



MARLO M. OAKS
TREASURER

State of Utah

UTAH STATE TREASURER
UTAH STATE CAPITOL COMPLEX
350 N STATE STREET, SUITE 180
PO BOX 142315
SALT LAKE CITY, UTAH 84114-2315

TEL: (801) 538-1042
FAX: (801) 538-1465
TDD: (801) 538-1042

KIRT W. SLAUGH
CHIEF DEPUTY TREASURER

ALLEN ROLLO
INVESTMENT OFFICER

September 16, 2024

Terry Cosby, Chief
Department of Agriculture
Natural Resources Conservation Service
Docket ID: NRCS-2024-0014
Federal Register Document Number: 2024-18348

Re: Request for Public Input about Implementation of the Sustainability Targets in Agriculture

Mr. Cosby:

I am submitting comments in response to the Request for Public Input on the implementation of the SUSTAINS Act. As the State Treasurer of Utah, I am deeply concerned about the trend toward the financialization of ecological services. In my testimony before the House Committee on Natural Resources Subcommittee on Oversight and Investigations on March 7, 2024, I discussed at length the perils of financializing nature, particularly through mechanisms like Natural Asset Companies (NACs) and Natural Capital Accounts (NCAs).¹ These initiatives reflect a misguided approach to managing ecological services and pose far-reaching dangers to public land management, state economies, and national security. The financialization of ecological services is not only impractical but threatens to undermine the very goals of sustainability that it purports to advance. The subcommittee was unable to find anybody who was willing to testify in defense of these ideas. It is my hope that any future proposed rule put forward does not attempt to financialize nature.

Attempt to Financialize Ecological Services Through Natural Asset Companies

On September 27, 2023, the New York Stock Exchange (NYSE) submitted a proposal to the Securities and Exchange Commission (SEC) for the creation of NACs. NACs were intended to manage land for ecological services rather than traditional economic activity. Under this proposal, NACs would raise money from global investors, including sovereign wealth funds, to acquire and manage the rights to ecosystem services on U.S. lands. The proposal posed a significant risk by creating a mechanism for public and private lands to be permanently removed from productive use to address a laundry list of ill-

¹ Marlo M. Oaks. (2024, March 7). Statement before the House Committee on Natural Resources Subcommittee on Oversight and Investigations. U.S. House of Representatives.

<https://www.congress.gov/118/meeting/house/116880/witnesses/HHRG-118-II15-Wstate-OaksM-20240307.pdf>

defined resource values, such as climate regulation, ornamental resources, and visual amenity resources.² This could have had grave consequences for resource-rich states like Utah, where federal land ownership dominates (67% of the land). Public lands are vital for energy production, grazing, logging, and agriculture. Moreover, the NAC system allows foreign entities to potentially own management rights to U.S. natural resources, creating serious national security concerns. Sovereign wealth funds from nations such as China or Russia could exploit NACs to curtail U.S. energy production and agricultural output. This would have disastrous consequences for rural economies and food security.

Following widespread opposition from citizens, state and local governments, and organizations across the country, the SEC extended its decision on the proposal twice and reopened public comments. However, the NYSE withdrew the proposal on January 17, just before the comment period ended, preventing many stakeholders from submitting input. Despite the withdrawal, efforts to push forward similar land-use regulations under the guise of addressing climate change and biodiversity continue, with initiatives like Natural Capital Accounts (NCAs) and conservation leases still being pursued by the Biden Administration. These concepts echo the same problematic principles of the original NAC proposal. It is my hope that these concepts will not resurface in any proposed rule you may put forward.

Ecological Services and Performance Rights: A Legal and Practical Quagmire

As noted in my testimony, measuring ecological services simply means fixing a value to natural processes (e.g., clean air, water supply, flood protection, productive soils for agriculture, climate stability, and habitat for wildlife). NCAs attempt to identify and capture these values that would end up on public and even corporate balance sheets.³ Importantly, this is not possible under U.S. accounting standards, as many ecological services do not generate traditional economic activity. For that reason, those pushing this framework contemplate an alternative accounting system based on United Nations standards of assigning an arbitrary value to natural processes. However, that system can't be squared with GAAP accounting.

Furthermore, the value assigned to ecosystem services is highly subjective. As outlined in the NAC proposal, these services are often measured in terms of aesthetics or “option value,” which refers to benefits that are currently unknown.⁴ Such a valuation framework is ripe for manipulation and cannot be reliably audited. Even supporters of the NAC proposal, such as Ernst & Young (EY), have pointed out significant challenges. EY notes that accounting firms, which audit financial statements of publicly traded companies, lack the expertise to evaluate “biophysical measures for different ecosystems” without relying heavily on external specialists. This outsourcing would involve scientists who are neither registered with the Public Company Accounting Oversight Board nor familiar with GAAP

² See p. 19-24 of IEG. “Ecological Performance Reporting Framework,” available at <https://www.sec.gov/files/rules/sro/nyse/2023/34-98665-ex3.pdf>.

³ National Strategy to Develop Statistics for Environmental-Economic Decisions: A U.S. System of Natural Capital Accounting and Associated Environmental-Economic Statistics. (2023, January). Office of Science and Technology Policy, Office of Management and Budget & Department of Commerce. <https://www.whitehouse.gov/wp-content/uploads/2023/01/NaturalCapital-Accounting-Strategy-final.pdf>

⁴ See page 10 of IEG. “Ecological Performance Reporting Framework,” available at <https://www.sec.gov/files/rules/sro/nyse/2023/34-98665-ex3.pdf>.

standards.⁵ This process raises concerns about accountability, as these external experts would have significant influence over valuations without appropriate oversight or objective justification.

Another concept embedded within the attempts to financialize nature is ecological performance rights. However, as I noted in my testimony, ecological performance rights are not recognized under U.S. property law because they pertain to non-exclusive public goods, such as clean air, water, and biodiversity. These rights cannot be clearly defined or enforced, and any attempts to license or manage them would, of necessity, fall outside of time-honored legal frameworks. Entities based on ecological performance rights would lack tangible assets, making them legally precarious and economically worthless.

In addition, University of Reading Professor Tom Oliver has pointed out that natural assets should not be treated identically to other forms of capital because their loss is often irreversible. Financial capital can be invested, spent, or borrowed; natural capital cannot. Therefore, the commodification of public goods like clean air or water is inherently dangerous. It places vital ecosystem processes at the mercy of market forces that prioritize profit over sustainability.⁶

Financializing Ecological Services Would Harm Local Economies

In Utah, agriculture constitutes about 1% of employment and generates \$2.1 billion annually, with \$378 million from cattle sales. Livestock grazing is critical, with 73% of Utah's 45 million acres dedicated to grazing, the majority on federal lands overseen by the Bureau of Land Management (BLM).⁷ However, grazing on these lands has drastically declined—66% on BLM land and 50% on Forest Service land—due to federal restrictions.⁸ The mixed-use approach practiced by local farmers is far more effective than proposals that limit land use by placing control in the hands of private or foreign investors.

As federal regulations reduce multiple land-use opportunities, Utah communities face economic challenges, including job losses in industries like mining and logging.⁹ The lack of active forest management, further exacerbated by these restrictions, has increased wildfire risks, contributing to

⁵ See EY comment to SEC on NAC proposal available at <https://www.sec.gov/comments/sr-nyse-2023-09/srnyse202309-281019-686302.pdf>.

⁶ 4 Oliver, Tom. "Is the concept of 'Natural Capital' useful?" *Debating Naturals Value - The Concept of 'Natural Capital'* (2018) Ed (Victor Anderson) Palgrave Pivot, doi: 10.1007/978-3-319-99244-0, , available at <https://research.reading.ac.uk/social-a>

⁷ 2017 Census of Agriculture. 2017. State Profile: Utah, available at: https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/Utah/cp99049.pdf.

⁸ See generally Hayden Ballard, *Killing Kaibab Industries*, *Idaho Critical Legal Studies Journal*, available at: <https://www.uidaho.edu/-/media/UIIdaho-Responsive/Files/law/critical-legal-studies/issues/volume-14/hayden-l-ballard-killing-kaibab-industries-13-the-crit-critical-stud-j-2020.pdf?la=en&hash=6343683CACC6F77FB76DDDC4D70AEBC3E621705E> (2020).

⁹ See generally Hayden Ballard, *Killing Kaibab Industries*, *Idaho Critical Legal Studies Journal*, available at: <https://www.uidaho.edu/-/media/UIIdaho-Responsive/Files/law/critical-legal-studies/issues/volume-14/hayden-l-ballard-killing>

economically disadvantaged rural areas.¹⁰ While climate change is often blamed for wildfires, inadequate land management is a significant contributing factor.¹¹

Although the federal executive branch can be held accountable through political channels, when land management is transferred to private entities through mechanisms like conservation leases, local and state governments lose their influence, raising concerns about public oversight.

The Financialization of Mother Nature Risks Our National Security

The trend toward natural capital accounting presents significant national security risks, particularly as foreign investment could gain control over U.S. natural resources. In my testimony, I cited recent events in Utah involving Chinese-owned corporations acquiring agricultural assets, downsizing operations, and withholding productive resources.¹² The acquisition of NACs by foreign entities could allow adversarial nations to lock up U.S. natural resources, severely restricting our agricultural and energy sectors.

For example, a foreign-owned NAC could acquire the rights to manage ecosystem services on public lands, limiting energy production or food supply chains. This could lead to artificial shortages, undermining U.S. energy independence and food security. What better way for a foreign adversary to cripple the United States than by investing money to lock up our natural resources and food supply?

Conclusion

The financialization of nature represents a dangerous and misguided approach to land management and sustainability. These initiatives threaten to undermine rural economies, compromise national security, and erode public control over vital natural resources. As I emphasized in my testimony, the commodification of public goods like clean air and water places them at risk of speculative exploitation by foreign investors and private actors, all while sidelining the local communities that have traditionally served as stewards of the land.

¹⁰ See generally Hayden Ballard, Killing Kaibab Industries, Idaho Critical Legal Studies Journal, available at: <https://www.uidaho.edu/-/media/UIDaho-Responsive/Files/law/critical-legal-studies/issues/volume-14/hayden-l-ballard-killing-kaibab-industries-13-the-crit-critical-stud-j-2020.pdf?la=en&hash=6343683CACC6F77FB76DDDC4D70AEBC3E621705E> (2020).

¹¹ See generally The Senate and Congressional Western Caucuses. “Western Conservation Principles: An alternative proposal to conserve and restore America’s landscapes,” available at https://westerncaucus.house.gov/uploadedfiles/10.5.2021_western_conservation_principles_final.pdf. Also see generally Little Hoover Institute. “Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada,” available at <https://lhc.ca.gov/report/fire-mountain-rethinking-forest-management-sierra-nevada/>.

¹² Amy Joi O’Donoghue, How the end of hog farming can kill a way of life in rural Utah, Deseret News, available at: <https://www.deseret.com/2023/12/8/23992293/how-end-of-hog-farming-can-kill-a-way-of-life-in-rural-utah> (2023). And Dave Sebastian, Chinese Owned Pork Producer Smithfield Prepares for U.S. Listing, The Wall Street Journal, available at: <https://www.livemint.com/news/chineseowned-pork-producer-smithfield-prepares-for-u-s-listing-11697733802038.html> (2023)

In implementing the SUSTAINS Act, I urge the Department of Agriculture to reject these flawed approaches to financializing nature.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marlo M. Oaks". The signature is fluid and cursive, with the first name "Marlo" being the most prominent.

Marlo M. Oaks
State Treasurer of Utah
O: (801) 538-1042
M: (385) 226-1463
moaks@utah.gov