

H O N O R A B L E M E N T I O N

CONSERVATION RIGHTS-OF-WAY ON PUBLIC LANDS

by Justin R. Pidot and Ezekiel A. Peterson

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The Joseph Biden-Kamala Harris Administration's ambitious America the Beautiful Campaign to protect 30% of the United States' lands and waters by 2030 will require a comprehensive inventory of conservation tools. This Article contributes to that inventory by identifying and evaluating a novel use of the authority of the Bureau of Land Management (BLM) to issue rights-of-way under Title V of the Federal Land Management & Policy Act (FLPMA) over the vast public lands managed by the agency, which account for roughly 10% of the surface area of the United States. It contends that BLM could issue a "conservation right-of-way" to a state, tribe, local government, or private party seeking to restore and protect ecological systems. Creating private rights to conserva-

tion in appropriate circumstances could address persistent asymmetries between active use of public lands—which tends to occur through private rights—and conservation use of public lands—which tends to occur through public policy. BLM could plausibly deploy conservation rights-of-way in an array of circumstances, for example, to authorize the construction and maintenance of mitigation banks for wetlands or wildlife habitat or to monitor and maintain wildlife corridors. Conservation rights-of-way could be small in scale, nuanced, and context-dependent, and they could be issued in a distributed fashion at BLM field offices throughout the United States. These features suggest that conservation rights-of-way could serve as an important supplement to other conservation tools.

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