis.

⁵ U.S. Senate Committee on Banking, Housing, and Urban Affairs. Public Input on Climate Change Disclosures. June 13, 2021. [banking committee republicans letter to sec on climate disclosures.pdf\(senate.gov\)](#)

“Rather, activists with no fiduciary duty to the company or its shareholders are trying to impose their progressive political views on publicly traded companies, and the country at large, having failed to enact change via the elected government.”⁶

It is important to note that the SEC is looking to finalize this long-stalled rule this spring. The Financial Services Subcommittee on Oversight and Investigations, Chaired by Rep. Bill Huizenga, is scheduled today, January 18th, to question witnesses regarding this rule. Huizenga has stated that the committee,

“... seeks to obtain information to better understand the black box of the SEC’s activities on climate-related measures and its rulemaking authority,”

Within the overarching context of the whole-of-government climate policy initiatives, MtNRC has grave concerns about the Securities and Exchange Commission’s (SEC’s) October 4, 2023, proposed rule at Federal Register (FR) Volume 88, No. 191, Pages 68811-68819 to amend the New York Stock Exchange (NYSE) Listed Company Manual to adopt listing standards for Natural Asset Companies (NACs). This rule in conjunction with other concerted efforts by federal departments has the potential to alter public lands management, inventorying, monitoring, and use of resources in ways Congress has not intended. These processes pose a high potential to disproportionately impact rural resource dependent counties and local communities.⁷

Introductory Statements

- The NAC Rule is unlawful because Congress has not authorized any agency – including the SEC – to subordinate the multiple use directives in FLPMA by putting conservation of public lands on the same level as all other multiple uses and establishing policy preferences that functionally make conservation the highest and best use of the land.
- Though the President has authority to issue executive orders, he is prevented by nature of his office from legislating to agencies responsibilities that extend beyond their Congressionally delegated authority.⁸
- The SEC proposed rule constitutes a single part of a group of concerted efforts being promulgated by various departments and agencies intended to implement decarbonization policies in order to reach Net Zero goals and objectives without explicit statutory delegation.⁹

⁶ “The social change they seek has often been rejected outright by the people’s elected representatives.” See, e.g., Will ESG Disclosures be Mandated by Law? A Legislative Analysis. KING & SPALDING. (Sept. 22, 2021). <https://perma.cc/F4FZ-9JA7> (discussing environmental, social, and governance (“ESG”) legislation from the 117th Congress and finding a “low likelihood” that the legislation becomes law); see also Stuart Loren, ESG and the Road to Serfdom, LINKEDIN (Oct. 22, 2021), <https://perma.cc/3UVC-ETZ7> (“Even if well-intentioned and sensible, . . . do we really want a handful of senior management at BlackRock and the world’s largest asset allocators pushing for policy related changes? Isn’t this the role of government?”)

⁷ [Application of Federal Land and Natural Resource Authorities to the Proposed US Forest Service Manual 2000 Chapter 2040 Adaptive Management and Monitoring Policy](#). Boundary Line Foundation. Jan. 10th, 2024; [Final-MtNRC-MHCA-11-27-23.pdf](#)

⁸ “. . . We presume that ‘Congress intends to make major policy decisions itself, not leave those decisions to agencies.’” *United States Telecom Assn. v. FCC*, 855 F. 3d 381, 419 (CADC 2017); . . . it is unlikely that Congress will make an “[e]xtraordinary gran[t] of regulatory authority” through “vague language” in “a long-extant statute.” Ante, at 18–20 (quoting *Utility Air*, 573 U. S., at 324).

⁹ 43 U.S.C. § 1701(a)(7) The Congress declares that it is the policy of the United States that – goals and objectives be established by law as guidelines for public land use planning. . .

The **continued productive use** of private and federal lands within states and counties is essential for maintaining the taxable revenue to local governments. In many western states domestic livestock grazing permits on Taylor Grazing Act grazing districts are needed and statutorily required¹⁰ for the viability of dependent commensurate properties to provide stability for the ranching industry and local communities.¹¹ This is also true for livestock leases outside of grazing districts. This principle and major use is an important source of taxable revenue for counties and states. The proposed SEC rule will open the door for special interest exploitation of these lands and will have fiscal impacts on local governments and deteriorate local customs, cultures, and unique socio-economic environments developed by multi-generational ranching and farming communities.

The SEC proposed rule in conjunction with the BLM Landscape Conservation Leasing Rule would inappropriately encourage special interest acquisition of commensurate base properties with the intent to transition productive national resource lands to non-productive conservation purposes.

A vast amount of Bureau of Land Management and Forest Service administered lands are linked to commensurate deeded base properties leased and permitted to private domestic livestock interests. The only way an entity can apply for a conservation lease is to first acquire the base properties. This would encourage well-funded non-profit conservation groups to expand existing land acquisition schemes and further inflate the rural real estate market pushing local tax-paying citizens out of the farm and ranch land market. Inevitably this would further consolidate the livestock and farming industries while lands enrolled into conservation leasing paradigms and listed as a natural asset on the NYSE would potentially outsource local taxable productive revenue for counties to outside national and international carbon markets.¹²

In this context it is foreseeable that these non-profit conservation groups may capitalize on removing cattle production and other FLPMA principal uses from the range¹³ and enrolling lands into conservation leasing programs that then could be marketed into the international finance arena as a carbon credit for multi-national corporations to offset their emissions.¹⁴

The international climate agenda advanced by Executive Orders is illegitimately driving domestic land use policy by facilitating a natural asset class and carbon mitigation

¹⁰ MCA 76-16-102; 43 USC § 1901(a)(4),(5); 43 USC § 315b; 43 CFR § 4100.0-2.

¹¹ [The Repurposing of Federally-Reserved Taylor Grazing Districts For Wildlife Rewilding: A Statutory, Administrative and Legal Analysis](#). Stillwater Technical Solutions. April 22, 2020. J.R. Carlson et. al

¹² [Carbon-Paper-2016.pdf \(plainsconservation.org\)](#)

¹³ [Expanded Conservation Leasing Would Improve Federal Land Management | National Review](#) “If a local community values the environmental attributes of a tract more than a grazer does for livestock feed, it makes sense to switch uses to conservation and formalize that change with a new lease. . .” “. . .As currently drafted, the proposal allows conservation use — as identified and designated by the BLM — to trump all competing uses.”

¹⁴ **FR p. 19603 Subpart 6102—Conservation Use to Achieve Ecosystem Resilience** § 6102.5–1 (c) For compensatory mitigation, the BLM may use a third-party mitigation fund holder.; [How the voluntary carbon market could help us get to net zero | World Economic Forum \(weforum.org\)](#); [What are carbon credits and how can they help fight climate change? | World Economic Forum \(weforum.org\)](#)

framework to market into the international finance realm as carbon offsets for corporate entities.

In November of 2022, the Biden-Harris Administration released the Nature-Based Solutions Roadmap at COP 27 in Egypt. This marks the first time the U.S. has developed a strategy to scale up nature-based solutions.^{15,16} This administration in April of 2022 also issued pursuant to Executive Order 14008 the U.S. International Climate Finance Plan, the *first of its kind*, to address the need to better align public and private financial flows to achieve international objectives for decarbonization under the Paris Accord.¹⁷ The finance plan claims such a novel whole-of-government directive is necessary to protect and advance U.S. national and economic security. The plan states on page 3:

“As the United States scales up its international climate finance, we must ensure greater impact and coordination among the various departments and agencies involved in providing or mobilizing this finance.”

The current rule being proposed by the SEC is a clear signal that the commission is among the agencies playing a significant role in mobilizing this novel, whole-of-government whole-of-economy climate finance agenda. In fact, if finalized, this rule will foreseeably serve as a conduit for the conservation leasing framework being promulgated by the Department of Interior to streamline arbitrary standards and values into the international finance realm, with a disproportionate benefit to sole-purpose agencies and their special interest partners. As documented in our [June 29, 2023, comments](#)¹⁸ we submitted regarding the DOI leasing rule, Congress has not delegated such priorities to federal land management departments which pose vast transformative effects on the policy and economy of the United States.¹⁹

Since the issuing of Executive Order 14008 and reentrance into the Paris Agreement and the associated Nationally Determined Contribution and 30x30 Conservation Initiative, the executive branch is now attempting to establish a natural asset class for land, water, and air resources.²⁰ This represents an effort to attach a synthetic market value to these biodiversity goals and associated decarbonization objectives. Because there is no current free market process

¹⁵ [FACT SHEET: Biden-Harris Administration Announces Roadmap for Nature-Based Solutions to Fight Climate Change, Strengthen Communities, and Support Local Economies | The White House](#); [Optimal allocation of nature-based solutions to achieve climate mitigation and adaptation goals - Villarreal-Rosas - 2023 - People and Nature - Wiley Online Library](#)

¹⁶ EO 14008 § 102 (b)

¹⁷ [U.S.-International-Climate-Finance-Plan-4.22.21-Updated-Spacing.pdf \(whitehouse.gov\)](#)

¹⁸ J.R. Carlson at. el., [Survey of the History, Background, and Compliance of the Proposed BLM Landscape, Conservation and Health Rule with The Public Land Laws of the United States, Report to Public Record RIN 1004-AE92](#) – Boundary Line Foundation, June 2023.

¹⁹ “[W]hen Congress wishes to ‘alter the fundamental details of a regulatory scheme,’ . . . we would expect it to speak with the requisite clarity to place that intent beyond dispute.” - *U.S. Forest Serv. v. Cow pasture River Pres. Ass’n* 140 S.Ct. 1837, 1848– 49 (2020).

²⁰ All Roads Lead to Paris: [Administrative Chronology and Structural Violations of the Climate Policy Agenda Under the Biden Administration Executive Orders 14008 and 13990](#). Nathan Descheemaeker, January 27, 2023.

establishing a metric for economic calculation for this novel market, any values placed on these natural assets are arbitrary.²¹

The SEC rule along with other concerted efforts by multiple federal departments seek to establish administrative mechanisms in order to facilitate artificial avenues for private investments into natural resource lands without extractive material products to attach a value to. This will provide an illusion of private market value for the application of non-use of lands which then will be sold and marketed into the international finance realm with no calculable benefits to local governments and citizens.

In fact, this process will invert the productive use of lands which provides economic calculation for taxable revenue of material products to local governments as a basis to provide goods and services based on the principle of multiple-use and sustained-yield. This historic use mandate provides tangible assets for consumers to access at prices mutually agreed upon in the free market. In stark contrast the SEC rule would make non-use a competing force against actual use allowing government regulators to set prices with special interest third parties.²²

The White House Natural Capital Accounting Strategy ranks conservation as an economic necessity. These processes seek to arbitrarily place a value on non-use of public lands and inventory them under the 30x30 conservation objectives. The White House document, *National Strategy to Develop Statistics for Environmental Economic Decisions*²³ published January of 2023 signifies that the Conservation Stewardship Atlas will serve as a tool “*for tracking a range of conservation benefits provided by U.S. lands and waters, particularly for biodiversity, climate and equity benefits.*”

It appears that the DOI Landscape Leasing Rule may serve as an administrative mechanism to transition lands from active use to non-use while the America the Beautiful Conservation Atlas will serve as the inventorying system to monitor and track the transition and then the NACs will be the mechanism for entities which acquire such lands to sell non-use as an *ecosystem service* on the New York Stock Exchange.

The documents coming out of the federal departments regarding the Climate Policy agenda lack transparency required by the Administrative Procedures Act (APA) and other federal law. It is mandatory under the APA for agencies to act only pursuant to express legal authority, being fully transparent, providing opportunity for public comment, and with judicial review. See *Texas v. U.S.*, 809 F.3d 134 (5th Cir. 2015).

Though the President has authority to issue executive orders, he is prevented by nature of his office from legislating to agencies responsibilities that extend beyond their Congressionally

²¹ [Microsoft Word - draft statistics for environmental economic decisions strategic plan 8.16.22 \(whitehouse.gov\); A New National Strategy to Reflect Natural Assets on America's Balance Sheet | OMB | The White House: Look beyond carbon credits to put a price on nature's services, experts say \(mongabay.com\)](#)

²² Fergus County LUP, p 2.

²³ [Microsoft Word - NATIONAL STRATEGY TO DEVELOP STATISTICS FOR ENVIRONMENTAL-ECONOMIC DECISIONS final \(whitehouse.gov\)](#)

delegated authority.²⁴ The proposed SEC rule is one of many examples of agencies attempting to implement executive directives without explicit legislative delegation. These concerted efforts are shaping biodiversity conservation policy, claiming national and global benefits, without adequately analyzing the fact that the costs of biodiversity conservation are most often locally concentrated posing significant impacts on regional economies. Because of the disproportionate impacts of this rule on western states and their political sub-divisions, serious federalism concerns are raised and must be addressed.²⁵

Conclusion

The institutionalization of climate change theory into executive branch policy is the mechanism currently imposing vast transformative impacts on the economy of the United States and political process which implicates the *major questions* doctrine. This is evidenced by dozens of rules and guidance being issued and promulgated within multiple federal departments and agencies pursuant to their climate action plans. The Supreme Court has clearly stated, if an agency is attempting to use an old statute to claim novel powers for “new problems,” this is a warning sign that the agency is acting without clear Congressional authority.²⁶

The proposed SEC rule has no explicit Congressionally delegated basis and actually runs counter to, and poses a competing mechanism with, existing Congressionally delegated uses and priorities under long extant statutes. This rule would inappropriately open the door to special interest influence on the productive national resource lands for non-productive purposes.

We hold that the SEC proposed rule has no basis in statute and that the executive branch is usurping Article 1 powers to itself to accomplish international goals and objectives for our national resource lands which have not been established by law.²⁷ This effectively shifts the mission of federal land management agencies from managing renewable and non-renewable resources to support the needs of the American people, to managing ecosystems for addressing climate change. For reasons stated herein, as well as other unassessed problems addressed by other commenters, the SEC should withdraw the proposed NAC rule.

²⁴ “There is no undefined residuum of power,” said President William Howard Taft, “which the president can exercise because it seems to him to be in the public interest . . . His jurisdiction must be justified or vindicated by the affirmative constitutional or statutory provisions, or it does not exist.” - William Howard Taft. *Our Chief Magistrate and His Powers* 138-45 (1916). Quoted and cited in James L. Hirsen, *Government by Decree* 7 (1999).

²⁵ [Executive Order 13132](http://scholarship.law.cornell.edu/clr/vol83/iss1/1); Bradley C. Karkkainen, *Biodiversity and Land*, 83 *Cornell L. Rev.* 1 (1997) Available at: <http://scholarship.law.cornell.edu/clr/vol83/iss1/1>; A. Dan Tarlock, *Biodiversity Federalism*, 54 *Md. L. Rev.* 1315 (1995) Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol54/iss4/7>

²⁶ *West Virginia v. Environmental Protection Agency*, 597 U.S. ____ (2022).

²⁷ 43 U.S.C. § 1701(a)(7) The Congress declares that it is the policy of the United States that – goals and objectives be established by law as guidelines for public land use planning. . .