STATE PERSPECTIVES ON BLM'S
DRAFT PLANNING 2.0 RULE

OVERSIGHT HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS
OF THE
COMMITTEE ON NATURAL RESOURCES
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The subcommittee met, pursuant to notice, at 10:05 a.m., in room 1324, Longworth House Office Building, Hon. Louie Gohmert [Chairman of the Subcommittee] presiding.

Present: Representatives Gohmert, Labrador, Westerman, Bishop; and Dingell.

Also present: Representatives Lummis and Gosar.

Mr. GOHMERT. The Subcommittee on Oversight and Investigations will come to order. The subcommittee is meeting today to hear testimony on states’ perspectives on the Bureau of Land Management’s Draft Planning 2.0 Rule.

Under Committee Rule 4(f), any oral opening statements at a hearing are limited to the Chair and the Ranking Minority Member. Therefore, I ask unanimous consent that all other Members’ opening statements be made a part of the hearing record if they are submitted to the Subcommittee Clerk by 5:00 p.m. today. Hearing no objection, so ordered.

I also ask unanimous consent that the gentlelady from Wyoming, Mrs. Lummis—when she comes from a meeting we were having—and the gentleman from Arizona, Dr. Gosar, be allowed to sit in with the subcommittee, since they are part of the Full Committee. Hearing no objections, so ordered.

I will politely ask that everyone in the hearing please silence their cell phones. When I was a judge, we would order them confiscated. I don’t do that now, but this will allow for minimum distractions.

I will now recognize myself for 5 minutes for an opening statement.

STATEMENT OF HON. LOUIE GOHMERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Gohmert. The Subcommittee on Oversight and Investigations is meeting today to hear testimony on BLM’s draft resource management planning rule. This draft rule is part of BLM’s Planning 2.0 initiative, and it completely upends the current process by which the agency prepares and amends resource management plans that govern public lands.

Getting the planning process right is crucial because the effects of resource management plans on communities throughout the West cannot be overstated. In some counties, where the Federal Government owns a majority of the land, the decisions that BLM makes have an outsized impact. Families and local economies can
and do suffer as a direct result of BLM’s unaccountable, Washington, DC bureaucracy. That is why Congress specifically prioritized the input of those who are most affected by BLM’s resource management plans.

The Federal Land Policy Management Act (FLPMA) made clear that BLM must coordinate with local governments on management plans. BLM’s Planning 2.0 effort and this draft rule appears to ignore the law and undermines the communities that neighbor BLM land. From refusing to further extend the comment period, to cutting local communities out of the resource management planning process, BLM has perfectly illustrated why so many people feel that the Federal Government is not a good neighbor.

When BLM heard from numerous local governments, interested organizations, and Congress that significantly more time was needed to comment on the draft rule, BLM extended the comment period for only 30 days, effectively saying, “No, thanks. We don’t need to hear from all of you.” That probably should not have been a surprise, since, in many ways, the draft rule seems to be designed to increase Washington’s influence while minimizing BLM’s responsibility to work with the states, local government, and affected people.

We are here today to remind BLM of its obligation to cooperate with its neighbors, to provide an opportunity for those who are most invested in an effective and efficient planning process to share their expertise. They are not in existence to repeatedly infuriate local landowners until they are provoked to violence resulting in the death of a landowner, as we have seen.

Many people have acknowledged that the planning process could be improved, but BLM’s draft rule, as it is currently written, is not a workable solution. At a minimum, BLM needs to reopen the comment period to allow for full and substantive input on this complex rule. Ideally, BLM should go back to the drawing board and partner closely with the state and local governments to make sure the resource management planning process works for everyone, not just agency officials.

In closing, I want to say thank you to our witnesses. Most of them have traveled a great distance. And obviously, you don’t come for the money, because you don’t get paid. This is all because you care about our country and our freedoms, so we much appreciate your willingness to come share your thoughts and your observations with us, and we look forward to your testimony.

The Chair now recognizes Mrs. Dingell for 5 minutes for an opening statement.

**STATEMENT OF HON. DEBBIE DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mrs. Dingell. Mr. Chairman, thank you for your courtesy in accommodating me this morning. In the interest of time, I am going to ask unanimous consent to submit my opening statement for the record and yield back the balance of my time. I apologize to the witnesses that I am going to have to leave, to be blunt, to take my husband to the doctor.
But I will be here for the first round of questions and, as the Chairman knows, will pay attention to all the information we learn today.

[The prepared statement of Mrs. Dingell follows:]

PREPARED STATEMENT OF THE HON. DEBBIE DINGELL, RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Thank you, Mr. Chairman. And thank you to all of our witnesses who have taken the time to be here with us today.

A little over a month ago, I was sitting in this very same seat, in this very same room, talking about this very same topic. In fact, this morning marks the third congressional hearing on the Bureau of Land Management's resource management planning process.

If I didn't know better, I would think this re-run is a sign that this committee has run out of issues that warrant oversight and investigation. But I do know better and that couldn't be further from the truth.

My colleagues and I have made requests for committee hearing topics that demand our attention, but we continue to be ignored. Why aren't we having a hearing to learn more about home-grown terrorism like we saw at Malheur National Wildlife Refuge where our public lands were held hostage at gunpoint and the public service employees who work on those lands were threatened? Why can't we examine the alarming number of species that are going extinct each year and whether our Federal agencies have the resources they need to protect the biodiversity that we all rely on every day? And when will we do our due diligence in investigating the full spectrum of devastating consequences that climate change is having on our lands, ecosystems, and our own health, safety, and economy?

That said, BLM's resource management planning process is an important issue. As I mentioned in the first hearing on the topic, BLM is responsible for more public lands than any other Federal agency. And it's clear that the agency's current process for developing resource management plans is clunky, out of date, and inaccessible to the public.

Fortunately, BLM's proposed rule for revising this process, otherwise known as Planning 2.0, is a clear improvement. Planning 2.0 proposes several additional opportunities for the public to be involved in planning, making the process more transparent and relevant to all residents. Today we will hear some people claim that their organized voice should be elevated above the direct and unfiltered voice of Americans. I think that giving people more input into planning makes more sense than hoping that interest groups or other elected officials will do the talking for them.

The rule also proposes developing plans according to the natural boundaries of landscapes and ecosystems, rather than political or jurisdictional borders. This "landscape-level approach" not only makes sense, but has been consistently supported by leaders and experts in the field. In fact, there are ways in which BLM could strengthen its landscape scale approach in the new rule. For example, the rule should outline how landscape level plans will be monitored and evaluated to determine whether plan revisions are needed. Doing so is key to effective, adaptive management of our vast Federal lands.

So while there is no doubt that Planning 2.0 is important and deserving of our attention, it seems to me that having three hearings about it is a bit excessive. I will say that I am pleased to see that a representative from the Department of the Interior was actually invited to answer our questions about their initiative this time. My thanks to the Chairman for taking my suggestion to do so. I'm hopeful that this hearing—which I call Planning 2.0, version 3.0—will be a more productive use of everyone's time.

I also hope that the Chairman will consider my other suggestions for hearings in the future as well. Thank you and I yield back my time.

Mr. GOHMER. Coming from one of the nicest people I know, certainly that is so ordered.

Now I introduce our witnesses. Mr. Jim Ogsbury is the Executive Director for the Western Governors' Association, located in Denver, Colorado. Mr. Jeff Fontaine is the Executive Director of the Nevada Association of Counties, located in Carson City, Nevada. Mr. Chuck
McAfee is a landowner and community volunteer from Lewis, Colorado. Mr. Jim Lyons is the Deputy Assistant Secretary of Land and Minerals Management at the U.S. Department of the Interior, located here in Washington, DC. Ms. Kathleen Clarke is the Director of the Utah Public Lands Policy Coordinating Office, located in Salt Lake City, Utah.

Under Committee Rules, oral statements must be limited to 5 minutes, but your entire written testimony will be part of the record. When you see the light turn yellow, you know you have 1 minute left. When it turns red, your time has expired, and hopefully you will cease without having to be stopped.

The Chair now recognizes Mr. Ogsbury for your testimony.

STATEMENT OF JIM OGSBURY, EXECUTIVE DIRECTOR, WESTERN GOVERNORS' ASSOCIATION, DENVER, COLORADO

Mr. OGSBURY. Thank you, Chairman Gohmert, Ranking Member Dingell, and Chairman Bishop. My name is Jim Ogsbury. I serve as the Executive Director of the Western Governors' Association, an independent, bipartisan association representing 19 western governors and 3 U.S. flag islands.

When it come to the development and administration of Federal public policy, Western Governors are duly concerned and often frustrated when they are regarded or treated as common stakeholders. Governors, the chief executive officers of their states, are much more than that. States are sovereigns. Governors have constitutional responsibilities, delegated authorities, and on-the-ground knowledge about their states’ economies, cultures, and environments. Their expertise and perspective should be brought to bear in the design and execution of Federal programs.

The governors are particularly anxious to operate as authentic partners with Federal agencies in the execution of programs that have demonstrable impacts on state authority. States, for example, possess primary police powers to manage most fish and wildlife within their boundaries. Likewise, states have primary authority over the management of water resources within their borders, and they possess plenary authority over groundwater.

Because the management of Federal lands implicates these authorities, and because the Bureau of Land Management owns such vast amounts of land in the West, the governors are deeply invested in the agency’s processes for the development of resource management plans. Moreover, the Federal Land Policy and Management Act, FLPMA, recognizes this investment and mandates a substantial role for governors in the BLM planning process.

Unfortunately, the proposed Planning 2.0 rule fails to honor the role of governors in this process, and instead diminishes it in significant respects. With respect to states, FLPMA says in relevant part that the Secretary of the Interior shall, “Coordinate the land use, inventory planning, and management activities of or for such lands with the land use planning and management programs of states. The Secretary shall provide for meaningful public involvement of state officials in the development of land use programs, land use regulations, and land use decisions for public lands. Land use plans of the Secretary under this section shall be consistent
with state plans to the maximum extent he finds consistent with Federal law.”

Planning 2.0 changes the existing implementing regulations in ways that diminish gubernatorial authority and influence. Whereas current regulations provide that BLM shall strive for consistency between resource management plans and resource-related policies, programs, plans, and processes of states, the proposed regulation would only consider consistency between RMPs and officially adopted land use plans, substantially narrowing the influence of governors.

Furthermore, the proposal eliminates the existing regulatory directive that BLM accept a governor’s recommendation submitted as part of his or her consistency review if they provide for a reasonable balance between the Nation’s interest and the state’s interest. Under 2.0, the Director is directed to simply consider governors’ views. By eliminating the current provision and failing to provide criteria or standards for the review of gubernatorial input, it appears that BLM is investing itself with great, perhaps unfettered, discretion to disregard a governor’s recommendations.

Western Governors are concerned about several provisions that shorten timelines for public comment and obviate the need to publish notices in the Federal Register. The agency has suggested the comment periods are appropriately reduced because the proposed rule includes new opportunities for the public to participate early on in the planning process, such as during a new planning assessment phase.

These additional opportunities, however much they may operate to elevate the role of the public and non-governmental organizations in resource planning, do nothing to promote coordination between the states and the agency; rather, governors are treated like any other stakeholder.

Planning 2.0 includes new provisions calling for the use of high-quality information. It is disappointing that the proposal fails to acknowledge the value of state science, data, and analysis, despite the congressional directive for the past 3 years that Federal land management agencies use state information, at least with respect to wildlife data, as a principal basis for land management decisions.

There was little disagreement that the resource management planning process of BLM could be greatly improved. Accordingly, Western Governors are prepared to work with BLM as authentic and invested partners in the development and execution of a planning process that redounds to the benefit of individual states, the American West, and our great Nation. Thank you.

[The prepared statement of Mr. Ogsbury follows:]

PREPARED STATEMENT OF JAMES D. OGSBURY, EXECUTIVE DIRECTOR, WESTERN GOVERNORS’ ASSOCIATION

Good afternoon, Mr. Chairman, Ranking Member Dingell, and members of the subcommittee. My name is James D. Ogsbury. I serve as Executive Director of the Western Governors’ Association. WGA is an independent, non-partisan organization representing the governors of 19 western states and 3 U.S.-flag islands. I am honored to be here to share perspectives of Western Governors regarding the U.S. Bureau of Land Management’s (BLM) recently released proposal, Resource Management Planning—or, Planning 2.0.
In Planning 2.0, BLM proposes a number of changes in how it develops and implements resource management plans (RMP). The stated purposes of these changes are to clarify existing language, address landscape-scale management issues, and more effectively involve governmental and stakeholder partners.

Upon review of the proposal, Western Governors have concluded that what the agency has proposed will have quite opposite effects from what it intended: confusion rather than clarity, less transparency rather than more. This proposal, if instituted, will significantly reduce the opportunity for governors, state regulators, local governments and the public to engage in what needs to be a collaborative land management planning process for huge swaths of the American West.

STATE CONSULTATION

Western Governors have very clear expectations regarding how Federal agencies should interact with them when developing regulatory programs impacting states. To quote WGA Policy Resolution 2014–09, Respecting State Authority and Expertise, “Western Governors support early, meaningful and substantial state involvement in the development, prioritization and implementation of Federal environmental statutes, policies, rules, programs, reviews, budget proposals, budget processes and strategic planning.” The rationale behind this position is a logical one: states have statutorily- and constitutionally-recognized authority to manage lands and resources within state borders.

Governors expect Federal land management agencies to respect states as sovereign and full partners. As the chief executive officers of their states, governors also expect to play the principal role in determining the best-situated state governmental entity with which an agency should consult on any given issue.

Governors have been very explicit in delineating what, in their opinion, qualifies as “early, meaningful and substantial” consultation:

- **Predicate Involvement**: agencies taking into account state data and expertise to use as a basis for Federal regulatory action;
- **Pre-publication/Federal Agency Decision-making**: pre-rulemaking consultation with governors and state regulators, including substantive consultation with states during development of regulations—and prior to launch of formal rulemakings;
- **Post-publication/Pre-finalization**: Governors and state regulators should have the ability to engage with agencies on an ongoing basis to seek refinements to proposed regulations—again, prior to rule finalization; and
- **Rule/Policy Implementation**: agencies should defer to states to formulate implementation and compliance plans where statutorily recognized delegated programs exist.

The process BLM engaged in with states during development of Planning 2.0 falls short of the Governors’ definition of consultation. In September of 2014, BLM representatives briefed the WGA’s Staff Advisory Council on preliminary efforts related to Planning 2.0. That briefing focused on matters such as an explanation of BLM’s interest in landscape-scale planning and the agency’s general timeline and project leadership for the initiative. BLM representatives were not able to respond to substantive questions from Governors’ representatives during that briefing.

BLM later noted in its proposal that it had consulted with WGA during rule development. Western Governors view this preliminary briefing—and a subsequent exchange of correspondence between WGA leadership and Interior Secretary Sally Jewell—as short of the consultation contemplated in WGA Policy Resolution 2014–09. Secretary Jewell did state “[a]s new information becomes available on the [2.0] Initiative, BLM will provide updated briefings to state and local representatives through . . . the WGA . . . and other venues as appropriate.” These updated briefings did not take place.

Central to the Western Governors’ position is that agency/state consultation should be substantive and should take place on an early—and ongoing—basis. The two preliminary communications from BLM and DOI failed to achieve this standard.
BLM's Planning 2.0 proposal includes a number of provisions that weaken the value and impact of Governors' Consistency Reviews in the RMP development process:

- It states that RMPs must be consistent with officially approved or adopted land use plans of other agencies, state governments, local governments, and tribal governments only "to the maximum extent practical ..." Yet, the Federal Land Policy and Management Act of 1976 (FLPMA)'s Section 1712(c)(9) states, "Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act." FLPMA clearly does not permit BLM to limit the consistency requirement merely because the agency thinks consistency would be impractical.

- The time allotted for governors to conduct their Consistency Reviews is limited to 60 days. The clock alone would foreclose states from exercising their statutory right to provide meaningful review of RMPs. Western states have extensive experience working with Federal RMPs. These lengthy documents contain extremely nuanced resource-specific—and often site-specific—information. Federal RMPs guide Federal planning decisions for their designated area for up to several decades. Western Governors argue vigorously that development of foundational documents such as Federal RMPs should include significant input from governors and state regulators. That simply cannot occur under the structure suggested by the Planning 2.0 proposal.

- Not only does BLM propose to severely limit the time allotted, it also seeks to limit the scope of Governors' Consistency Reviews. The rule would narrow the scope of Governors' reviews by removing the words "policies, programs, and processes" from the definition of officially approved and adopted land use plans. Governors would no longer be afforded an opportunity to raise concerns based on inconsistencies between BLM RMPs and the very "state policies, programs, and processes" that guide state planning efforts and decisionmaking but are not part of officially approved and adopted state land use plans. This would clearly limit Governors' participation in RMP review and is especially problematic for states engaged in shared management of threatened and endangered species with vast ranges that span multiple planning areas and multiple states. This change could preclude BLM’s consideration of various kinds of state-endorsed plans—for instance State Wildlife Action Plans and multi-state agreements. Multi-state agreements have been used for decades to conserve resources like threatened or endangered species. These plans exhibit effective and ongoing cross-jurisdictional planning between states—planning that has taken place on a landscape-level basis. Preclusion of such plans by BLM would undermine its goal of planning on a landscape scale and would threaten existing state conservation efforts.

Governors have primary decisionmaking authority for management of state resources, and have enacted effective plans to manage and conserve western resources. They therefore must be afforded an opportunity to raise any concerns that arise, not just those concerns that arise from inconsistencies between BLM and state plans.

- The proposed rule states BLM may consider whether to adjust the timeline or appeal process for a Governor's Consistency Review. To endow an agency with the flexibility to simply change the process—particularly the mechanism for states to appeal BLM's decision regarding a Governor's Consistency Review—would operate to the clear disadvantage of states.

**PLANNING ASSESSMENT**

BLM proposes to establish a new step in the RMP development process: the planning assessment. This assessment would occur during the scoping process, before BLM begins work on an RMP. The goal is to, "combine and revise existing steps for inventory data and information collection and the analysis of the management situation."

This portion of the rule needs to clarify: the process for states to be substantially and meaningfully involved in development of a planning assessment; BLM's obligation to use state data and information; how state data and information will be gathered; and how—and when—information supporting assessments will be made available to the public.
PROPOSED CHANGES TO PUBLIC INVOLVEMENT PROCESSES

Early, meaningful and substantive engagement of governors and their designated state regulators is crucial to the RMP development process. Western Governors also believe that any open and collaborative Federal regulatory process must involve adequate opportunity for engagement of the public. BLM’s proposal falls short in this regard. The agency proposes to shorten two key procedural aspects of RMP development:

- BLM proposes to shorten comment periods for draft RMPs—and the draft environmental impact statements which must accompany RMP development—by a full one-third, from 90 days to 60 days; and
- BLM proposes a 45-day minimum comment period—a full 50 percent reduction from the current 90-day minimum—for EIS-level amendments.

Reductions in public comment timelines will greatly limit input of stakeholders, many of whom are likely to be directly affected by RMPs for an extended period of time. Additionally, significant changes can take place between the time that RMPs and environmental compliance documents are drafted. BLM should retain the existing minimum public comment period time frames so that states, local governments and other stakeholders will have adequate time to fully analyze proposed changes and provide meaningful feedback on foundational, long-term land management decisions.

BLM has based its proposed reduced public comment timelines on a premise that doing so will reduce the overall decisionmaking timeline. Western Governors, however, are concerned that reducing the opportunity for stakeholder input early in the planning process will ultimately result in increases to the overall planning and RMP implementation time frames as stakeholder concerns are raised later in the process. Potential litigation stemming from these stakeholder concerns could further extend planning and implementation timelines.

CHANGES TO WATER MANAGEMENT ASPECTS OF RMPS

BLM’s proposed rule indicates the agency may also add provisions to its RMPs that could result in greater agency involvement in water management, a concerning potentiality for western states. As stated in WGA Policy Resolution 2015–08, Water Resource Management in the West, “Western Governors believe Federal partners must continue to recognize states’ primary authority to develop, use, control and distribute surface and ground water within state boundaries.”

Additionally, BLM’s proposal indicates the agency may add provisions to RMPs that could provide for greater involvement in areas affecting traditional state authority. These areas include:

- Managing wetlands to buffer the effects of weather fluctuations by storing floodwaters and maintaining surface water flow during dry periods;
- Identifying and responding to the degree of “local dependence on potable water from groundwater recharge in the planning area;”
- Estimating the sustained levels of potable water from groundwater recharge based on the current and projected rainfall averages for an area; and
- Considering the long-term needs of future generations for renewable and non-renewable resources including watersheds.

It is vital that nothing in BLM’s proposed rule be construed as affecting states’ primacy over allocation and administration of water resources in state borders. BLM’s Planning 2.0 must exhibit agency recognition and deference to states’ legal rights to allocate, develop, use, control, and distribute the states’ waters.

Potential implications for water management and quality, and project development and maintenance, that should be considered by the agency include:

- Siting for new water infrastructure on public lands;
- Operation and maintenance of existing water infrastructure located on public lands;
- Intrusions on states’ exclusive authority on water administration and development; and
- Impacts on existing watershed plans under Section 319 of the Clean Water Act.
TRANSPARENCY

Any process that reduces BLM’s responsibility to actively engage with stakeholders represents a retreat from openness and transparency. Yet that is what BLM suggests in Planning 2.0. Currently BLM publishes RMP documents exclusively in the Federal Register. The Planning 2.0 proposal, however, would permit the agency to forego formal publication of many RMP-related documents. Those documents could instead be posted to the BLM Web site and at BLM offices within an RMP planning area. This change would significantly impair the ability of affected stakeholders, local governments and states to monitor, understand and participate in the RMP development and amendment processes.

The public should be afforded a clear and consistent opportunity to review and comment on proposed new or revised Federal RMPs. This is particularly true given that management plans have a direct and substantial impact on existing multiple use rights such as grazing permits, road rights-of-way, conventional and renewable energy development permits, and rights-of-way for electricity transmission and distribution infrastructure.

SUMMARY

In summary, BLM’s Planning 2.0 proposal, as drafted, presents serious challenges and contains significant shortcomings. This is unfortunate, not only for states, but also for local governments and stakeholders. In WGA’s estimation, much of the opposition to this proposal would have been mitigated had BLM engaged in “early, meaningful and substantial” consultation with Governors in the formative stages of the rule’s development.

Chairman Gohmert and Ranking Member Dingell, thank you for the opportunity to testify today and to provide the subcommittee with the viewpoints of the Western Governors I serve. I hope my testimony has been helpful to the subcommittee. I welcome any questions you or your colleagues may have.

QUESTIONS SUBMITTED FOR THE RECORD BY REP. GOHMERT TO JIM OGSBURY, EXECUTIVE DIRECTOR, WESTERN GOVERNORS’ ASSOCIATION

Question 1. During the hearing, you were asked “[H]ave you heard any stories from Western Governors [of] specific instances where they were not allowed the voices that they felt they should have in policies that affected the people in their states?” To this, you replied, “[. . .] I would appreciate the opportunity to provide a more thoughtful answer for the record.” Please provide information about each instance in which a Western Governor was not given adequate representation or consideration regarding BLM policies that affected the citizens of their respective states.

Answer. Lack of substantive consultation with states during Bureau of Land Management (BLM) rulemaking and policy change efforts is an ongoing concern of Western Governors. Western Governors have made clear their view that prior to intervention in any state-run program, Federal agencies should consult with states in a meaningful way and on a timely basis. That consultation should involve: predicate engagement before a rule is proposed, pre-publication consultation with governors and state co-regulators, and post-publication engagement with these parties to seek refinements. Finally, as provided for by Congress in various statutes, significant deference should be granted to states for formulation of state plans designed to implement delegated programs.1 Two examples of insufficient engagement with governors by Federal agencies are discussed below.

- First, and most pertinent to the July 7 Subcommittee hearing, is Western Governors’ consultation experience regarding BLM’s Planning 2.0 rule. This consultation fell far short of governors’ requested engagement with the agency prior to—and during—rule development, as well as after publication of the proposed rule.

In the fall of 2014, Western Governors’ and WGA staff were provided a briefing by BLM on the agency’s Planning 2.0 initiative to revise the way it develops and amends resource management plans (RMPs). During this briefing, BLM representatives indicated they were not at that time able to provide substantive information for state partners on matters including the agency’s rule development and proposal timeline, its plans for state and public engagement, or its plans to ensure consistency with existing Federal RMPs and similar state plans. Western Governors’ staff

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1 WGA Policy Resolution 2014–09: Respecting State Authority and Expertise.
were told that further opportunities for engagement and discussion would be provided by the agency in advance of issuance of the proposed rule. These subsequent opportunities did not materialize. Instead, governors’ staff and state regulators were left to monitor BLM publications and announcements regarding the rule’s development.

In-person engagement by BLM did not occur until after BLM’s Planning 2.0 rule had been proposed and comments submitted. That in-person engagement took place in Jackson Hole, Wyoming in June of 2016. While Western Governors appreciate BLM’s willingness to meet with state partners, they again found the level of engagement to be perfunctory in nature. For instance, this meeting lacked specific information about BLM’s plans to involve governors and state regulators during the agency’s post-proposal rule revision process. Additionally, there was no discussion about BLM’s plans for rule implementation or matters involving statutorily mandated deference to states.

• A second example of less-than-satisfactory state consultation by BLM involves the 2015 development of agency sage-grouse and sage-grouse habitat management plans. Prior to development and the 2015 release of BLM and U.S. Forest Service’s sage-grouse management plans, Western Governors worked with Federal agencies and multiple stakeholders in a proactive, collaborative, innovative and conservation-focused manner to design effective and sensible plans. BLM was involved with these cooperative efforts to develop state sage-grouse conservation plans, designed to conserve sage-grouse resources and habitat.

Western Governors were concerned that the resource management plans ultimately released by BLM were significantly different from, and inconsistent with, the cooperatively developed state plans. The scope of difference and inconsistency reflected insufficient attention to, consideration of, and respect for, the input, experience and insight of governors and state regulators.

Additionally, several Western Governors submitted very comprehensive consistency reviews in response to BLM’s sage-grouse management plans. These reviews detailed inconsistencies between the BLM plans and collaboratively developed state plans and pre-existing state conservation plans and programs. Agency responses to governors’ consistency reviews were largely truncated and dismissive. Further elaboration on this matter and comments from Western Governors can be found on WGA’s Web site.¹

Thank you again for the opportunity to testify before the committee and to provide this supplemental response. Please contact me if I might be of further assistance to the subcommittee.

Mr. Gohmert. Thank you very much. I appreciate that opening statement.

The Chair now recognizes Mr. Fontaine for 5 minutes.

STATEMENT OF JEFF FONTAINE, EXECUTIVE DIRECTOR, NEVADA ASSOCIATION OF COUNTIES, CARSON CITY, NEVADA

Mr. Fontaine. Chairman Gohmert, Ranking Member Dingell, and Chairman Bishop, thank you for the opportunity to testify today on BLM’s draft Planning 2.0 rule. Nevada has the highest percentage of federally managed public lands of any state, approximately 85 percent, and five of our counties contain over 90 percent of public land. The Bureau of Land Management administers the majority of this public land, 47 million acres.

For good reason, the Federal Land Policy and Management Act requires engagement specifically with local partners in three ways: coordination, consistency review, and meaningful public involvement. Local communities are greatly impacted by the BLM’s land use plans and management decisions, and vice versa. Without local partners, the BLM cannot effectively manage their land; and with-

¹Western Governors comment on BLM and Forest Service sage-grouse management plans. Published August 5, 2015.
out local engagement from BLM, impacts on local partners cannot be adequately considered and mitigated.

As the Nevada BLM’s 1997 vision statement says, the future of Nevada will, in large part, be shaped by the future of public land management.

Commissioner Jim French from Humboldt County, Nevada, testified before this subcommittee and noted three concerns with the draft rule: specifically, that BLM has not provided sufficient time for counties to fully digest and offer comment, that BLM has proposed changes that will diminish the statutory role of local governments and reduce requirements to ensure consistency with local policies, and that BLM seeks to implement a multi-state landscape level of analysis that could diminish the ability to meaningfully assess the local impacts of BLM management decisions.

We share these same concerns. Meaningful public involvement of local government has not occurred in this rulemaking process, and FLPMA distinguishes between the general public, state, and local governments, and also imposes a higher standard on the BLM for involving state and local government. Only a few of our counties have the resources necessary to employ a full-time natural resources coordinator of similar position dedicated to monitoring proposals from BLM, let alone assessing the impacts of sweeping Federal land management actions, like Planning 2.0, at the county level.

That is why meaningful public involvement of local government requires more than public notice and comment. That Nevada is shaped by the future of public land management remains true today, and that is why we have such a strong interest in Planning 2.0.

Nevada’s counties perform important sovereign responsibilities and provide fundamental services, such as planning and zoning, public health and safety, and emergency response. They also have an important role in maintaining local economies. Nevada experienced an unprecedented economic distress during the great recession, but is again a growing state with a diversifying economy, including renewable energy and other sectors that rely on BLM land.

Counties need to effectively participate in BLM land use planning to promote continued prosperity while protecting public lands for future generations. Unfortunately, counties with the most public lands are also those with the least capacity to engage in BLM land use planning because of their limited staffing and resources. For this reason, proactive outreach from BLM to local government is a critical component of meaningful public involvement.

We are concerned that the BLM has proposed changes to current planning rules that will reduce local government’s ability to ensure Federal consistency with local master plans and policies. FLPMA requires consistency review occur at four different stages of the planning process. First it mentions appraisal, then consideration, an attempt to resolve, and, finally, consistency with state and local plans.

Instead, proposed regulations say the BLM will determine whether the county provided officially approved and adopted land-use plans or raise specific inconsistencies with those plans. FLPMA
does not limit consistency review to land use plans, nor require any plans to be officially approved or adopted.

Finally, Planning 2.0 proposes to implement a multi-state landscape level of analysis that could diminish the ability of BLM to meaningfully assess the local impacts of management decisions. Landscape-scale economic impact analysis are likely to dwarf local economic costs, which will greatly dilute the overall cost in the cost-benefit analysis, even where the cost to a local economy might never be recovered. This creates a bias and unjustly eliminates BLM's requirement to resolve possible economic impacts to local governments.

A landscape-scale approach that does not involve local officials would require state and local governments to spend more time and taxpayer dollars building relationships at higher levels, and local relationships that have been built over years of close collaboration would be de-emphasized.

On May 25, the Nevada Association of Counties (NACO) submitted to the BLM annotated comments and revisions which were carefully drafted with a coalition of local and state governments. Together, we have developed language that we believe helps to achieve BLM's stated goals in Planning 2.0 while addressing significant local government concerns, including preserving the elevated role expressly granted to state and local governments under FLPMA.

We continue to encourage BLM to adopt these comments. Thank you again for holding today's hearing. I look forward to answering questions from the committee.

[The prepared statement of Mr. Fontaine follows:]

PREPARED STATEMENT OF JEFFREY FONTAINE, EXECUTIVE DIRECTOR, NEVADA ASSOCIATION OF COUNTIES

Chairman Gohmert, Ranking Member Dingell and members of the subcommittee, thank you for the opportunity to testify today on BLM's Draft Planning 2.0 Rule. My name is Jeff Fontaine and I have served as Executive Director of the Nevada Association of Counties (NACO) for nearly 10 years. NACO represents all of Nevada's 17 counties and works on their behalf on public lands issues including land use planning.

Nevada has the highest percentage of federally managed public lands, approximately 85 percent, of any state in the Union and five of Nevada's counties contain over 90 percent public land. The majority of this public land, 47 million acres, is administered by the Bureau of Land Management (BLM). Nevada alone contains 19.22 percent of BLM land following only Alaska at 29.27 percent.

The Federal Land Policy and Management Act of 1976 (FLPMA) requires engagement specifically with local partners in three ways: coordination, consistency review, and meaningful public involvement. These responsibilities are meant solely for the BLM's partners and for good reason: Nevada's communities and economies are greatly impacted by the BLM's land use plans and management decisions and vice versa. The BLM recognizes these realities, as the Nevada BLM's 1977 vision statement says, 'The future of Nevada will in large part be shaped by the future of public land management.' Although ecological landscapes extend beyond political boundaries, political boundaries represent the BLM's local partners and primary on-the-ground managers for each unit of land. Without local partners, the BLM cannot effectively manage any land. More so, impacts on local partners cannot be adequately considered and mitigated for if the BLM's planning regulations do not implement a process that works for both the BLM and its partners. It is for these common-sense reasons that FLPMA designates counties as the BLM's planning partners.

Commissioner Jim French from Humboldt County, Nevada and a member of NACO's Board of Directors testified at your hearing on “Local and State Perspectives on BLM's Draft Planning 2.0 Rule” on May 12, 2016.
He noted three concerns with the Draft Planning 2.0 Rule, specifically that BLM:

- Has not provided sufficient time for counties to fully digest and offer comment on the proposed rule change;
- Has proposed changes that will diminish the statutory role of local governments and reduce requirements to ensure Federal consistency with local policies; and
- Seeks to implement a multi-state landscape level of analysis that could diminish the ability of BLM to meaningfully assess the local impacts of management decisions.

We share these same concerns and today would like to expand on these issues. Only a few of our counties have the staffing and budgetary resources necessary to employ a full-time natural resources coordinator or similar position dedicated to monitoring proposals from the BLM let alone assess the impacts of sweeping Federal land management actions like Planning 2.0 at the county level. That is why NACO, along with representatives of state and local governments spanning the BLM’s jurisdiction requested that the BLM extend the public comment period from 60 days to 180 days. The BLM granted only a 30-day extension until May 25, 2016. This alone indicates the lack of a true partnership between local and Federal land management.

Goals and actions must be viewed as a whole. While the BLM’s stated goal is to “ensure participation by the public, state and local governments, Indian tribes and Federal agencies . . .,” the commitment must be solidified within the regulatory text. While the discussions regarding Planning 2.0 continually stress the importance of local relationships, the text of the proposed rule compared to the existing regulatory language greatly diminishes in practice the inter-governmental and public roles. It is important that we work together to ensure the language achieves Planning 2.0’s positive narrative.

That Nevada is shaped by the future of public land management remains true today and is why we are so concerned and interested in collaborating with the BLM on the development of their land use planning initiative. Nevada’s counties perform important sovereign responsibilities. Nevada’s counties, like others across the Nation, provide fundamental services such as planning and zoning; infrastructure, water and wildlife protection, public health and safety and emergency response on both private and public lands within their jurisdiction. Thus, it is imperative that the BLM maintain regulatory language that supports these activities and actively acknowledge the counties important responsibilities.

Nevada’s counties also have an important role in maintaining local economies. In the last 25 years Nevada experienced periods of unprecedented growth in which it led the Nation in population expansion and then in economic distress during the “Great Recession.” Nevada is again a growing state with a diversified economy which includes renewable energy and other industries that rely on BLM administered land. We want to make sure that Nevada’s counties are able to effectively participate in BLM land use planning to promote continued prosperity while protecting the public lands for future generations.

In Nevada, BLM planning is critical for all of our counties—whether our most rural or most urban. This requires a flexible process that relies on collaboration with local officials to address the unique needs of our individual counties. Where urban counties may be able to provide capacity for BLM rural counties may require additional outreach due to a lack of resources. Our two urban counties, Clark and Washoe, represent 2.5 million people, or 88 percent of our state’s population. These counties have comprehensive planning staffs who engage with the BLM on land use plans. Unfortunately, the majority of the counties with the most public land are also the most rural and economically distressed communities. NACO has been making efforts to enhance communications about public lands issues and has been co-hosting quarterly public lands breakfast meetings in which state, county, U.S. Forest Service and BLM officials discuss specific public lands challenges in our state. At our most recent breakfast meetings BLM officials were interested to hear that our urban counties are experiencing challenges encouraging commercial and industrial development due to increasingly high prices driven by residential developers seeking newly disposed lands. As commercial development is one of Nevada’s strategic business sectors, our presenters expressed ways the BLM might work as a partner with the counties to ensure that the use of newly disposed land is driven by the state’s key economic goals. Similarly, as partners, the BLM and counties can create capacity to address non-controversial applications such as right-of-way permits which would free up the BLM’s time and help increase economic certainty for new projects and provide capacity for more Local Area Working Groups.
performing on-the-ground sage grouse habitat restoration activities. This is not the type of information included in an “officially adopted land use plan” and likely would not be included in a BLM land use plan. It is coordination of local governments and BLM that enable the sharing of this critical information. These conversations must be ongoing, and if they are not then at a minimum they must occur at the forefront of any planning stage.

In rural counties such as Esmeralda where over 95 percent of their land is managed by the BLM, in order to develop economic development strategies that will sustain and revitalize their local economy, a rural community needs a sense of the existing structure and overall trends within the local economy. Thus, the economic impacts of public lands management can drastically change that structure and these trends for their main economic sectors, including livestock grazing, timber, minerals, tourism, agriculture, and water development.

Again, FLPMA provides three key roles for local government partners during the planning process: coordination, consistency review, and meaningful public involvement. These statutory mandates are not currently reflected within the planning regulations and in many cases were actively deleted from the existing regulations. It is not enough that the BLM says it will follow the law at what it believes will be “appropriate times,” and it is not enough that the BLM provide internal guidance.

“COORDINATION”

Under the Federal Land Policy and Management Act (FLPMA), the BLM must “coordinate the land use inventory, planning, and management activities . . . with state and local governments,” as well as, “provide for meaningful public involvement of state and local government officials.” These requirements apply to all steps of resource management planning, including the planning rules. The planning rule has not yet been finalized so there is still time for changes and for the BLM to work with their state and local government partners to address their concerns.

“CONSISTENCY REVIEW”

NACO is also concerned the BLM has proposed changes to current planning rules that will reduce local government’s ability to ensure Federal consistency with local master plans and policies. As elected officials and intergovernmental partners with the Federal Government, counties must have a seat at the table and an opportunity to help shape management decisions in partnership with land managers. We read FLPMA to say that consistency review must occur at four different stages of the planning process—first mentions appraisal, then consideration, an attempt to resolve and finally consistency with state and local plans.

Yet the proposed regulations say the BLM will determine whether the county provided “officially approved and adopted land use plans” or raised “specific inconsistencies” with those plans. Otherwise, the BLM will not review those plans. Nowhere in FLPMA does the language say “officially approved,” “adopted,” and it does not limit consistency review to “land use plans.” The language is intentionally all-inclusive. These provisions are not in alignment with the BLM’s goals to improve relationships and speed up the process. The BLM will now add a step to determine whether the counties’ sovereign responsibilities are in fact worth reviewing where FLPMA already says that they are.

Another consequence of limiting consistency review to “officially approved and adopted land use plans” is state and local governments will need to revisit every resource-related plan and program to find a way to call it a “land use plan.” This is very difficult to accomplish and stretches their limited resources.

“MEANINGFUL PUBLIC INVOLVEMENT”—APPLIES TO RULEMAKING PROCESS

Meaningful public involvement of local government has not occurred in this rule-making process and is not a term included within Planning 2.0. FLPMA uses the term “general public” separate from “state and local governments” and also imposes a different standard on the BLM for addressing each, respectively. Meaningful Public Involvement is a collaborative affair that requires more than public notice and comment. Meaningful Public Involvement must be incorporated into the planning regulations. The engagement for Planning 2.0 has been exactly the same for local governments as for the general public, even for provision changes that greatly impact state and local government planning. We believe that had BLM done more outreach in counties that contain large amounts of public lands and engaged associations like ours they would have been able to develop a more workable proposal and address any unintended consequences or challenges posed by the proposed rule.
Finally, Planning 2.0 proposes to implement a multi-state landscape level of analysis that could diminish the ability of BLM to meaningfully assess the local impacts of management decisions.

Local BLM Officials should drive the planning process, especially at a landscape scale. Where planners (deciding officials and responsible officials) are elevated to positions outside of the planning area, landscape-level planning undermines the purpose of FLPMA (and NEPA).

Landscape-scale economic impact analyses are likely to dwarf local economic costs, which will greatly reduce the overall “cost” in the cost-benefit analysis even where the cost to a local economy might never be recovered. This will create bias and unjustly eliminate BLM’s need to address and resolve the possible economic destruction of one or several local governments and programs as a result of their decision-making.

Another unintended consequence is a reduced emphasis on local BLM relationships. A landscape-scale approach that does not involve local officials means that state and local governments will need to spend more time and taxpayer dollars building relationships at higher levels and the local relationships that have been built over years of close collaboration will be de-emphasized.

The Nevada Association of Counties submitted to the BLM on May 25, 2016 official comments as well as “Annotated Comments and Revisions.” The “Annotated Comments and Revisions” were carefully drafted with a coalition of local and state governments who are partners with the BLM in the planning process. Together, we have identified needs and developed language that we believe addresses significant local government concerns within the Planning 2.0 rule and helps achieve BLM’s stated goals. Other commenters that submitted the “Annotated Comments and Revisions” to the BLM include:

- State of Nevada Governor’s Office
- Nevada State Land Use Planning Advisory Council
- Clark County, Nevada, City of Las Vegas, City of Henderson joint letter
- Churchill County, Nevada
- Eureka County, Nevada
- Esmeralda County, Nevada
- Storey County, Nevada
- Wells Nevada Rural Electric Company
- Nye County, Nevada
- Mineral County, Nevada
- National Association of Counties
- Utah Association of Counties
- Idaho Association of Counties
- Rural County Representatives of California
- New Mexico Association of Counties
- Wyoming County Commissioners Association
- Governor of Wyoming
- Foundation for Integrated Preservation
- McKenzie County, North Dakota

NACO understands that relationships are keys to any planning process. Regulations require training and consistent application and where relationships are good they should be afforded the flexibility to accomplish mutual goals. We are fortunate to have in Nevada a State BLM Director and team with whom we coordinate and collaborate regularly. However, we cannot always count on having BLM managers and staff that understand our state and are as willing to have an ongoing dialogue with our counties. This is why it is extremely important that the BLM take the time to get the proposed regulations right.

Our desire is to work with the BLM to make this a rule that strengthens the partnership between the BLM and local and state governments, preserves the elevated role expressly granted to state and local governments through Coordination, Consistency Review, and Meaningful Public Involvement in the planning process and ensures the role of the public through the public involvement requirement.
QUESTIONS SUBMITTED FOR THE RECORD BY REP. GOHMERT TO JEFF FONTAINE, EXECUTIVE DIRECTOR, NEVADA ASSOCIATION OF COUNTIES

Question 1. During the hearing I asked “if you have specific instances that you can find where the rules have worked a hardship, then let us know those. Please send us those in the days ahead,” in regards to rules promulgated by the BLM. Please list specific instances where rules promulgated by the BLM have led to compliance hardships for either state, local, or municipal officials.

Answer. We are unaware at this time if other rules promulgated by the BLM have led to compliance hardships for either state, local or municipal officials. With respect to the planning regulations addressed in Planning 2.0, what we have experienced is not necessarily a hardship from the existing land use planning rules. Rather, we believe the hardship is that the BLM has not followed its existing planning regulations.

Planning 2.0 removes the specific regulatory sections with which the BLM has failed to comply. The existing rules, last amended in 2005, contain coordination requirements that are meant specifically to benefit local governments. Where the 2005 Amendments added language that significantly increased the role of state and local governments, now the proposed regulations seek to reverse each of those improvements. The state of Nevada along with the majority of our counties are involved in a lawsuit challenging the legality of the BLM’s “current practices” regarding land management planning for the Approved Resource Management Plans designed to protect the Greater Sage-Grouse. This lawsuit alleges that the BLM has failed to adhere to its current regulations, specifically those provisions from 2005, and to the requirements of the Federal Land Policy and Management Act and National Environmental Policy Act. This lawsuit stems from a lack of consistency review, consultation and meaningful public involvement of the state and county governments. At the invitation of the Interior Secretary in 2012 and with input from local BLM officials the state and counties invested significant time and public resources developing conservation plans. Yet last year the BLM signed Records of Decision for land management plans that disregard these plans.

We understand that Utah, Idaho, Colorado and Wyoming have also filed similar lawsuits.

One purpose of the counties’ lawsuit is to ensure compliance with FLMPA and the current planning regulations, including several regulations now omitted from the proposed language in Planning 2.0. For example, 43 C.F.R. §§ 1601.3 and 4, which require that in amending land use plans the Secretary coordinate with state and local governments, consider state and local plans that are germane to the development of land use plans for public lands, and provide for meaningful public involvement of state and local government officials.

Thank you again for your question and we hope this response was helpful.

Mr. GOHMERT. Thank you very much.

At this time, Mr. McAfee, you are recognized for 5 minutes.

STATEMENT OF CHUCK McAFEE, LANDOWNER AND COMMUNITY VOLUNTEER, LEWIS, COLORADO

Mr. McAfee. Mr. Chairman and members of this subcommittee, I appreciate the opportunity to share my thoughts with you. My grandparents and their 1-year-old son, my father, came to Montezuma County in southwest Colorado 100 years ago. They came West because their Nebraska farm dried up. They homesteaded and began farming by hand-grubbing the sagebrush to plant and to harvest crops. They lived in a tent for a couple of years through two winters. They hauled water for themselves and for neighbors. They were tough, hard workers. Dry-land pinto.

1 70 FR 14561.
3 Western Exploration, Case No. 3:15–cv–00491–MMD–VPC at 37.
beans and wheat were the crops of the day, and those are important today.

My perspective here is that of a long-time resident, third-generation on the McAfee farm land. BLM is a neighbor. We are governed locally by an elected board of county commissioners. My comments come to you from what I observe, what I know to be true. In this context, I will address two topics: public participation and planning around natural landscape versus political boundaries.

First, I am for as much public involvement as possible, as early as possible, in planning for public lands. I am local, I am concerned, I am thoughtful, and I do my homework. I take the long view. I am a life member of the local chapter of the Rocky Mountain Farmers Union, and we understand the relationships among public lands and agricultural lands. Local people want their voices to be heard. What we think and what we say can be extremely valuable in gaining a broad view from long-term local experience, interests, ideas, and needs for public lands, especially in a place like Montezuma County, where we have a lot of public land.

I don't understand why some county commissioners are so opposed to enabling greater public participation. Under Planning 2.0, they will not give up their participation, their voices and authority will not be diminished. The whole process will be made richer by inclusion of public voices early on. They are elected to represent us, but that does not translate to us giving up the right and responsibility of representing ourselves.

We have perspectives and ideas that are broader and deeper, and sometimes they are too busy jockeying with the BLM about who is in control of our Federal lands to even represent us at all. Recently BLM started a process to discuss whether a master leasing plan would be helpful in our area. Our current resource management plan does not really get into the details of how and when leasing or development happens. Instead of engaging in the discussion, our commissioners spent a long time refusing to even come to the table, questioning BLM's motives and authority. Meanwhile, many of our community members wanted to have this discussion, and wished that our commissioners would stop obstructing it.

BLM should take the lead in getting through the rhetoric and getting on with dealing effectively with issues through a thoughtful, transparent collaboration. I know that it can work, and that giving the public more input will only make it better.

Next, to planning around natural landscape versus political boundaries. In my view, this is so simple. The natural landscape and resources got here first. Political lines came later, and generally were not established with natural boundaries in mind. It is obvious when you think of watersheds, for example. Those responsible for managing natural resources need to have the latitude, and be held accountable for planning for the whole picture, the natural picture. In this way, the interests of local farmers and ranchers and others who depend on these resources will be taken seriously. This is part of the reform that BLM was proposing, and local government will continue to have a strong voice in this common-sense way of managing land.

BLM's proposal seeks to provide more and earlier opportunities for input. This makes sense to me for counties, states, tribes, and
even folks like me. We care about the land, and we want to have a voice in how it is run. Your Web page says, “Empowering people through our Nation’s resources.” What better way to empower us than to listen to us as plans are developed early on? It is about participation, collaboration, and transparency. Thank you for listening.

[The prepared statement of Mr. McAfee follows:]

PREPARED STATEMENT OF CHUCK MCAFEE, LANDOWNER AND COMMUNITY VOLUNTEER, RETIRED ELECTRICAL ENGINEER, MONTEZUMA COUNTY, SOUTHWEST COLORADO

Mr. Chairman and members of this subcommittee, I appreciate this opportunity to share my thoughts with you on the topic of BLM planning processes. My grandparents and their 1-year-old son, my father, in-migrated to Montezuma County in Southwest Colorado 100 years ago. They came west because their Nebraska farm dried up. In the midst of the drought that we are currently experiencing, I'm not so sure that they would not reverse the trek if they were here now.

My grandma, my granddad, and his sisters homesteaded land in Montezuma County where he began farming by hand-grubbing out the sagebrush to plant and to harvest crops. They lived in a tent on the land for a couple of years, through two winters. They hauled water for themselves and for neighbors. They were tough, hard workers. Dry-land Pinto beans and wheat were the crops of the day and they remain important crops now.

My perspective here is that of a long-time resident, third-generation on the McAfee farm land. BLM is a neighbor. We are governed locally by an elected board of county commissioners.

I presume that you know more than I do about BLM’s Planning 2.0 and I don’t intend to address too many details. My comments come to you from what I observe, what I know to be true. In this context I’ll address two topics with you today.

First, I’ll talk about public participation in the planning process, including my observations about how that has been going in our county and how it can be improved.

Second, I’ll address the issue of planning around natural landscape versus political boundaries.

So, public participation in the planning process: I am completely supportive of enabling as much public involvement as possible, as early as possible, in planning for public lands. I’m local and I’m concerned. I’m thoughtful. I do my homework. I take the long view. I’m a life member of the local chapter of the Rocky Mountain Farmers Union (probably the oldest member). Our Farmers Union chapter is comprised of local family farmers, all ages, dryland farmers, farmers under the ditch, small scale, large scale, sheep growers, cattle men and women—we represent a diversity of agricultural interests in Montezuma and Dolores Counties. We understand the relationships among public lands and agricultural lands. As you can see in the submission from some of other local farmers, we are both affected by decisions on public lands and care deeply about them as part of our community.

We want our voices to be listened to and heard. What we think and what we say can be extremely valuable in gaining a broad view of local experience, long experience, interests, ideas, and needs relating to planning and implementation of plans for public lands. How public lands are managed is vitally important to Ag people as well to everyone else in a place such as ours where public lands are so prevalent as they are in Montezuma County.

I fail to understand why some county commissioners are so opposed to enabling greater public participation. Under Planning 2.0 they will not give up participation, their voices and authority will not be diminished by public voices. The whole process will be made richer by inclusion of public voices, early on. The local elected entities can view this as an opportunity to be proactive and inclusive, rather than taking a position that their roles are being undermined. They, of course, are elected to represent us. Yet that does not translate to us giving up the right and responsibility of representing ourselves. We have individual and collective perspective and ideas that go far beyond the capacity of elected officials to have the whole picture.

And sometimes our elected officials are too busy jockeying with the BLM about who is in control of our Federal lands to even represent us at all. The words “coordinating” and “cooperating” are on the table much of the time in these exchanges, while we wish the two parties would get on with actually collaborating for the good of our community.
Recently, BLM started a process to discuss whether a master leasing plan would be helpful. Our current Resource Management Plan doesn’t really get into the details of how and when oil and gas leasing happens or development happens, even though we’ve had a lot of conflict around that. Instead of engaging in the discussion, our county commissioners spent a long time refusing to even come to the table—questioning BLM’s motives and authority. Meanwhile, many in our community wanted to have this discussion, and wished our commissioners would stop obstructing it.

BLM can and should take the lead in getting through the rhetoric and getting on with dealing effectively with issues through thoughtful, transparent collaboration. I know from personal experience that it can work to great advantage and the public will support such efforts.

Public voices along with input from officials can be very complementary and valuable if we will let it happen. Giving the public more input will only make it better.

A tag line on the House Committee on Natural Resources Web page says “Empowering People Through Our Nation’s Resources.” What better way to empower people than to listen to and to hear their voices, their thoughts, as plans are developed? It’s about participation and transparency.

I also wanted to comment on planning around natural landscape versus political boundaries: In my view, this is so simple. The natural landscape and natural resources got here first. Political boundaries came later, and generally were not established with natural boundaries in mind. People and agencies charged with the responsibility of managing natural resources and landscapes need to have the latitude, and to be held accountable, for planning for the whole picture, the natural picture. In this way the interests of local farmers and ranchers and others who depend on these natural resources will be taken seriously.

A very real example of this is watersheds. Why not make watersheds be a definer for management units? The reality of watershed health and water management is a key element to economies and land use in the arid American West. It makes so much sense to assess, analyze, organize, plan and manage around natural watersheds rather than dealing with these realities being confined by political boundaries. It makes no sense for a watershed management plan to be different on one side of a political boundary from what it is on the other side. No sense. It’s just natural to be in concert with nature, as those of us who depend on natural resources do.

If the BLM truly values local stakeholders and the way that we interact with public lands, it must consider how the people, wildlife and use of our public lands impact our farms and other private lands. The BLM can only do this by looking at the lands as a whole and collaborating with landowners at the landscape-level. This is part of the reforms that the BLM is proposing to make and local government will continue to have a strong voice in this common sense way of managing land.

The reforms to planning that the BLM is proposing seek to provide more participation and transparency earlier in the process. This means more participation and transparency for the counties, states, tribes and even folks like me. As we all care about and manage our land, we should all agree that more conversation and a better understanding of how we’re having an impact to each other upstream and how we’re impacting each other downstream is better for everybody.

Thank you for listening.

QUESTIONS SUBMITTED FOR THE RECORD TO CHUCK McAFEE, LANDOWNER AND COMMUNITY VOLUNTEER

Questions Submitted by Rep. Dingell

Question 1. Was there anything else you wanted to say or respond to from the hearing?

Answer. I would like to emphasize that the BLM’s Planning 2.0 initiative will only help, and not hinder, state, local and tribal governments as well as the public participation in land use planning for public lands. I appreciate Rep. Dingell’s acknowledgement of this fact and support for greater transparency and participation opportunities through this initiative.

With that, I believe that with my oral testimony, my written testimony, my responses to Rep. Polis’ questions, and the letter from the Mancos farmers, my comments are complete at this point.

Thank you for the opportunity to provide input into this important process.
Questions Submitted by Rep. Polis

Question 1. Mr. McAfee, under these new rules, local governments, like your county, still have special opportunities for participation but the public will also have more of a chance to give input. In your experience, is the county always sufficiently focused on representing its residents? What are the benefits of giving more of a voice to local residents whose lives are also affected by decisions made on the public lands? The BLM is proposing a more collaborative, transparent and democratic process to help navigate the planning process. How, in your experience, will more up-front engagement improve the planning process? Can that make it more efficient? Will resulting plans have more support?

Answer. I have a fundamental belief that a genuine richness of thought and energy come from listening to ideas from multiple, diverse, thoughtful individuals and groups, whatever the topic of interest and discussion. With this as a backdrop, I will address each of the sub questions posed above by Rep. Polis.

In your experience, is the county always sufficiently focused on representing its residents?

A specific example that illustrates why I do not believe that the county focuses adequately on representing its residents has to do with the BLM's consideration of creating a Master Leasing Plan (MLP) for public lands in Montezuma County. The intent behind the MLP is a simple land use planning concept; ensure that oil and gas development occurs in the least impactful places and protects others as appropriate. Instead of engaging in the discussion, our county commissioners spent a long time refusing to even come to the table—questioning BLM’s motives and authority. Meanwhile, many in our community wanted to have this discussion and wished that our commissioners would stop obstructing it. Here is a quote from an article in the Cortez Journal in June 2016: “Public comment, totaling 350 pages, has been overwhelmingly in favor of an MLP, officials report.” The Cortez City Council voted unanimously to support creation of an MLP. 25 local businesses attached their name to a statement supporting MLP.

In spite of this strong local support, the Montezuma County Board of County Commissioners (BOCC) remains adamantly opposed.

Another example: Several years ago a previous BOCC addressed the planning and development situation in the Dolores River Valley, along the East Fork of the Dolores River. They convened a group of local residents who, over a couple of years, came up with a process called Transferrable Development Rights (TDRs) to address the issue. Our current BOCC, at the end of a day-long public forum attended by 120 local residents, where five people spoke in opposition of TDRs and 40 people spoke in favor of retaining the TDR program, suddenly passed a resolution to eliminate TDRs from the land use code. The County Planning and Zoning committee spoke to retain the TDRs. Four previous county commissioners spoke in an attempt to explain the concept to the current BOCC and to ask them to retain TDRs. The BOCC admitted that they didn’t understand it and simply voted it out. They ignored a day’s worth of thoughtful speakers and 2 to 3 years of thoughtful discussion and planning by a diverse group of local residents.

To me, these are examples of our BOCC listening to what they want to hear and dismissing other voices. This is what the BLM seeks to avoid when they engage in land use planning through the concepts of greater public participation and input through the Planning 2.0 initiative.

What are the benefits of giving more of a voice to local residents whose lives are also affected by decisions made on the public lands?

I believe that the benefits of giving more voice to local residents, early on, will help create a better, more comprehensive, more lasting decision and action. The local residents know what is going on. They know the landscape, how it impacts them, how to work, live and play with public lands as a neighbor. They know how to address their needs and interests while helping plan for and tend to the health and sustainability of the public lands. There is no way that any three county commissioners can possibly have a comprehensive knowledge or understanding of how local residents and the communities are impacted by decisions made on the public lands. They can learn by listening to local residents. The residents, the public lands, and the community will benefit when local ideas are sought and voices are included early on.

How, in your experience, will more up-front engagement improve the planning process? Can that make it more efficient?

First, throughout my corporate experience with the Hewlett-Packard Company we engaged employees in the process of visioning and planning. We all brought great
ideas, different perspectives; we brought energy and commitment; we brought the skills necessary to implement the plans. We were successful.

Second, I recently became involved in the Cortez Heart and Soul project, funded by the Orton Family Foundation, with the intent of learning how to engage all sectors of the community early on in the process of developing and maintaining a city plan. This was a deliberate effort to solicit voices from throughout the city population in the city planning process. So far as I know, no one in the Cortez city government or administration felt threatened by inviting local residents to participate from the beginning. They did not argue that their power was being eroded; rather, they engaged in the process.

The planning process is inherently more efficient because of the transparency created by upfront-engagement by everyone. There is common knowledge of the common ground that is being traversed as the plans evolve. Local residents have perspective and ideas that go far beyond the capacity of elected officials to have the whole picture.

**Will resulting plans have more support?**

I believe that it is commonly accepted that people will support what they help create. They own it when they participate in its creation, when they know that their ideas have merit and are being genuinely considered.

I believe that public lands administrators could start their deliberations by asking themselves a few relevant questions. Such as “Who else should be at the table? “Who else should be looking at this? They could first tend to clarity, completeness, and relationships.

**Question 2.** Mr. McAfee, as someone who’s life and livelihood are unavoidably linked with and affected by decisions made on the public lands, and specifically by the BLM, can you discuss how planning based on natural boundaries and for natural resources like watersheds would better serve you, other farmers and ranchers, and other members of your community?

**Answer.** The public lands, all lands, comprise a system. This can be thought of as a landscape of connections, where occurrences upstream have consequences all the way downstream. Political boundaries generally have no association with the system. Think of the Dolores River watershed as such a system. Both the East Fork and the West Fork of the Dolores River are in Dolores County prior to crossing the political boundary (county line) into Montezuma County. The river doesn’t know the difference—it responds to upstream decisions and then follows its natural constraints and boundaries right on down. Anything that happens to those streams in Dolores County carries right on in to Montezuma County. Decisions upstream impact us all. Ranchers, farmers, municipalities all need to know what decisions are being made upstream. Those decisions are more sound and effective when they are made in the context of natural landscape rather than political landscape.

It makes no sense for a land use plan for a landscape system to be different on one side of a political boundary than on the opposite side. I firmly believe that BLM should be encouraged and supported in its efforts to plan around natural landscape systems. Natural landscapes existed and functioned long before the modern construct of political boundaries. We should rethink the way we manage those landscapes.

**Question 3.** Mr. McAfee, I have a letter here from a number of local farmers in the Mancos Valley expressing their support for the principles of Planning 2.0. The letter talks about how the BLM’s master leasing plan process in the area providing “opportunities for us to bring our concerns and vision for our neighboring public lands early on in the process” how “making decisions on how to manage the land should start from similar concerns for the health of the land as a whole, including consideration of our farming operations, rather than driven by political boundaries.” Can you talk some more about the farming community in your area, how you’ve previously engaged with the BLM and how you see these planning rules improving cooperation and land management?

**Answer.** I believe that the letter to which you are referring makes the points beautifully, regarding living and farming alongside public lands. What’s been happening in this context is that BLM has been quite transparent in seeking input to help with its MLP decision. This is in contrast with previous experiences where we the public were presented with an array of displays that attempted to inform us about the various options that were being considered. We had little or no background information, or context. I don’t recall seeing anything that spoke to landscape-level planning or consideration of the health of the land as a whole.
I know these farmers. They are young, energetic, responsible, small-scale. They show up and engage with ideas and comprehensive perspectives. We all, the local residents, will respond positively to transparency and inclusion just as these farmers have. It’s a certainty that these proposed planning rules and processes will improve cooperation (we will own the results) and land management (BLM will have gained great input that otherwise would have been lost).

As I pointed out in my written testimony in July, your Web page says “Empowering People Through Our Nation’s Resources”. What better way to empower us than to listen to us as plans are developed? It’s about participation, collaboration and transparency. Working alongside elected officials and agency employees, we local residents can make a positive difference.

Mr. GOHMERT. Thank you very much. I appreciate your testimony, Mr. McAfee.

At this time, the Chair recognizes Mr. Lyons for 5 minutes.

STATEMENT OF JIM LYONS, DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. LYONS. Chairman Bishop, Chairman Gohmert, and Ranking Member Dingell, I appreciate this opportunity to appear before you today to discuss BLM’s proposed amendments to its planning rules.

As you know, FLPMA was enacted into law about 40 years ago. The framework for developing and amending BLM’s land resource management plans has changed little in the past three decades and, in fact, has only been revised slightly. Yet much has changed in the past 40 years with regard to management and the use of the public lands.

New uses, such as renewable energy production, are a part of an expanding variety of public land uses. Conflicts between users and uses of public lands are increasing, as pressures mount on rural communities to try to maintain their economic flow, meet the needs for their economies, and, at the same time, address the expanding interests of others.

Factors affecting the use and management of the public lands are going beyond traditional planning boundaries, resulting in impacts on, as Mr. McAfee said, watersheds, landscapes, and regions. I think there are plenty of examples of that today, dealing with fire, invasive species, water supplies, and wildlife habitat.

The current planning framework has been the source of frustration for many people, from community leaders, to public land users, to other stakeholders and, in fact, the planners themselves. The Bureau has heard many complaints about the planning process from many of these and, in fact, in 2011 initiated an internal effort to review the planning process. At that point in time, they recommended the need for change in the process.

The complaints, again, were many. The process takes too long, it is not transparent, opportunities for input are few, and final plans, in the end, do not meet our needs. For these reasons and for others, the BLM has proposed new rules for public land use planning that have been in development for a number of years. These proposed rules are really built on the foundation of the current planning process, but they represent a sincere and serious effort to try to address the many concerns and complaints that have been
raised by a wide range of stakeholders with regard to BLM planning process.

The proposed rules provide for some important improvements in the planning process, and I will just highlight a few.

First and foremost, the planning rules seek to provide additional opportunities for input earlier in the planning process. Through the establishment of an assessment requirement, actually, before formal planning begins, the opportunity exists for everyone to provide input into the process, to share data, information, ideas, ways to identify and deal with conflicts, and potential areas of agreement as a foundation for planning.

In essence, the purpose of the assessment is to provide a common baseline to share information and have everyone bring their views, perspectives, and resource information to the table. I would suggest that that in particular can be a significant benefit to local communities and counties who may not have the resources to do their own assessments, but can, in fact, benefit from those assessment reports that are prepared before the formal planning process begins.

Second, resource management issues are not conveniently limited to traditional planning boundaries. Unfortunately, under current rules, no matter how expansive the concern or the particular need, we are required to do plans within the existing planning boundaries. So, when a wildfire crosses state lines, we have to develop plans that fit those particular circumstances in the current planning process.

Under the proposed rule, the planning boundaries can be adjusted to the scale necessary to deal with the issues of concern. This can increase efficiency and effectiveness. It does not, in any way, negate the importance of local input and the value of that stakeholder, coordinator, and cooperator involvement. Nevertheless, it can help us do things in a more efficient and effective way. The same data analysis can help inform the planning process and all participants in moving forward, but dealing with the issue at the appropriate scale, in an appropriate manner, and hopefully in a much more efficient and effective way.

Third, the proposed planning rule process actually reaffirms the unique role the cooperators play in working with the Bureau and helping with the development of land use plans. Cooperators can work with planners throughout the process and, similar to the current process for the engagement of cooperators, they become a part of the planning team from the very outset. In fact, many of our people talked about providing desk space and a chair for representatives who are cooperators from local and state government. So, cooperators' opportunities are not negated in any way. In fact, we think they are enhanced through this more open and earlier planning process.

Now, unfortunately, there is a great deal of misinformation and, I think, misunderstanding out there with regard to the Planning 2.0 effort and the BLM’s proposed planning rule. We certainly look forward, Mr. Chairman, to working with all those who depend upon the public lands or have an interest in their lands, to try to address these concerns and put together a final rule that we think will help improve the planning and management of our public lands. Thank you.
The prepared statement of Mr. Lyons follows:

PREPARED STATEMENT OF JIM LYONS, DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to present the views of the Department of the Interior regarding the Bureau of Land Management’s (BLM) proposed planning rule. The proposed planning rule is part of the BLM’s ongoing efforts to improve the way that the BLM develops land use plans that guide the management of the public lands administered by the Bureau as authorized by the Federal Land Policy and Management Act of 1976 (FLPMA).

This proposed new rule is the culmination of over 2 years of outreach and discussion with state and local governments, communities, stakeholders, other governmental partners, and the public and reflects many of the lessons learned and best practices developed over the last 40 years of land use planning. This proposed rule responds to the recommendations and concerns raised by state and local governments, stakeholders, and the public to modernize and improve our land use planning process in ways that make our efforts more collaborative, transparent, and efficient.

BACKGROUND

The BLM manages 10 percent of the land in the United States and 30 percent of the Nation’s minerals. Under FLPMA, the BLM is required to develop land use plans in partnership with state, local, and tribal governments, as well as the public, to manage these diverse public land resources in accordance with the BLM’s multiple-use and sustained yield mission unless otherwise provided by law. BLM land use plans establish goals and objectives to guide future land and resource management actions implemented by the BLM.

The regulations governing the BLM’s land use planning process are more than 30 years old. Pressures are increasing on BLM-administered lands and land managers to better balance often competing and increasingly conflicting uses of the public lands. The BLM and its stakeholders, including state and local governments, have also experienced an increased number of practical challenges, including unexpected delays, higher expenses, and expanded legal issues in managing these lands. Resource issues such as invasive species, wildfire, energy transmission, and wildlife conservation cross traditional administrative and jurisdictional boundaries making current planning less efficient and more costly to implement.

State, local, and tribal government officials and representatives of diverse stakeholder groups have expressed concern about the current process, stating that they often feel disconnected from the BLM’s land and resource management planning process. We have heard the process described as one characterized by long waiting periods punctuated by short periods in which stakeholders have to digest and respond to large volumes of information. This can be exacerbated by the need to supplement draft plans that have been in process for years when new issues are identified or additional information is required late in the planning process. Delays in BLM planning efforts increasingly consume BLM staff capacity and resources that could otherwise be spent addressing critical resource management priorities.

We understand and share many of these concerns. These factors, combined with the changing nature of the demands on public lands and the increasingly complex and conflicting issues that result, served as a catalyst for the BLM to update its land use planning process. The effort was launched in 2014.

CURRENT PLANNING PROCESS

The current land use planning process begins with a formal public scoping process to identify planning issues that should be considered in the land management plan. The BLM analyzes these and uses them to develop a range of alternative management strategies.

The range of alternatives is initially presented in a draft Resource Management Plan (RMP) and draft environmental impact statement (EIS), in which the BLM must identify a preferred alternative. The release of the draft RMP and draft EIS is followed by a 90-day public comment period. Once comments have been reviewed and evaluated, the BLM revises the draft plan, as appropriate, and then releases a proposed RMP and final EIS.

Release of the proposed RMP and final EIS initiates a 30-day protest period for any person who previously participated in the planning process and has an interest that is (or may be) adversely affected by the proposed plan. At the same time, the BLM provides the proposed plan and final EIS to the governors of those states in-
cluded in the RMP for a 60-day consistency review period to identify inconsistencies with state and local plans. After inconsistencies and protests have been considered, the BLM State Director can approve the final RMP.

THE PROPOSED RULE

The proposed planning rule includes some important updates and improvements to the current process. These changes, consistent with FLPMA, are intended to: (1) respond to specific, articulated issues with the current planning process; (2) improve opportunities for state and local governments, stakeholders, and the public to better provide input to plans from the outset; and (3) reduce time delays, costs, and, we believe, the chance of litigation.

For example, the proposed rule would add a requirement for the development of a planning assessment as a first step. This planning assessment would provide an opportunity for the BLM, state, tribal, and local governments, stakeholders, and the public to work together before any scoping or drafting takes place to better understand the existing conditions in the planning area, and to identify the types of data and information that will be necessary during the planning process. Gathering relevant data and information would be an important part of the assessment and would improve understanding of key resource issues and conditions, and other issues in the planning area. During this phase, participants would also be able to provide early input into identifying the planning area boundary, and would help identify data to use during the planning process.

State, tribal, and local government entities would also be invited to participate as cooperating agencies at this time. The special role of state, tribal, and local government entities is fully preserved in the proposed rule, and is discussed in more detail below.

The rule would also add the opportunity for a public review of and input on preliminary alternatives before the draft RMP is written. We believe that the production of a planning assessment and additional opportunities for input into development of the plan alternatives would help to improve the effectiveness and timelessness of land use plans. We believe these measures could also reduce delay and the chances of litigation as concerns and potential conflicts between competing land and resource users and uses would surface earlier, and opportunities to address these concerns could be initiated sooner. The need for supplemental analyses and data gathering would be reduced.

These planning process improvements would provide new opportunities for public input early in the planning process. However, they would not change the special status currently afforded to state, local, and tribal governments. Opportunities for more frequent check-ins with governments and stakeholders during the development of the draft plan would also help the BLM identify errors or missing information earlier in the process.

Under the proposed rule, after an RMP has been adopted and is being implemented, the BLM would publish a summary report on the effectiveness of the plan. This summary report would enable state, tribal, and local governments and the public to track implementation progress. It would also enable the BLM to determine whether implementation strategies need to be adjusted, or if the RMP needs to be amended or revised to more effectively achieve management goals.

The BLM believes that these changes will contribute to a more efficient and cost-effective planning process that should reduce the amount of time and resources the BLM would have to spend to develop and maintain land and resource management plans. The BLM would be able to react more quickly to address local needs, and amend land use plans in ways that may be critical to enabling local economies to adapt to changing circumstances.

AFFIRMING THE UNIQUE ROLE OF STATE, LOCAL, AND TRIBAL GOVERNMENTS IN THE PLANNING PROCESS

FLPMA, the National Environmental Policy Act, and the proposed rule provide state, tribal, and local governments a special role in the BLM’s land use planning process. This role is important to the BLM in ensuring the best quality plans are prepared.

First, FLPMA directs the BLM to coordinate with state, local, and tribal governments to assist in resolving inconsistencies between BLM’s land use plans and local land use plans, to the maximum extent consistent with Federal law and the purposes of FLPMA. Specifically, Section 202(c)(9) provides, in part, that, in the development and revision of land use plans, the BLM shall:

- to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management
activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the states and local governments within which the lands are located. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of state, local, and tribal land use plans; assure that consideration is given to those state, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of state and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands.

Cooperating agencies work closely with the BLM at every stage of the planning process to identify issues that should be addressed, collect or analyze data, develop or evaluate alternatives and, of course, review preliminary documents. This unique partnership is provided only to governmental entities and helps the BLM develop a land use plan that is responsive to the needs and concerns of local communities.

For example, after the public scoping period, the BLM would collaborate with cooperating agencies to develop a preliminary range of alternatives and rationales, and to identify the preliminary procedures, assumptions, and indicators to be used in the analysis. The BLM would make preliminary versions of these key planning documents available to state, tribal, and local governments and interested stakeholders for review. The BLM would use feedback gained from this opportunity to develop alternatives in the draft land use plan that more fully address local needs and the concerns and information shared by various stakeholders during the early stages of the planning process.

There are no changes to the status or role of cooperating agencies being considered as part of this draft rule. The BLM is committed to continuing its collaborative relationship with state, tribal, and local governments, as it has, consistent with FLPMA.

PUBLIC PARTICIPATION IN DEVELOPMENT OF THE PROPOSED PLANNING RULE AND AFTER PUBLICATION OF THE PROPOSED RULE

In 2014, the BLM launched a campaign to garner feedback on the initial ideas for updating its land use planning rules. The capstone of that campaign was a series of public listening sessions in Colorado and California in the fall of 2014. Through that listening process, stakeholders submitted more than 6,000 written comments; those comments provided invaluable feedback and formed the backbone for the development of the proposed rule. The BLM also presented information on its efforts to improve the planning process and the proposed rule at multiple stakeholder events, including: the 2014 and 2015 North American Wildlife and Natural Resources Conference, webinars hosted by the National Association of Counties, and Western Governors Association meetings.

Since the release of the proposed rule on February 11, 2016, the BLM extended the comment period by 30 days in response to requests from the public; hosted a public meeting in Colorado in March 2016; and conducted multiple webinar outreach sessions in March and April 2016. Recordings of all of these events are available for viewing on the BLM’s Web site.

In addition to outreach to the general public, the BLM has had several conversations with National Association of Counties (NACo) members and hosted a question and answer session with county and state governments. The BLM hosted a question and answer session for county representatives at the NACo Western Interstate Region conference on May 27. Finally, the BLM conducted government-to-government consultation with federally-recognized tribes and hosted an informational webinar specifically for tribal representatives in May 2016. Recently, BLM leadership briefed staff of the Western Governors’ Association this past weekend on the proposed planning rule and answered questions that they posed.

CONCLUSION

In recent years, the BLM has received valuable feedback from state, local, and tribal governments, other stakeholders, and the public that its existing planning process takes too long, is too costly, and is difficult to follow. We take this feedback seriously, and recognize the need for improvements in our current planning process. The Planning 2.0 Initiative was developed to assess the strengths and weaknesses of the current planning process; identify state, local, and other stakeholder and public concerns, and to develop “fixes” for the issues identified in order to make the
BLM planning process more efficient, cost-effective, and relevant to the issues affecting public land management today—nearly 30 years since the current planning rules were formulated. The proposed BLM planning rule incorporates lessons learned from the development of hundreds of land use plans and feedback received through numerous public meetings, webinars, briefings, and conversations over the past 2 years.

Fostering close working relationships with local communities and increasing transparency and opportunities for state and local officials, stakeholders, and the public to participate in the planning process earlier and more often would allow the BLM to develop and maintain meaningful and effective land use plans. This updated approach to planning would also allow the BLM to react more quickly to amend land use plans to better address local needs and changing land and resource conditions, to enhance local communities’ ability to adapt to changing circumstances, and ensure that the BLM can meet its legal mandate to manage the public lands for multiple-use and sustained yield for generations to come.

Thank you for the opportunity to appear before you today to present the views of the Department of the Interior regarding the Bureau of Land Management’s (BLM) proposed planning rule. I am happy to answer any questions that you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO JIM LYONS, DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Questions Submitted by Rep. Gohmert

Question 1. Every state has a state forest action plan (FAP) which was publicly vetted, is regularly updated and which provides guidance for all ownerships. These plans can be viewed for any state at forestactionplans.org. (FAPs, which include assessments and strategies, were mandated per the Farm Bill.) Since these plans provide guidance for vegetation management—including riparian areas, fuels priorities, forest insects and disease and fire management across all ownerships, it would appear that they should be foundational documents in BLM’s planning process.

Why are state forest action plans not specifically mentioned as primary base documents in BLM’s 2.0 planning process?

Do you consider input from state government officials with primary authority for activities and guidance across all boundaries to have the same weight as comments from an individual or small NGO?

Answer. While state forest action plans are not specifically mentioned in the proposed rule, they represent an example of the types of documents that may be gathered and reviewed during the planning assessment. The plan assessment process will enhance opportunities for state and local input by setting the stage for the planning process as well as enhancing the ability of local governments and other interests to gather information to help them in their own planning processes.

The existing, proposed, and final rule include provisions for the special relationship and involvement of cooperating agencies and coordination with other Federal agencies, state and local governments and Indian tribes. Specifically, under the proposed rule, to the maximum extent practical and consistent with FLPMA and other Federal laws, BLM Land Use Plans must be consistent with those of local, state, Federal, and tribal governments.

Question 2. During the hearing, Representative Labrador asked if states other than Idaho have requested the withdrawal or substantive rewriting of the proposed rule . . .

To this you replied, “We have heard from a number of states who are concerned about the rule. [. . .]”

Afterward, Mr. Labrador asked you, “and have they specifically made request to just start the process over?”

To this you replied, “I would have to check on the specifics, Congressman.”

Please provide a list of the states below that requested withdrawal or re-writing of the proposed rule. Specifically include information about what each state requested and their reasoning for the request.

Answer. The state of Alaska requested that the BLM revise the proposed rule and allow for an additional public review and comment period on that revision. Alaska expressed support for the goals of increased public involvement, efficiency, clarity, and transparency, but expressed concern that the proposed rule would create delays in the planning process. Alaska expressed additional concern that the planning rule
would not address issues unique to their state and may further complicate issues related to subsistence, economic development, and implementation of other Federal laws including the Alaska National Interest Lands Conservation Act (ANILCA).

The states of Idaho and New Mexico requested that the BLM withdraw the proposed rule, contending that BLM did not sufficiently consult with state governments.

The state of Nevada requested that the BLM amend the proposed rule to address its concerns that the proposed rule reduced transparency, diminished the role of coordination with state and local governments, and should have allowed for more input from western states.

The state of Utah requested that the BLM withdraw the proposed rule for analysis under NEPA, or amend the proposed rule where necessary to address concerns regarding coordination of land management with state and local governments and to ensure the role of cooperating agencies in planning.

The state of Wyoming requested that the BLM withdraw the proposed rule because many of the goals the BLM expressed are accomplishable under existing regulations and suggested that the BLM better clarify the opportunities for cooperation, coordination, and public involvement in the planning process.

Question 3. During the hearing, I asked about state’s primacy over allocation and administration of water resources within their respective borders, “[. . .] the BLM proposals here indicate the agency may [. . .] add provisions to its RMPs to increase agency involvement in water management. Specifically, what aspects of water management allocation would BLM incorporate into the future in new or amended RMPs?”

To this you replied, “[. . .] I am actually not aware of that,” and, “I am going to have to do a little homework and try to understand where the impression came from.”

Please provide information about what aspects of water management allocation BLM would incorporate into new or amended RMPs.

Answer. The rule does not indicate or imply that BLM will increase its involvement in water management and does not discuss water management allocations. The rule does incorporate language from FLPMA to identify general management objectives in the planning regulations, specifically that the BLM manage public lands, “to protect the quality of [. . .] water resource[s].” The preamble to the proposed rule provided both surface water and groundwater as examples of water resources for establishing baseline conditions in the planning area as part of Section 1610.4—Planning Assessment, but it does not increase agency involvement in water resource management.

Question 4. Please provide specific information about the pilot program for BLM 2.0, including where it was implemented, any guidelines used to assess its outcome, involvement of state and local governments in the pilot program, and information about state and local government reactions to the pilot program pilot program.

Answer. The BLM has applied some principles of Planning 2.0 in several new plan revision efforts, particularly the principle of early and frequent public involvement and planning at appropriate scales. These new planning revisions currently underway include the Eastern Colorado RMP, the Missoula RMP, and the Northwestern California Integrated RMP. The response to these planning efforts has been extremely supportive. Local governments and the public have expressed strong support for the upfront engagement of the public during the planning assessment phase.

Question 5. How is it appropriate for the BLM to employ a NEPA Categorical Exclusion process for a proposed rule that is controversial and contrary to the congressional intent and language of FLPMA? Why is BLM using a CatEx for a rule affecting over 245 million acres of land and 700 million acres of subsurface mineral estate when the BLM requires a higher level of NEPA review for much smaller projects, such as a 1-acre telecommunications site?

Answer. As described in the categorical exclusion documentation for the rule, the existing and final planning rules are entirely procedural in character. The BLM believes the categorical exclusion is the proper form of NEPA compliance for this action under 43 CFR 46.210(i). As discussed in the documentation, The actual planning decisions reached through the planning process are themselves subject to compliance with NEPA’s analytical requirements as well as with the statute’s public involvement elements. For this reason, the BLM’s reliance upon this categorical exclusion is appropriate.
Question 6. Has at least one public hearing been held in each state where the proposed rules would apply? How has your process consistent with Executive Order 13563 which states that “regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas.”

Answer. Formal public hearings were not conducted in each state where the rule would apply. The rule complies with Executive Order 13563. With respect to public participation, the BLM launched the Planning 2.0 initiative in May 2014 by seeking public input on how the land use planning process could be improved. The BLM developed a Web site for the initiative (www.blm.gov/plan2) and issued a national press release with information on how to provide input to the agency. The BLM held public listening sessions in Denver, Colorado (October 1, 2014) and Sacramento, California (October 7, 2014). Both meetings were led by a third-party facilitator and were available to remote participants through a live broadcast of the event over the Internet via livestream. The goals of these meetings were to share information about the Planning 2.0 initiative with interested members of the public, to provide a forum for dialogue about the initiative, and to receive input from the public on how best to achieve the goals of the initiative. Prior to issuing the proposed rule, the BLM conducted outreach to BLM partners. Outreach included multiple briefings provided to the Federal Advisory Committee Act chartered RACs; a briefing for State Governor representatives coordinated through the Western Governors Association; a briefing for State Fish and Wildlife Agency representatives coordinated through the Association of Fish and Wildlife Agencies; multiple briefings for other Federal agencies; a Webinar for interested local government representatives coordinated through the National Association of Counties; and meetings with other interested parties upon request.

Following publication of the proposed rule, the BLM held one public meeting in Denver, Colorado (March 2016) and two Webinar meetings. All meetings were led by a third-party facilitator and were available to remote participants through a live broadcast of the event over the Internet or through Webinar access. The goal of these meetings was to share information about the proposed rule and answer questions from the public as they prepared their response to comments. During the comment period on the proposed rule, the BLM also held a Webinar for interested local government representatives coordinated through the National Association of Counties. The BLM also held meetings with other interested parties upon request.

Question 7. Section 202(c)(9) of the Federal Land Policy Management Act (FLPMA) requires meaningful coordination with counties. County Leaders represent all of their constituents and must have continued government to government communications as the FLPMA coordination statute provides. Section 202(c)(9) provides counties with meaningful involvement with BLM as it prepares and conducts significant Federal actions, such as changing land use plans. Why does the proposed rule relegate counties to the same stature and status as any non-government entity (NGO) instead of maintaining their status under FLPMA?

Answer. FLPMA requires that the BLM keep apprised of state, local and tribal land use plans and assist in resolving, to the extent practical and consistent with Federal law, inconsistencies between Federal and non-Federal Government plans (see 43 U.S.C. 1712(c)(9)). The provisions in the rule that address coordination and consistency afford state, local, and tribal governments the opportunity to coordinate with the BLM in the development of resource management plans, with the goal of increasing consistency between Federal, state, local, and tribal land use plans.

State, local, and tribal governments that have special expertise or jurisdiction by law (see 40 CFR § 1501.6 and 43 CFR § 46.230) are also invited to partner with the BLM in developing resource management plans as cooperating agencies. In most cases, formal cooperating agencies have access to preliminary and deliberative draft documents that are not routinely made available to the public.

Under existing rules, state and local governments that do not participate as cooperating agencies may review planning documents when they are made available to the general public with the draft resource management plan. The rule provides additional opportunities to these state and local governments to review planning documents including: (1) the planning assessment report; (2) the preliminary statement of purpose and need; (3) the preliminary range of alternatives; (4) the preliminary and relevant scale for the
resource and management issues being addressed in an individual planning effort. The intent of the final planning rule is to ensure that the BLM avoids a "one-size-fits-all" approach by considering all relevant scales in its planning process, rather than defaulting to a field office scale. The BLM would continue to consider impacts on local conditions and local economies, as well as impacts at regional and national scales during individual planning efforts. The BLM believes it is appropriate and necessary for a deciding official to consider all relevant scales and information before rendering a decision.

Question 9. Logically, land management decisions should be made at the level closest to the lands being managed. Will this rule create the scenario where the BLM Director becomes the deciding official and the planning activity becomes removed from the local area to be undertaken by a project team of Washington, DC bureaucrats responsible only to the Director?

Answer. The BLM will continue to select line-officers who are highly qualified for any given decisionmaking process. The BLM takes seriously the responsibility of a line-officer to make well-informed decisions and consider the impacts such decisions have on the public and the public lands. The BLM’s commitment to qualified and well-informed decisionmaking will not change under the proposed planning rule.

Question 10. The current BLM rules contain a definition of “consistent,” that the “Bureau of Land Management plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans, or in their absence, with policies and programs, subject to the qualifications in Section 1615.2 of this title.” Why is this definition being removed?

Answer. The rule removes the definition of the term consistent because the definition is unnecessary as it is commonly used terminology. Section 1610.3–2 of the rule describes the requirements for consistency and would require that RMPs be consistent with state and local plans to the extent practical and consistent with Federal laws, including the FLPMA.

Question 11. The current rule emphasizes that the impact of BLM land use decisions “on local economies, uses of adjacent or nearby non-Federal lands and on non-public land surface over federally-owned mineral interests shall be considered.” Why is the proposed rule written to erode the importance of protecting local economies and uses on nearby non-Federal lands and shift the focus to the “impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at appropriate scales.”

Answer. Consideration of resource, environmental, ecological, social and economic conditions is consistent with the principles of multiple use and sustained yield and therefore consistent with the Federal Land Policy and Management Act. Multiple use, as defined in the Federal Land Policy and Management Act, includes “the management of public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.” Consistent with FLPMA, the BLM must seek to understand the present and future needs of the American people, and the assessment of resource, environmental, ecological, social and economic conditions is an important tool to help the BLM understand the present and future needs of the American people at the local, regional, or national scale. The rule requires that all values associated with the management of public lands (i.e., environmental, ecological, social and economic) be considered, as appropriate, through the planning process.

Question 12. Section 1610.3–2(b)(4)(ii) of the proposed rule, Consistency Review: (Page 9705 of the Federal Register Notice) is proposed to read that “The Director will consider the Governor(s)’ comments in rendering a final decision. The Director will notify the Governor(s) in writing of his or her decision regarding the Governor’s appeal. The BLM will notify the public of this decision and make the written decision available to the public.” In Planning 2.0, the BLM proposes to eliminate existing rule language requiring the BLM Director to accept the recommendations of the Governor(s) if the BLM Director determines that the recommendations “provide for a reasonable balance between the national interest and the state’s interest.” Why is the BLM no longer seeking to reach a reasonable balance between the national interests and state or local interests?

Answer. The rule states that the BLM Director will consider the Governor(s)’ appeal and the consistency requirements of this section of the rule in rendering a decision. The proposed change would reflect that the BLM Director must consider many factors when rendering a decision, including whether the Governor(s)’ recommendations are consistent with Federal laws and regulations applicable to public lands, such as FLPMA.
Question 13. The BLM proposes, in the planning assessment, to no longer consider “the estimated sustained levels of the various goods, services and uses that may be attained.” Instead, the BLM proposes to identify “the various goods and services that people obtain from the planning area, including ecological services.” Why is the BLM proposing to change the original purpose and intent of this section to measure the impact of BLM decisions against the objectively quantifiable value of tangible goods and services, such as minerals or timber; that could be lost as a result of the decision and instead throw in the concept of ecological services, which cannot be objectively or accurately quantified for comparison?

Answer. Goods and services include a range of values and human uses of the resources provided by and derived from management of the public lands. However, determining the value of these goods and services is difficult and affected by many factors including markets, the state of the economy, and other variables. Benefits resulting from proper management of ecosystems, such as flood control from intact wetlands and carbon sequestration from healthy forests are referred to as “ecological services.” Some commodities sold in markets, for example, forest products resulting from timber production, are more easily valued. Others, such as wetlands protection and carbon sequestration, are not commonly valued in the marketplace but do provide tangible benefits and valuable services (e.g., flood control); they provide non-market values. The BLM does have guidance based on established practices for estimating non-market values for ecosystem goods and services for the purposes of comparison. The language included in the rule is simply intended to ensure that all goods and services derived from the proper management of public land resources are identified in the planning process, beginning with the planning assessment.

Question 14. Why is the BLM proposing to remove from the Planning Assessment a requirement for the BLM to analyze “specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, state and local government agencies and Indian tribes?”

Answer. The BLM did propose removing this provision of the plan assessment because at that early stage in the planning process, the BLM usually does not have sufficient information to identify “requirements and constraints” related to consistency, as the BLM would not yet have developed management alternatives for the area. Under the final rule, the BLM would require that as part of the planning assessment for an individual planning effort, the BLM identify relevant national, regional or local policies, guidance strategies or plans; in response to public comment, the final rule includes language identifying that constraints for achieving consistency would be addressed as planning issues during the scoping process.

Question 15. Section 1610.4–4 of the existing rule directs the BLM Field Manager to analyze the management situation. The manager is to keep multiple use principles in mind as alternatives are formed. As part of the AMS process, the manager is to consider the degree of local dependence on resources from public lands.

The proposed rules do away with the Analysis of the Management Situation and replace this step with the Planning Assessment. However, in the Planning Assessment, the focus of the assessment shifts from the concept of multiple use and resource development on public lands to preserving “ecological services.” How is this shift in focus consistent with congressional intent when FLPMA came into effect in 1976?

Answer. In the planning assessment process in the rule, rather than consider the “degree of local dependence on resources from public lands” (from existing §1610.4(g)), the BLM would instead consider “the degree of local, regional, national, or international importance of these goods, services, and uses” (from proposed §1610.4(d)(7)(i)). “Resources” would be replaced with “goods, services, and uses” to provide a more precise explanation of what the BLM considers with regard to those resources. The BLM believes that the use of more precise terminology in the regulations will improve understanding of this provision. The BLM does not intend for this change to change the meaning of this provision. The language in the rule is simply intended to ensure that all goods and services derived from the proper management of public lands and resources are identified and considered in the planning process.

Question 16. During one of the recent Webinars associated with the planning rules, a question was posed whether one has to be a U.S. citizen to comment on the proposed rules. The answer was no; that anyone could comment. During a recent RMP process in Utah, there were approximately 68,000 comments received by the BLM; with approximately 11,000 of those comments being from outside of the country. Is the BLM willing to include provisions in the proposed rule to somehow give greater credence to the views of local elected officials and stakeholders over the
views of those with no direct connection to the land other than responding to a request to submit a form letter on behalf of a special interest group?

Answer. Under the rule, and consistent with the previous planning rule, local, state, tribal, and Federal governments are afforded special consideration not afforded to other general members of the public such as foreign nationals. Specifically under the rule, to the maximum extent practical and consistent with FLPMA and other Federal laws, BLM Resource Management Plans must be consistent with those of local, state, Federal and tribal governments.

Questions Submitted by Rep. Dingell

Question 1. The Bureau of Land Management’s Planning 2.0 initiative is an impressive undertaking. The proposed regulations will affect every facet of BLM land use planning and management. The U.S. Forest Service promulgated a similar rule in 2012, analyzing the many, significant environmental, economic and effects of the rule in more than 1,300 pages of environmental impact statements under the National Environmental Policy Act. How did the BLM decide that its equally expansive rule was excluded from review under NEPA? Would alternative analysis under NEPA have helped contribute to stronger proposed and final regulations?

Answer. As described in the preliminary categorical exclusion documentation for the proposed rule, the Department of the Interior categorical exclusion at 43 CFR § 46.210 is applicable to this action. The existing planning rule is entirely procedural in character and the amendment of this rule is entirely procedural. The amendment does not develop or amend any land use plans; any future revisions, plans or amendments will be subject to NEPA analysis, including appropriate public involvement, before any decision affecting the management of the public lands is made. Further, there are no extraordinary circumstances that would preclude the use of a categorical exclusion. For this reason, the BLM’s reliance upon the DOI categorical exclusion is appropriate. The BLM planning regulations are distinguishable from the 2012 Forest Service planning rule, and the U.S. Department of Agriculture and the Department of the Interior have different categorical exclusions.

Question 2. In promulgating its similar planning rule, the Forest Service also heeded direction in the Endangered Species Act to manage public lands and resources in a manner that contributes to conservation and recovery of threatened and endangered species and specifically referenced the ESA in its rule, and even consulted with the Fish and Wildlife Service and the National Marine Fisheries Service on the potential of its regulation to support listed species conservation. By comparison, neither the BLM’s proposed rule nor the agency’s description of it even mentions the ESA. How does the agency intend to improve the final regulation to ensure that it achieves congressional mandates in the ESA to protect and recover listed plants and animals?

Answer. While not specifically addressed in the rule, the BLM must comply with the Endangered Species Act, including Section 7 consultation requirements for actions that may affect a federally listed species or designated critical habitat. Additionally, the BLM planning regulations establish the procedures for developing and amending resource management plans and do not approve any land use plans or plan amendment or authorize any particular projects. The BLM will continue to comply with the ESA when it completes future individual planning efforts and will continue to address listed species during these future planning efforts. For example, under the procedures for plan development and amendment in the proposed rule, during future planning, the BLM would identify areas of potential importance through the identification of potential Areas of Critical Environmental Concern (ACECs) and other means such as habitat for federally-listed threatened and endangered species.

Question 3. Was there anything else you wanted to say or respond to from the hearing?

Answer. Planning 2.0 was developed to respond to concerns and criticisms of the existing planning process (which had not been revised for nearly three decades); to respond to state, local, and other stakeholder and public concerns; and to make the BLM planning process more efficient, cost-effective, and relevant to the issues affecting public land management today. The rule will allow the BLM to react more quickly to amend land use plans to better address local needs and changing land and resource conditions and ensure that the BLM can meet its mandate to manage the public lands on the basis of multiple-use and sustained yield, through a more open, transparent, and inclusive planning process.
Questions Submitted by Rep. Polis

Question 1. Mr. Lyons, in your view, how does Planning 2.0 increase the transparency of the BLM land use planning process? How does Planning 2.0 help to ensure that the draft RMP more closely meets the expectations of stakeholders? There is no doubt that local input and concerns are highly important when planning for BLM-managed lands. Would the BLM’s proposed rule take away these special participation opportunities from states and local governments?

Answer. The rule increases the transparency of the land use planning process by establishing more frequent check-ins with stakeholders. These frequent check-ins provide stakeholders the opportunity to review preliminary documents before they are formalized and provides the BLM an opportunity to engage in ongoing dialogue with stakeholders to better understand their needs, concerns, and expectations. By working closely with stakeholders throughout the duration of the planning process, the BLM will be better able to respond to stakeholders.

Question 2. Mr. Lyons, help the committee to understand how ‘landscape level’ planning allows land managers to better tackle pressing natural resource concerns at an appropriate scale?

Answer. The rule provides for an open and transparent process; supports assessment and management at appropriate scales; supports the use of the best available scientific information in planning; and applies principles of adaptive management. Key to this process is developing land use plans at a scale that is based on resource management concerns and the issues being addressed. We saw this with sage grouse, whose range covers 11 states and requires a coordinated, comprehensive, science-based conservation strategy as we developed leading to a “not warranted” decision by the U.S. Fish and Wildlife Service. Similarly, dealing with invasive species like cheatgrass across a larger landscape is essential for reducing the risk of rangeland fire across the Great Basin where it constitutes a significant threat to ranchers and rural communities.

Question 3. Mr. Lyons, the agency has certainly received a lot of feedback from stakeholders on the proposal; what is the agency’s plan for incorporating that feedback to help ensure that the final rule works best for local governments, the public, the agency itself, and the natural resources the agency manages?

Answer. The BLM received over 400 unique comments from members of the public, state and local governments, other Federal agencies, and tribal governments. We analyzed those comments and considered all suggestions made. As part of the rule-making effort, we will publish a response to all substantive comments, along with the rationale for why we did or did not incorporate suggested changes.

Question 4. Mr. Lyons, we know that things like wildlife, rivers and people do not just stop at state and field office boundaries but migrate or otherwise span political boundaries. I’m glad to hear that the BLM is seriously thinking about common-sense ways to plan for use and conservation of our public lands rather than rely on political boundaries.

Question 4a. Can these planning “landscapes” be either larger or smaller areas as needed?

Answer. The rule permits BLM land managers to determine the most appropriate planning area given the issues and resources that are affected. That is the most efficacious way of developing plans and involving all jurisdictions that may be affected by management decisions on that landscape. Through an open and transparent process, using the best available scientific information, and informed by a robust planning assessment, the BLM can determine the most appropriate planning area for any given set of management issues. While appropriate planning areas may be larger or smaller than the typical field-office boundary, in considering the resources needed to conduct effective land use planning, it is likely that the BLM will more often conduct planning at a field office or larger scale.

Question 4b. How will local expertise and input be integrated into landscape level planning?

Answer. Under the rule, the BLM would add several new opportunities for the interested citizens and stakeholders to engage with the BLM during the planning process, including development of a (1) planning assessment; (2) preliminary statement of purpose and need; (3) preliminary range of alternatives; (4) preliminary rationale for alternatives; and (5) preliminary basis for analysis. At each of these stages, individuals with local expertise would be invited to provide input either as
a cooperating agency (if an eligible governmental entity) or through public involvement opportunities during these stages of the planning process.

Question 4c. Can you discuss some of the ways that this landscape level planning would benefit the public lands?

Answer. The BLM manages a diverse range of natural resources, which occur at an equally diverse range of scales, and it collaborates with a diversity of partners, stakeholders and communities who work at different scales. For these reasons, the BLM planning process must enable consideration of issues and opportunities at multiple scales and across traditional management boundaries. Some of the management concerns that may benefit from a landscape approach to decisionmaking include those that cross traditional administrative boundaries, such as wildfire, wildlife, water resources, energy development, and transmission.

Question 4d. And how it would provide for more meaningful input from stakeholders invested in the management of public lands?

Answer. The rule increases opportunities for meaningful public involvement in several ways. First, during the planning assessment, the BLM must gather and consider public input before initiating formal planning. This provides local citizens and stakeholders with the opportunity to engage at the very beginning of the planning process—before issues are identified or alternatives are considered. The rule also establishes new opportunities for stakeholders to review preliminary planning documents prior to the formal public comment period for a draft plan or draft amendment. These new steps afford the public additional opportunities to track the BLM planning process as it develops and would provide them with more time to review preliminary documents before drafts are issued. The BLM believes that these new opportunities will promote meaningful involvement in the planning process by increasing the transparency of the process.

Mr. GOHMERT. Thank you, Mr. Lyons.

At this time, Ms. Clarke, you are recognized for 5 minutes.

STATEMENT OF KATHLEEN CLARKE, DIRECTOR, UTAH PUBLIC LANDS POLICY COORDINATING OFFICE, SALT LAKE CITY, UTAH

Ms. CLARKE. Chairman Bishop, Chairman Gohmert, Ranking Member Dingell, and members of the subcommittee, I am honored to be here today and want to thank you for this opportunity. I am here today to voice my strong opposition to BLM Planning 2.0. I come to my position based on my 30-plus years of experience with public land issues, and also having served as the Director of the BLM for 5 years.

It is my sincere belief and my experience that BLM planning is most effective and durable when the BLM works side by side with counties and states to understand land management challenges and opportunities.

When I was at the BLM, I felt so strongly about this partnership that I made a point of creating a BLM rule that mandates a rigorous, cooperative engagement with state and county officials. State agencies bring data, expertise, and a history with the land that BLM does not have. In my opinion, BLM Planning 2.0 will fundamentally undermine the role of state and county governments in their planning.

Although the official position of the BLM and the Department is that the planning rule will not impact the BLM’s relationships with cooperators, in practice, I believe that the rule, as proposed, will significantly marginalize the role of cooperators and dramatically diminish their influence.
The BLM proposes a shift in planning philosophy toward landscape scale management. Planning areas will not be fixed as they are now, but may be arbitrarily designed by BLM officials. For example, such a policy, if adopted, could lead to a Colorado plateau resource management plan that would include three or four different states or portions of those states.

This sort of multi-state management will force the BLM to juggle consistency with several different policy positions of multiple governors. I believe this proposal will prevent the kind of close coordination that was envisioned by Congress when they enacted FLPMA; and the biggest losers from this proposal will be state governments and the landscapes themselves, which require highly localized and fine-tuned management.

Right now, I have a very strong relationship with the BLM Director acting in Utah, Jenna Whitlock. It is troublesome to me that BLM Planning 2.0 would diminish her decisionmaking authority, or at least it could, because it creates some ambiguous role for a deciding official, which does not have to be someone who has worked in or is familiar with the state.

The BLM also proposes a similar dilution of the role of its field managers, which right now are closely aligned with county commissions. They work together as partners, not as adversaries. This vague shift in policy power could possibly bring someone in to make decisions that has no experience with the land and does not understand the culture or the land of the state of Utah.

Another very troubling matter is this planning assessment business. The problem is that the BLM does not propose any additional coordination with state or elected officials. Under the proposed rule, state and local governments would have the very same role during the planning assessment as environmental organizations, special interest groups, and the general public. If unelected special interest groups have an equal seat at the table during the planning assessment, the role of state and local government as cooperators will inherently be diminished. Key decisions and directions will likely have been set before cooperating agencies ever have a chance to sit down with the BLM and work through their particular concerns.

The BLM says it wants to better understand public values, but it is interesting that it then chooses to ignore the fact that the citizens within the given jurisdiction have elected their leaders to faithfully represent their values and protect their interests. They are the voices of the public opinion and the public interest. They are elected by a majority of their voters to comply with both the letter and the spirit of the law. I think BLM needs to modify this significantly.

I believe this has the potential to undo many good relationships which are so important in the West, and we would ask the BLM to withdraw the rule and to work closely with cooperators if they feel, indeed, a need to modify it. Thank you.

[The prepared statement of Ms. Clarke follows:]
Chairman Bishop, Chairman Gohmert, Ranking Member Dingell, and members of the subcommittee, I am honored to be here and thank you for this opportunity.

I am here today to voice my strong opposition to BLM Planning 2.0. It is my experience that BLM planning is most effective and durable when the BLM works side by side with states and counties to understand land management challenges and opportunities. When I was at the BLM, I felt so strongly about this that we developed a rule that mandates a process for rigorous cooperative engagement with state and county officials. State agencies bring data, expertise, and a history with the land that the BLM doesn’t have. County commissioners are able to articulate the interests of the people they have been elected to represent. While the system is not perfect, Utah has many examples of truly effective cooperation between the BLM and state and local governments that has resulted in workable compromises and practical solutions that are good for both the land and the people.

In my opinion BLM Planning 2.0 will fundamentally undermine the role of state and county governments in BLM planning. Although the official position of the BLM is that the planning rule will not impact the BLM’s relationships with cooperating agencies, in practice, I believe that the rule as proposed will significantly marginalize the role of cooperators and will dramatically diminish their influence. Let me share with you a few examples.

The BLM proposes a shift in planning philosophy toward what it calls “landscape scale management.” This is planning on a large scale that may extend across state borders. Planning areas will not be fixed as they are now, but will be established arbitrarily by BLM officials. For example, such a policy, if adopted, could very well lead to a Great Basin Resource Management Plan that includes portions of both Utah and Nevada. Or it could lead to a Colorado Plateau Resource Management Plan that includes three or four different states. This sort of multi-state management will force the BLM to juggle consistency with several different state land use plans. It will have to consider and respond to different policy positions of multiple governors. I believe that this proposal for multi-state landscape management will prevent the kind of close coordination between an individual state and the BLM that Congress envisioned in FLPMA. The biggest losers from this proposal will be state governments and the actual landscapes, which require highly localized and fine-tuned management.

Utah possesses an incredibly diverse array of small, unique landscapes. They need specialized attention from the BLM. To be successful, land management must offer a plan for stewardship, monitoring, and funding for land treatments. Effective management plans require local input and expertise, not one-size-fits-all directives for large multi-state areas. BLM planning should encourage greater specification for small landscapes contained within a single state. Without the engagement and buy-in of state and county elected officials in BLM planning, support for BLM plans will be diminished and success compromised.

BLM 2.0 also proposes to weaken the role of its own State Directors and Field Office Managers. Currently, the Utah BLM Director has broad decision-making authority within the state, which allows for strong partnerships with state elected officials and their representatives. I have a very positive relationship with the BLM’s Acting State Director in Utah, Jenna Whitlock. I see her often and we communicate regularly. This close association has allowed both of us to understand the different sides of a problem, make compromises, and resolve difficult issues resulting in win-win solutions. Unfortunately, BLM Planning 2.0 could strip BLM State Directors of much of their decisionmaking authority, putting it in the hands of what the BLM calls “deciding officials.” These deciders could be anyone, such as a bureaucrat in Washington, DC or some other third party brought in for a specific land use plan. There appears to be no requirement that the deciding official live in Utah or have real life experience with Utah lands or culture. The relationship of trust that currently exists between BLM state directors and state elected officials will be fractured as more BLM decision are made by BLM with employees with no ties to affected states.

The BLM proposes a similar dilution to the role of its field office managers. Currently, the boundaries of most BLM field offices closely align with county borders. This facilitates effective cooperation between BLM field office managers and county commissioners. I know county commissioners who consider local BLM field office managers and staff to be personal friends. They meet often and resolve issues as partners, not as adversaries. But under BLM Planning 2.0, field office managers may be relegated to the side-lines, making room for what the BLM calls “responsible officials.” This vague policy could shift decisionmaking power to far-removed BLM officials.” This vague policy could shift decisionmaking power to far-removed BLM officials.”
employees who have no history with the planning area and will never experience the real-world impact of his or her decisionmaking. The BLM should withdraw this proposal so as to not impair these critical relationships between state directors, field office managers, and elected state and county officials.

Another very troubling matter proposed in BLM 2.0 is the introduction of a new step in the agency’s planning process. They call this step the “Planning Assessment.” The BLM purports that this “planning assessment” will “help the BLM better understand public values.” The “planning assessment” will include open public meetings at the very beginning of a planning process. The problem is that the BLM doesn’t propose any additional coordination with elected state or county officials. Under the proposed rule, state and local governments would have the same role during the “planning assessment” as environmental organizations, special interest groups, and the general public. If unelected special interest groups have an equal seat at the table during the “planning assessment,” the role of state and local governments as cooperators will inherently be diminished. Key decisions and direction will likely have already been set before cooperating agencies ever have a chance to meet privately with the BLM.

The BLM says that it wants to better understand public values, but chooses to ignore the fact that the citizens within a given jurisdiction have elected their leaders to faithfully represent their values and protect their interests. Elected officials rightly represent the values of the majority of voters in their jurisdiction, not the values of the loudest, most well-funded interest groups. To comply with both the letter and the spirit of FLPMA and NEPA, the BLM must provide for formal coordination with state and local governments from the very beginning of its planning process.

FLPMA explicitly requires that BLM plans be consistent with local land use plans, policies, and programs. Unfortunately, the BLM’s proposed rule requires the BLM to be consistent only with “official approved or adopted land use plans” of state and local governments, and allows the BLM to disregard land use “policies and programs” of state and local governments. This proposal is illegal as it is a clear violation of FLPMA. Not all counties have “officially approved or adopted land use plans,” and the BLM cannot ignore the consistency requirements in FLPMA merely because a county has a land use “program” or “policy” instead of an official “plan.” Utah is rapidly working to create official land use plans in all of its counties, but this proposal could do great damage to rural counties all across the West that lack the resources to create official land use plans.

CONCLUSION

BLM Planning 2.0 has the potential to undo much of what currently works in BLM planning, and opens the door to a host of other problems and conflicts. We ask that the BLM withdraw the proposed rule and work with their legally identified cooperating agencies to consider a new rule that enhances state and Federal cooperation and trust.

Thank you.

QUESTIONS SUBMITTED FOR THE RECORD BY REP. GOHMERT TO KATHLEEN CLARKE, DIRECTOR, UTAH PUBLIC LANDS POLICY COORDINATING OFFICE

Question 1. During the hearing I asked “if you have specific instances that you can find where the rules have worked a hardship, then let us know those. Please send us those in the days ahead,” in regards to rules promulgated by the BLM. Please list specific instances where rules promulgated by the BLM have led to compliance hardships for either state, local, or municipal officials.

Answer. It was a privilege to testify before the members on the “State’s Perspectives on BLM’s Draft Planning 2.0 Rule.” As a follow up to my testimony, you had asked that we provide specific examples of BLM’s regulations that have caused a hardship to the state of Utah (State). I have chosen a few specific examples that are discussed in detail below. However, there are multiple examples of practices and regulations enacted by the BLM’s Washington, DC office that have harmed, and will continue to harm, Utah’s wonderful economy and lifestyle. The practices identified below, however, highlight the ongoing practice of the BLM to usurp local control of resources and authority, unlawfully and unilateral ignore congressional mandates of multiple-use and sustained yield. They continue to illegally implement practices that result in a preservation of resources, in lieu of allowing for use and conservation of resources, as intended by Congress. If you have any
questions with regards to my testimony, or if you would like me to further highlight other BLM rules, regulations, and practices that harm the State and our citizens, I will provide such upon request.

I. Sage-grouse Land Use Plans

In 2015, the BLM developed land use plans (Land Use Plans) to manage the greater sage-grouse in Utah, and across the West. The Land Use Plans, developed and finalized by the BLM in September, 2015, have and will continue to cause unnecessary regulatory burden and hardship on the State. The Lands Use Plans have resulted in economic uncertainty, administrative delays, and setbacks, and utilize tools and ideas that are not based on local and relevant scientific research and known management practices.

Since 2006, Utah has invested over $50 million dollars into greater sage-grouse conservation, management and research. In 2013, after much collaboration with stakeholders, including the BLM, the State approved a revised comprehensive conservation plan for sage-grouse (State Plan). The State Plan protects core sage-grouse habitat, known as Sage-grouse Management Areas (SGMA), on over 7.5 million acres across the State. The goal of the State Plan is to conserve 90 percent of the State's greater sage-grouse habitat and 94 percent of the population. The State Plan builds on the legacy of utilizing state biologists, university researchers, land managers, local working groups and Federal partnerships to manage sage-grouse. To date, the State has enhanced and restored more than 620,000 acres of sage-grouse habitat, protected over 25,000 acres of habitat using conservation easements and land transfers since 2013, and most importantly, has increased sage-grouse populations by at least 56 percent.

The economic impacts to the State, from the Land Use Plans, are very clear. The BLM’s Land Use Plans specifically regulate over 2.5 million acres in Utah for a species that is not federally protected under the Endangered Species Act. Currently, almost $3 billion dollars’ worth of economic activity occurs annually in Utah within sage-grouse range. Energy development or resource use and extraction on public and private lands in sage-grouse range as their livelihood. The work by those Utahns results in 13,071 Utahans depend upon energy development or resource use and extraction on public and private lands in sage-grouse range as their livelihood. The work by those Utahns results in approximately $830.9 million in earnings. Coal, oil, natural gas, renewable energy and other mining activities within Utah’s sage-grouse range account for $224 million in earnings annually. Similarly, livestock production on private, state and Federal lands in sage-grouse range accounts for approximately $52.9 million in earnings. The financial harm and burden resulting from the Land Use Plans will ultimately harm Utah’s local economies.

Just a few of the most noticeable economic impacts from the Land Use Plans include:

**Limited oil, gas, and mining on Federal lands.** The BLM’s Land Use Plans do not allow for any new oil, gas, or mining operations to occur on Federal lands within areas designated as Sagebrush Focal Areas. However, most of these Sagebrush Focal areas do not actually have sage-grouse populations. In areas designated as Priority Habitat, new development of oil, gas and mining resources is severely limited. For example, the BLM has created an arbitrary disturbance cap which limits disturbance in areas designated as Priority Habitat from oil, gas, mining and other uses into a 3 percent cap. When the cap is met, no new disturbances will be allowed. Further, if the BLM leases new oil and gas mineral leases in Priority Habitat, the development will be subject to no surface occupancy (NSO) stipulations, with limited exceptions. Similarly, any development in areas known as General Habitat will be subject to specific mandates and measures, including mandates such as NSO, and controlled surface use and timing limitations will be implemented to further limit disturbance.

**Wind Energy Development is severely restricted.** The BLM will not allow any new wind energy development projects to be permitted or occur in Sagebrush Focal Areas or Priority Habitat. Limited wind energy development in General Habitat may still be authorized.

**New solar Energy development will become non-existent on Federal lands.** The BLM has decided to exclude new solar development on any areas designated as sage-grouse habitat on Federal lands. The BLM has stated that solar energy will not be permitted in any sage-grouse habitat on Federal lands in all Sagebrush Focal Areas.

**Land Use Plans will result in the modification or termination of certain grazing permits on Federal land.** The BLM and the Forest Service are currently re-evaluating every grazing allotment on BLM lands and reviewing the potential to modify the terms on 567 grazing permits in Utah (389 BLM and 178 USFS), encompassing over 5 million acres.
Constraints on new recreational development. The Land Use Plans state that no new recreation facilities will be developed in Sagebrush Focal Areas or priority habitat. Further, the plans note that only minimal new recreational development will occur in general habitat but only after receiving special permit to recreate.

It is clear that the practices identified above, are harmful to the State’s economy, especially in a state where over 50 percent of the land is under Federal management and control. These Land Use Plans have created economic uncertainty and hardships on the State and violate the multiple-use mandates identified and embraced in FLPMA.

In addition, the plans have created huge administrative delays and burdens. The local BLM field offices have been unable to take action or make decisions because they are waiting on top-down direction from Washington, DC. The Land Use Plans are complicated, create a new layer of bureaucracy, and instruct BLM employees with jurisdiction over areas within sage-grouse habitat to prioritize their time, efforts, and budgets on matters relating to sage-grouse.

In conclusion, the Land Use Plans for sage-grouse are a prime example of unnecessary and burdensome regulations being developed and implemented by the BLM. The BLM needs to embrace the Utah’s Plan for the Conservation of Greater Sage-grouse. The State Plan has worked and will continue to work to conserve sage-grouse.

II. Wild Horse and Burro

The BLM’s purposeful failure to manage wild horses and burros in Utah is a harming Utah’s rangelands, wildlife and water resources and impacting livestock producers throughout the state. Currently there are an estimated 5,440 wild horses and 400 burros in Utah. The BLM’s failure to remove excess horses in Utah has left us with nearly three times as many horses as should be on its lands. The BLM needs to take action to manage horses at the appropriate levels which includes removing horses, when necessary, to protect Utah’s ecological resources.

The current levels of wild horses and burros on Utah’s rangelands is not ecologically sustainable. By continuing to allow horses and burros to exceed sustainable levels, the BLM is placing in jeopardy the future of wildlife, rangelands, and livestock operations in Utah, not to mention harming the long-term survival of the horses and burros themselves. The focus of the BLM Wild Horse and Burro program should revert to its original purpose and stated goal of achieving appropriate management levels in Utah. Last year the BLM only removed 123 excess horses from the range. The BLM’s ongoing practice of not removing horses is creating economic hardship and harmful ecological impacts that may not be reversed for decades.

Direct removal of horses and burros from impacted regions will aid in maintaining the minimum management levels being achieved while simultaneously reducing their impact on the supporting ecosystem. The BLM’s current Budget Proposal seeks to only remove a minimal amount of wild horses and burros from Utah’s rangelands. We are concerned with the lack of urgency of the BLM in managing their wild horse and burro populations. With a growing level of conflict and the inaction by the BLM to meet their management obligations and bring horse and burro numbers to appropriate management levels, the State has asked for better management and removal of wild horses. Rather than tackle this difficult challenge, the BLM has chosen to put the burden of wild horse management on the livestock producers and tax payers within the State. This practice is unacceptable and must be changed.

III. Coal Leasing Moratorium

The BLM’s recent actions to stop new coal development on Federal lands threatens the viability of several major coal mine expansion projects in Utah. The BLM, under the direction of the Secretary of the Interior, Sally Jewell, and in concert with President Obama’s Executive Order is currently reviewing the Federal coal program and placing a long-term moratorium on new coal leasing and development on public lands while the review is underway.

The BLM’s coal leasing moratorium is a rushed and uninformed political decision that threatens Utah’s coal industry and the many benefits that industry provides. Coal generates 76 percent of Utah’s electricity and helps employ more than 45,000 men and women across the state. In Carbon County alone, 8 out of 10 jobs in the county of 17,000 come from mining and power plants. In the event coal mines in Carbon County are closed, thousands of families will be displaced and without work. Similarly, hundreds of people lost jobs in Carbon and Emery County last year when...
a coal plant and coal mine closed due to, among other things, onerous Federal regulations.

The Coal Moratorium has recently halted the expansion of a mine in southern Utah, near Alton. The mine's management worked together with the State and the BLM to identify ways that coal mining could continue while mitigating for environmental impacts through the use of compensatory mitigation tools. However, after working for months on a mitigation plan with the State and BLM, and submitting an emergency application to expand the mine during the Coal Moratorium, the application was denied. This failure to allow needed responsible expansion is unnecessary and another prime example of ridiculous and burdensome regulations harming the state of Utah and its citizens.

IV. “Wild Lands”—Unlawful Designation of Wilderness

An additional practice that has created a hardship for the State is the BLM’s designation of “wild lands” within the State. On December 22, 2010, Ken Salazar issued Secretarial Order 3310 (the BLM issued its manuals shortly thereafter). Order 3310 created a new public land designation—“wild lands” that superseded existing land use management plans and created additional steps in the implementation of land management decisions. In essence, the BLM began managing “wild lands” as “de facto” wilderness in violation of the BLM’s rulemaking procedures, Federal laws, and wilderness study areas designation process.

Under “wild lands,” at least 6 millions of acres in Utah could be set aside, preserved, and managed as “de facto” wilderness. The ongoing preservation mentality, coupled with the failure to allow for multiple-use, development, and access into areas designated as “wild lands” is a burden on the state. Further, the unilateral action to designate lands as de facto wilderness, creates a lack of trust, displaces the roles of state and local government and displaces necessary economic development and utilization of precious resources within the State. Due to the hardships and issues surrounding the “wild lands” designations, the State filed suit in Federal court challenging the BLM’s actions.

Please direct any other written questions regarding this correspondence to the Public Lands Policy Coordinating Office, or call to discuss any questions or concerns.

Mr. GOHMERT. Thank you, Ms. Clarke. At this time, the Chair recognizes the Ranking Member, Mrs. Dingell, for 5 minutes.

Mrs. DINGELL. Thank you, Mr. Chairman, for your extraordinary courtesy. You are a true gentleman, and I love working with you.

So, enough of that this morning. Can I ask unanimous consent to submit for the record a letter in support of Planning 2.0 signed by Trout Unlimited, the Teddy Roosevelt Conservation Partnership, and the Rocky Mountain Regional Center?

Mr. GOHMERT. So ordered.

Mrs. DINGELL. Thank you.

[The information follows:]

SPORTSMEN FOR RESPONSIBLE ENERGY DEVELOPMENT

July 6, 2016

Hon. Neil Kornze, Director
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

Re: Sportsmen Support for Planning 2.0

Dear Director Kornze:

Sportsmen for Responsible Energy Development (SFRED) is a coalition led by the Theodore Roosevelt Conservation Partnership, National Wildlife Federation and Trout Unlimited and is made up of more than 1,500 businesses, organizations and individuals dedicated to advancing federal policy and practices that ensure responsible energy development on public lands. Our members have extensive experience engaging in the Bureau of Land Management’s (BLM) Resource Management Plans
(RMPs) across the West and we can affirm that the agency’s current planning process needs to be modernized. We strongly support the BLM’s approach to improve land use planning through Planning 2.0 and urge you to see the rulemaking process through to completion.

Successful BLM land use planning includes early and frequent communication with the public. Under the current process, the public submits comments at the scoping period, those comments seem to disappear into the hands of the agency, and years later the BLM comes back with a proposed draft RMP. The public then submits comments on the draft RMP and the BLM disappears for another year or more before issuing a proposed final RMP. This long timeline with little communication from the agency makes it difficult for the public to remain interested in the process, and the lack of transparency makes people question how and if their comments are being used. The current BLM planning process is cumbersome and outdated, generating some of the frustration that people are voicing towards federal lands management in general.

Planning 2.0 is focused on fixing these problems by increasing the transparency of the land use planning process by adding three new steps to land use planning: the envisioning process, plan assessment, and preliminary alternatives. These added steps would enable the public to provide information about the planning area before the agency begins considering how the lands should be managed and allow the public to consider the plan’s direction and provide feedback before the draft RMP is formally proposed. These additional steps would help to maintain increased public interest in the planning process by providing a continuum of public involvement and help to ensure that the draft RMP more closely meets the expectations of stakeholders.

These additional steps to the land use planning process should be supported by everyone who wishes to see the BLM work more closely with the public to develop land use plans that more closely meet the expectations of multiple stakeholder groups.

We also support the BLM’s proposal to revise RMPs at the landscape level, such as across multiple BLM Field Offices at one time. Right now, land use plans are created along artificial jurisdictional boundaries, often at the Field Office level of the BLM within a particular state. Land managers have come to recognize that because resources like mule deer and steelhead don’t stop and turnaround at the BLM Field Office line, neither should land use plans. The BLM planning rule proposal to revise RMPs at the landscape level, such as across multiple BLM Field Offices at one time, makes common sense. By integrating landscape level planning into BLM management, the agency should be able to better care for fish and wildlife species that migrate and depend on different habitats throughout the year.

We also believe that the BLM Planning 2.0 process creates an important opportunity to incorporate modern management tools into land use planning to better balance demands between multiple uses and to conserve important resources important for fish, wildlife and sportsmen. These tools include master leasing plans, migration corridor protection tools, and backcountry conservation areas.

All of these changes would be achieved while simultaneously increasing the number of opportunities for cooperating agencies and decision makers to engage in the land use planning process. As you likely know, elected county officials located in all three areas where the BLM is implementing early adopter plans under the principles of Planning 2.0 (Missoula RMP, Eastern Colorado RMP, and Northwest California Integrated RMP) have endorsed the BLM’s proposed changes to the planning process. This support demonstrates that the local elected officials who are closest to the rule understand its importance in better involving the public in land management decisions and improving the management of BLM lands across the West.

Finally, we appreciate extensive public outreach and that has culminated in the draft rule. For over two years, the BLM has sought and received input from a multitude of diverse stakeholders, employing public meetings, webinars and taking public feedback. During the comment period for the draft rule, many valid points have been raised and we urge you to finalize the rule in a way that works for the general public, cooperating agencies, the agency itself and the public lands and resources that the BLM is charged with managing.
While we have provided some specific recommendations for improving the planning rule in our formal comments, we believe Planning 2.0 is an important process that must move forward to completion. Thank you for your consideration of our request.

Sincerely,

KATHLEEN C. ZIMMERMAN,
Policy Director, Public Lands,
National Wildlife Federation,
Denver, Colorado.

JOEL WEBSTER,
Director, Center for Western Lands,
Theodore Roosevelt Conservation Partnership,
Washington, DC.

COREY FISHER,
Senior Policy Director, Public Lands,
National Wildlife Federation,
Sportsmen Conservation Project,
Missoula, Montana.

Mrs. Dingell. Mr. McAfee, I continue to be surprised by the criticism that adding more opportunities for public involvement to the planning process is a bad thing. I was really touched by your testimony this morning—specifically, we have heard that the voice of elected officials in the planning process should be elevated above the voices of Americans that want to provide direct feedback to BLM, the idea that elected officials represent the people and can therefore speak better for them on BLM planning issues. But you mentioned a specific situation in which the opposite was true. Your local elected representatives were refusing to even talk to BLM about a proposed master leasing plan in your area. Can you give us a brief explanation about why a master leasing plan was needed in this situation?

Mr. McAfee. First, let me thank my colleagues for teaching me how to push the button.

[Laughter.]

Mr. McAfee. The management leasing plan process is one that is underway, right now in the very early stages, to determine whether or not there should be one. That is the major issue that is on the table. It has not been determined that there will be one. The reason for thinking about that is that the resource management plan for the areas of concern in Montezuma County are not specific enough to really protect some things that everybody agrees should be protected.

For example, there is a world-class biking area, called Phil's World, very near Cortez that is contiguous to BLM land; it lies on BLM land, as well as private and state land. That could be under severe risk if we don't have some way to know what is coming down the road with leasing; and everybody, including the county commissioners, agree with that.

The problem is that the county commissioners don't recognize that the resource management plan does not really protect it. They believe that that could be easily changed and, for reasons that I don't understand, they are opposed to an MLP. There has been a process to provide public input into that decisionmaking, and a lot
of people have showed up, hundreds; and I believe that at this point in time the preponderance of input into that question is 10 to 1 in favor of doing an MLP. Yet, the commissioners really do not recognize that kind of public interest.

That is why I believe that the process can be a lot better by listening to us, because we do our homework and we know what we need.

Mrs. Dingell. We have just a short bit of time here; so, in your opinion, were your representatives doing their job of representing your voice when they refused to come to the table with BLM about the master leasing plan?

Mr. McAfee. The simple answer is no, because they backed away from that and did not want to participate in it. One of the beginnings of the process was for them to select community members to be on the study group. They refused to select community members, and then community members decided to select themselves and applied to be on that.

And suddenly, our commissioners discovered that they were being left aside, and so they did step up and start to select members for that. But that was a case where they thought, by withdrawing and not doing anything, they were going to be able to retain power. Instead, they lost power and they lost credibility.

Mrs. Dingell. So, quickly summarizing, you are saying that your voice is currently not represented by your elected officials, and that they are actively advocating for things that you are saying that the majority of the community does not want. That sounds like a pretty good argument for maximizing the voice of everyday Americans in the BLM process.

Do you think more public input in the master leasing plan process would have benefited this situation? How could the public have helped move this process along? And you have 30 seconds.

Mr. McAfee. The public has been engaged because of the fact that they have come to the steering committee with input. What that has done is caused the steering committee to have to back off, and they have not made a decision yet as to what they will recommend.

So, it is clear to me that: (a) we were not represented by our county commissioners; and (b) at a higher level, at a different level, our input is being considered. I think that is a good example of how public input early on by concerned and knowledgeable citizens can make a difference.

Mrs. Dingell. Thank you.

Mr. Gohmert. Thank you. And we hope you will give Mr. Dingell our best. He turned 90 years old—was it yesterday?

Mrs. Dingell. Tomorrow.

Mr. Gohmert. Tomorrow. OK. Well, he is a distinguished gentleman in the best sense of the word.

At this time, we recognize the Chair of the Full Committee, Mr. Bishop.

The Chairman. Well, thank you, Mr. Chairman, even though you put me all the way down here; but thank you.

Let me ask a couple questions, if I could—I can go in the other room, if you would like.
First of all, Ms. Clarke, thank you for being here. I think adding to the resume is the fact that you were a former BLM director, so you understand this process and how these things work within the walls of the Interior Department, that great mausoleum to comradeship.

Let me ask you a couple of questions. When FLPMA was actually passed, part of it said that it was there to preserve existing rights. That included grazing, leasing, water rights, yada yada. BLM was also there so that the plans would be consistent with state and local plans. That is the purpose of FLPMA, that was in the legislation. That provided for a coordination of land use inventory specifically with the agencies of state and local government.

So, once again, I want to go—you touched on this in both your written and oral testimony—when I read BLM Planning 2.0, it appears that BLM is moving away from the rights granted to the state and local governments in the law. Under this new rule, how do you think BLM will honor their legal mandates to cooperate and coordinate with states, particularly the early public assessment phase?

Ms. Clarke. I believe, during this early public assessment phase, state and local governments can participate, should they choose, but their voice will be marginalized. They have a right to sit as an elevated partner because they are sovereigns, and they should not be relegated to sharing a position among the crowd.

Elected officials do represent the majority of the voices of those elected, although they may not represent the voices of the loudest, most well-funded special interest groups. I believe that this is stepping aside from the law, and it is not the first time we have seen the Administration take such a step.

The Chairman. Thank you, I appreciate that. It is troubling for me. The Federal Government does own—I actually can’t see how much time I have, so when I am close to it, hit me or something, will you?

The Federal Government owns a third of all America, we know that. About 45 percent is BLM property. The sad part is almost none of that is east of Denver; it is all west of Denver. That means, even though the votes in Congress are east of Denver, everyone here east of Denver thinks public lands are all national parks, when we know the bulk of it is BLM property, and it is for those of us who actually have the fortunate opportunity of living in the West.

What that simply means is, sometimes ideas can gain support when they actually do hurt people in the process. I think those of us here in the West have a specific interest, and that is why I appreciate the first two witnesses who represent the governors and commissioners who have concerns about what will actually happen in the West, even though we do not have the numerical majority here.

And, it is the same thing here. Mr. McAfee, you talked about the commissioners in your area. I am assuming they were voted by the people.

Mr. McAfee. Yes, sir.

The Chairman. And I assume, if they don’t like what they are doing, they could be unvoted by the people.
Mr. McAfee. That might be the case.

The Chairman. Well, I suggest you try that in the future. It is much more beneficial. We have 200 years of practice with that.

By contrast, is anyone going to vote for Mr. Lyons? Absolutely not. I mean, so you get the free pass here. Whatever you decide to do, even if you think of something that I think is kind of crappy, you still get the free pass. It is through the elected officials that we have some kind of input for people, and that has to be why it was supposedly respected in FLPMA.

So, let me go about this concept, this deciding official. Let me start with you, Mr. Ogsbury. If a plan does not cross state boundaries, should someone within the state be this deciding official?

Mr. Ogsbury. Chairman Gohmert, Chairman Bishop, members of the committee, I think it is axiomatic that, to the extent decisions are removed from the states and moved to Washington or away from localities, that the influence and the authority of governors that is mandated under FLPMA would be——

The Chairman. Just say yes or no, because I have 20 seconds.

Mr. Ogsbury. I am sorry, sir?

The Chairman. You said it, fine.

Mr. Ogsbury. Thank you.

The Chairman. So, in those last 20 whatever seconds I have, because I see the yellow light up there, let me say this. The issue you always talked about is more input. The issue of getting more input is good; but it is who makes the decisions that is significant. This program significantly contracts who gets to make those decisions, centralizes who gets to make those decisions, minimizes elected input, and that is what everyone has been saying—almost everyone has been saying so far—except for Mr. Lyons. I hope you are listening to what everyone is saying, because that is the biggest flaw in this plan.

I will be more than happy to go another round, but thank you. Sorry.

Mr. Gohmert. Thank you very much.

The Chairman. I am assuming I went over, because I see a red light. I have a block. I am sorry.

Mr. Gohmert. No, actually I have a block, but you got a late start on your time, so it worked out fine.

At this time, I recognize myself for 5 minutes. Of course, we know that there can be significant changes that occur between the original draft of a resource management plan and the finalization of the resource management plan. So, it is critical that the BLM hears from everyone who is a stakeholder. That especially includes governors that represent the whole state, even though their voice may be more in line with a majority, commissioners, county officials, and, certainly, the landowners themselves. That is why I am pleased with the representation we have here.

Longer comment periods would seem to make that more likely. There was a hearing recently for the Senate Energy and Natural Resources Committee, and Director Kornze suggested that it makes sense to retain longer comment periods, although it did take some prodding from Senator Warren.
Mr. Lyons, do you disagree with Director Kornze? Do you think we should have the longer comment periods, go back to those, or do you still insist that we should have shorter comment times?

Mr. Lyons. No, Mr. Chairman, Director Kornze and I have had a conversation about that, and that is certainly something we are willing to revisit.

I should explain that, in an attempt to limit the amount of time spent on planning in providing additional information or opportunities for input up front, I think an effort was made to cut back on some of those later comment periods. I think we need to rethink that, as you suggest.

Mr. Gohmert. Well, thank you. I am very glad to hear you say that.

Mr. Ogsbury, have you heard any stories from Western Governors, with specific instances where they were not allowed the voices that they felt they should have in policies that affected the people in their states?

Mr. Ogsbury. Chairman Gohmert, members of the committee, I would appreciate the opportunity to provide a more thoughtful answer for the record. In the meantime, I would suggest that in the course of consistency reviews that were issued with respect to the sage-grouse RMPs, that there was considerable concern expressed by a number of governors that there was not enough attention paid to those consistency reviews.

Mr. Gohmert. Well, I don’t know—we got representation from the various aspects, stakeholders. What I have heard in my district in dealing with Federal land issues is that sometimes a plan is being proposed and they don’t see word of it; they don’t feel like they get proper notice, and then all of a sudden their time has run out.

Mr. Fontaine, are you aware of any situations like that, where commissioners didn’t feel like they had adequate time to respond?

Mr. Fontaine. Mr. Chairman, thank you for the question. I think that is the case for many of our counties. We have a number of small rural counties that, quite frankly, do not have staff. I think we have eight or nine counties in our state that do not even have a county manager. So, even if the BLM, for example, might submit an email indicating that there might be some plan that is being considered, including this planning initiative, it is one of many emails that they may get and they may not have the opportunity to review that and give some thoughtful comment on that plan.

We think that the better course would be for the BLM to reach out to those counties and to our association, as well.

Mr. Gohmert. You made a great point. My counties where Federal land is located normally have less assets to utilize, like you are saying. You cannot tax the Federal land, it is not being used now where it should be used to produce timber. That was the original idea, it is a renewable resource—these are not sequoias or pine trees. They are struggling, the schools struggle, and they don’t have the ability to respond; and I appreciate that point being made.

My time is running out, but I just would ask all of you, including Ms. Clarke—you have special experience from all sides—if you have specific instances that you can find where the rules have
worked a hardship, then let us know. Please send us those in the days ahead.

My time has expired, and I recognize the gentleman from Idaho, Mr. Labrador, for 5 minutes.

Mr. LABRADOR. Thank you, Mr. Chairman. I would like to thank the subcommittee for holding this hearing today.

BLM's draft Planning 2.0 rule, if finalized, will have major impacts on states with BLM land. In my state, BLM manages approximately 12 million acres of land which will be significantly impacted by this rule. Because the impact on Idaho will be so significant, I am very concerned that this draft rule marginalizes the role that state and local governments will play in the BLM planning process and ignores BLM statutory obligation to coordinate with state and local governments, and to provide for meaningful public involvement of state and local government officials.

I would like to ask unanimous consent first that a letter that Governor Otter sent to the members of Idaho’s congressional delegation, as well as the state’s comments to BLM be included in the record.

Mr. GOHMERT. Without objection, so ordered.

[The information follows:]
change. The existing terminology does not suffer from readability problems. Moreover, the term "shall" is a generally recognized legal term of art that indicates mandatory or non-discretionary. This is an important term that should serve to remind BLM of such important congressional mandates as directives to "use and observe principles of multiple use and sustained yield" and "coordinate with other federal agencies, Indian tribes, and the States and local governments." See 43 U.S.C. 1712(a) sec. 202(c).

Section 1610.4: Planning Assessment

BLM proposes to establish a new "Planning Assessment" step in the RMP development process to "combine and revise existing steps for inventory data and information collection and the analysis of the management situation." This step would take place during the scoping process, before the agency begins RMP development. It appears BLM is basing the shortened Governor's consistency review, at least in part, on the fact that it will provide opportunity for State input during the Planning Assessment. Additionally, this section is written in a very "passive" fashion which seems to confer little obligation on the part of the BLM to gather appropriate data for its own planning process. We believe planning guidance should direct BLM to uphold an "active" role in soliciting, identifying and gathering relevant scientific information about the planning resources. Further, the BLM should be required to find and gather both (1) the best scientific data for relevant resources pursuant to a quality-controlled process and (2) appropriate data from the regulatory agency responsible for managing those resources. As now written, the BLM has the option of disregarding State management data for a given resource in preference for data from an individual or special-interest group, which is extremely concerning.

The State of Idaho's concern with this new process is two-fold:

- This consultation would occur at the scoping stage of RMP development, prior to any actual RMP design; and
- Specific opportunities for engagement by states appear limited.

Section 1610.4(a)(3) states BLM is proposing to add a requirement that the responsible BLM official provide opportunities for states and other stakeholders to provide data and information, or suggest other policies for the agency to consider (i.e., "a state wildlife agency might ask the BLM to consider a conservation plan for a sensitive species"). States are invited only to submit data and information. This also seems imbalanced by placing the onus of information submittal on states and other stakeholders while leaving BLM to make a subjective determination of whether to consider submitted information. Additionally, "[t]his opportunity would be provided through a general request for information from the public." States should be treated with special solicitude, and not simply as members of the public, as BLM proposes.

Section 1610.3–2 Consistency Requirements

The proposed BLM Planning Rule proposes the following revision: "Resource management plans will be consistent with officially approved or adopted land use plans of other Federal agencies, State and local governments and Indian tribes... (emphasis added)." As a foundation for this change, BLM proposes replacing the phrase "resource related plans" with "land use plans" and to remove the words "policies, programs, and processes" from the existing definition of officially approved and adopted land use plans (p. 52). Improved consistency with section 202(c)(9) of FLPMA is provided as rationale for this change.

This narrows the existing planning context for consistency with resource-related plans and policies, programs and processes. Idaho is concerned that this will fundamentally preclude Governor consistency review consideration of Idaho Department of Fish and Game ("IDFG") species management plans, which provide important context to official State and local government land use plans. We believe this flexibility is necessary because State and local governments' officially approved or adopted land use plans often do not specifically incorporate species management population objectives yet IDFG species management plans are fundamental to hunting, fishing, trapping and other wildlife-related activities as components of outdoor recreation plans and also are important state plans that are germane in the development of land use plans for public lands (which the Secretary is to assure that consideration is given, section 202(c)(9) of FLPMA). We recommend that IDFG species management plans remain an acceptable component of the governor consistency review process.

The proposed BLM Planning Rule claims to enhance state and local governments' opportunity to participate in the various BLM processes. However, a more detailed review of the proposed changes does not support that conclusion. In fact, develop-
ment of the proposed rule itself presented a perfect opportunity for the BLM to engage its state and local partners in identifying areas of needed improvement, crafting a process that takes full advantage of the important perspectives and priorities that states can provide, and roll out the proposal to the public in lock-step with the states. Instead, the rule was developed—as has become all too common—by officials in Washington, D.C., only engaging state partners in the same process with which it engages the general public. This process surely would overlook the important priorities or policies of the individual states and further erode the principles of federalism that are embedded within our history and national charter.

This process of minimizing state participation is inappropriate given the congressional direction codified in BLM’s organic statute. The Federal Land Policy and Management Act (FLPMA) directs BLM, to “establish procedures . . . to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.” See 43 U.S.C. 1712(f). It is evident from the language of the statute that Congress perceived the role of state and local governments to be separate from and in addition to the general public’s participation. Congress has stated that land use planning should consider[] the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-federal lands. 38 U.S.C. 1712(a) sec. 202 (emphasis added). The congressional mandates contained throughout FLPMA with respect to engaging state and local governments early and in a meaningful way are not being followed adequately, nor are they accurately reflected in the proposed regulation. How can the BLM “keep apprised of State, local, and tribal plans” and provide “meaningful” engagement by simply cataloging states’ comments along with the myriad of other written submissions to this rule or other important planning documents?

The various sections of FLPMA highlighted above provide important, non-discretionary direction with respect to stakeholder engagement. The proposed regulations must be consistent with these and other congressional mandates. Any final regulations should be amended to clearly recognize and emphasize the importance of the BLM coordinating its efforts with the states, local governments and Indian tribes. These governing bodies should have the opportunity to be equal partners in promulgating rules and land use plans. Of utmost importance is the need for the regulations to recognize the distinction between public comment opportunities and coordination with co-regulators and co-managers whereby state and local plans, policies and priorities are carefully considered and integrated into Resource Management Plans (“RMPs”) and other important planning documents. BLM should strive to create consistency with state policies, plans and programs at every level of RMP development, beginning with meaningful engagement with state and local governments.

Additionally, BLM is considering whether to adjust the timeline or appeal process of the Governor’s consistency review. It justifies a modification of this important tool for Governors by claiming that this proposed rule provides early opportunities to identify the officially approved and adopted land use plans of state and local governments, and to resolve inconsistencies between those plans and the RMP alternatives that BLM would consider.

BLM proposes no tangible early opportunities for participation by Governors. As discussed below, BLM is adding a baselining step to the RMP amendment process in which it will ask for information from state agencies with no assurance that BLM will seek consistency. If BLM chooses to adjust the timing for consistency reviews, it must not shorten the timeframe and in fact should consider granting states more time to make a consistency determination.

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1 Section 1610.3-2(b)(I)(ii)
Section 1601.0–4: Responsibilities

The proposed regulations attempt to shift certain decision-making authority from BLM state directors to the BLM director. This proposed change should be deleted. Empowering state directors to develop local solutions by engaging state and local co-regulators and co-managers is an important investment in the collaborative and coordinated model that is far superior to the centralized, top-down approach that is proposed. Federal agency personnel stationed in Washington, D.C. will never fully understand the unique socio-economic, cultural and conservation needs unique to the individual states. The attempt to codify the practice of top-down, one-size-fits-all decision making is misguided. This undermines collaborative local solutions and deflates enthusiasm for conservation initiatives. State and local leaders are closely connected to the citizens who are affected most by the regulatory framework contained throughout the proposed regulations. A more meaningful engagement with state and local governments improves the regulated community’s opportunity to interact with its government on all levels and provides a perspective that is otherwise missed. BLM offices don’t understand the issues in Idaho and across the West. BLM should maintain the status quo which allows the Idaho State Director to make the decisions that affect Idaho.

Section 1610.2: Public Involvement

BLM proposes to shorten the comment period for draft RMPs from 90 days to 60 days and reduce the comment period for draft environmental impact statement (EIS)-level plan amendments from 90 days to 45 days. BLM justifies these changes in order to streamline its process, and that longer periods will be unnecessary because new and amended RMPs will take consistent approaches in the coming years. These timeline reductions eviscerate the important role the public plays in land-use planning and government accountability. Many Idaho citizens who are directly impacted by BLM management decisions strongly desire to participate in and comment on all the BLM’s land management planning. Recently, nearly all RMP- and EIS-level plan amendments consist of multiple volumes and thousands of pages. While BLM reserves the right to take as much time as it needs to create these documents, reducing the amount of time that the public has to review them all but ensures that these important parties to the process cannot provide meaningful input.

BLM indicates that the reduction in review time is justified because of increased state/federal coordination early in the planning process. However, history shows us that early coordination between the state and BLM is ineffective because very little is required of BLM and other federal management agencies to meet their FLPMA “coordination” responsibilities. Both the sage-grouse process and the Gateway West Supplemental EIS are recent examples of how BLM believed it had met its “coordination” duties by giving Idaho advanced notice of plan changes. This is not enough. Increased early state/federal coordination should mean that states have the opportunity to be true partners in the planning process.

BLM should maintain and consider extending comment periods to ensure that Idaho and other states and interested parties have adequate opportunity to review and comment on RMP amendments and EIS-level plan amendments.

Mitigation

Idaho agrees with the construction and citation of a “Mitigation Hierarchy” as proposed in the proposed rule. Without referring directly to “preamble for proposed section 1610.1–2(a)(2)”, we recommend a clearer statement that the hierarchy considers avoidance preferable to minimization, which in turn is preferable to compensation. Please clearly spell out that the sequence as stated is in order of preference.

Agency Communication Protocol

BLM proposes to eliminate the requirement to publish notices related to RMP development, including NEPA analyses, on the Federal Register. Rather, the agency would publish these actions on the BLM Web site and at BLM offices within the planning area of a given RMP. Similarly, BLM proposes to eliminate the current requirement to publish Federal Register notices at the start of every planning effort and to remove the requirement that BLM publish a Notice of Intent (NOI) to prepare an environmental assessment as part of an RMP amendment, but would retain the requirement to publish a NOI for an EIS related to an RMP amendment. Federal Register notices ensures that RMP amendments and other NEPA analyses are consistently communicated with interested parties, and ensures that all parties are kept apprized of changes or new developments. BLM should continue publishing notices in the Federal Register while adding publication on the BLM Web site and
at BLM offices within the planning area of a given RMP in order to ensure that interested parties are notified of BLM’s actions.

Conclusion

It is my opinion that the proposed rule cannot be fixed simply by line-item edits. As I stated before, officials in Washington, D.C. will never fully understand the unique socio-economic, cultural and conservation needs of the individual states. State consultations should have occurred prior to the publication of this proposed rule. After much discussion with Idaho’s State agencies, I request that the proposal be discarded and a new proposal drafted with the BLM appropriately engaging the states. Throughout the consultation process, I would remind the BLM that state agencies are not merely stakeholders, but rather are the BLM’s partners, especially when implementing important land management actions. Idaho has a wealth of data, experience and expertise from which the BLM could benefit in developing a much more collaborative, robust and effective planning rule.

As Always—Idaho, “Esto Perpetua”,

C.L. “Butch” Otter,
Governor of Idaho.

STATE OF IDAHO,
GOVERNOR’S OFFICE.
July 1, 2016

Hon. Mike Crapo
Hon. James E. Risch
United States Senate
Washington, DC 20510

Hon. Mike Simpson
Hon. Raul Labrador
United States Congress
Washington, DC 20515

Dear Idaho Delegation:

I recently submitted the attached comments on the Bureau of Land Management’s (BLM) proposal to amend the resource management planning process (Planning 2.0) regulations. If instituted, Planning 2.0 will significantly limit opportunities for Idaho, local stakeholders, and the public to engage in collaborative land management planning.

As you know, the Senate Energy and Natural Resources Subcommittee recently held a hearing to conduct oversight on the Planning 2.0 initiative. Likewise, the House Committee on Natural Resources held a similar hearing in the Subcommittee on Oversight and Investigations to examine the local perspectives on Planning 2.0 in May. The testimony at these hearings showed a general displeasure across the West on the contents of the proposed initiative, and I wanted to take this opportunity to share my thoughts on the rule.

I have very clear expectations regarding how federal agencies should interact with the State while developing regulatory programs that impact Idaho. Federal land management agencies must respect Idaho as a sovereign and full partner. Planning 2.0 is no exception. However, the BLM failed to engage Idaho in early and meaningful consultation while drafting Planning 2.0. The BLM could not follow the very principles it purports to endorse in Planning 2.0 while drafting the rule itself. Planning 2.0 includes a number of provisions that weaken the value and impact of Governors’ Consistency Reviews in the RMP development process, and leaves states with an undefined role in the planning process.

Planning 2.0, as drafted, presents serious challenges and contains significant shortcomings. I urge you to support any effort to delay the implementation of Planning 2.0 until BLM appropriately engages Idaho, and addresses the serious issues that I provided in my comments. Please feel free to contact me if you have any questions or would like clarification on my comments.

As Always—Idaho, “Esto Perpetua”,

C.L. “Butch” Otter,
Governor of Idaho.
Mr. LABRADOR. Thank you.
Mr. Ogsbury, thank you for being here today. As I mentioned, the Federal Land Policy and Management Act requires that the BLM coordinate the land use inventory planning and management activities with state and local governments, and provide for meaningful public involvement of state and local government officials. That is what the law says.

Do Western Governors believe that BLM’s current planning regulations comply with these requirements?

Mr. OGSBURY. Chairman Gohmert, Representative Labrador, we believe that Planning 2.0 steps away from that requirement.

Mr. LABRADOR. In what ways?

Mr. OGSBURY. Governors under FLPMA are, as you pointed out, given a very substantial role with respect to the BLM planning process when, for example, the scope of consistency reviews are narrowed from having RMPs be consistent with plans, programs, policies, and processes to simply being consistent with officially adoptive land use plans; that is a step away from gubernatorial influence.

When 2.0 says that governors’ views will be considered, simply considered, that is a step away from saying governors’ recommendations submitted as part of a consistency review will be adopted if it represents a good balance between national and state interests.

Mr. LABRADOR. So, trying to change the law through regulation, in essence. This draft rule appears to shift planning away from local communities to BLM headquarters here in Washington, DC. This, to me, is very problematic for several reasons.

Idaho’s comments to BLM state that, “Idaho and its agencies have worked hard and in good faith to develop robust, collaborative planning documents with their BLM offices, only to have BLM’s national office in Washington, DC unilaterally change course at the last minute.”

Mr. Fontaine, have counties in Nevada had similar experiences to those that Idaho has had when planning documents go to BLM headquarters?

Mr. FONTAINE. Thank you for the question. I cannot think of a specific example today, but, generally speaking, we have a good working relationship with our local BLM officials, and strive to come up with plans and agreements on how those should be implemented and administered. Once they do leave the state and go to Washington, DC, it is really, quite frankly, beyond our control; and the last thing that we want to have happen is for our county officials to have to go back and try to rectify something that may have been changed that was not agreed to at the county and state level.

Mr. LABRADOR. I think you are making an important point. I think most of us have pretty good relationships with our local officials. It is when it comes here to DC that things seem to shift most of the time.

Under this proposal, do you think Nevada counties have a seat at the table when BLM engages in the planning?

Mr. FONTAINE. Under this proposal, I believe that we still have a seat at the table. But again, I think our concern is that that seat and our voice might be part of a much larger group of stakeholders,
and somehow backs away and diminishes the elevated role that county governments and local governments have in the process.

Mr. Labrador. Thank you.

Ms. Clarke, thank you for being here today. Will this proposal strengthen the relationships that states and local governments have spent years developing with local BLM officials?

Ms. Clarke. Thank you for the question. I believe absolutely not. I think it will go the opposite direction. Those relationships in the state are robust, but it is very disappointing when we sit and come to terms with one of our BLM counterparts and they say, “OK, now I have to go back to Washington and see if I can get this validated.” And very often they cannot. They come back with a counter-proposal.

I think this will just make that problem more prevalent.

Mr. Labrador. Thank you very much. I yield back my time.

Mr. Gohmert. Thank you. At this time, the Chair recognizes the Arkansas razorback gentleman, Mr. Westerman, for 5 minutes.

Mr. Westerman. Thank you, Mr. Chairman. I thank the witnesses for being here today. One of the most significant changes under Planning 2.0 would be moving to the implementation of a landscape-level management of resources. I don’t want to knock the landscape-level process, because it is used by large private landowners and you can look at individual management of stands and then the conglomeration into the landscape. So, the science of that I don’t necessarily disagree with, but we have to make sure that the process is still followed and that you still have the state and local-level input into that process, so that all the views are being represented and that we are not shifting power away from the local communities.

Mr. Fontaine, are you concerned that this change will centralize management planning in DC, rather than at the state and local level? Do you feel like state and local authorities will still have a role in this?

Mr. Fontaine. Congressman, thank you for the question. We are very concerned about how this might affect our local communities. We have a number of rural counties that contain small communities.

I will give you an example. Esmeralda County is one. It is a neighboring county to Clark County, our most populous county, with over 2 million people, completely different in terms of their interests and the impacts of BLM lands on their county. But Esmeralda County has 897 people. If somehow that county is included in a larger landscape-level planning initiative, we are very concerned about how the impacts to that local community in that county would be dwarfed by the larger economic analysis and impact analysis for landscape-level planning effort.

So, yes, we are very concerned. We have, again, a number of counties that would potentially be affected that way.

Mr. Westerman. Do you believe the current system benefits states by allowing for closer relationships with Federal officials in the state and field offices?

Mr. Fontaine. Again, thank you for the question, Congressman. Yes, we do. We have close relationships with our state office. We have district offices throughout our state, as well. And I know that,
while there may be differences between counties and the BLM officials at the local level from time to time, we encourage our member counties, as does the BLM encourage, I believe, their staff and management across the state, to work closely together to try to address those issues at the local level. We think that is very important, those relationships are absolutely critical.

Mr. Westerman. But do you think if the decision process is moved to DC or a more centralized process, do you think that would give outside groups, who may not have a local interest in the landscape, undue influence?

Mr. Fontaine. I certainly believe that opens the door to that possibility, very much so.

Mr. Westerman. I would like to ask Mr. Ogsbury and Ms. Clarke your thoughts on the BLM shift to landscape-level management.

Ms. Clarke. Thank you, I appreciate that opportunity. As I said, I have worked with many agencies, Federal and state, regarding land use planning and plans. It was delightful when I served at BLM to very often be out with local folks, sometimes elected officials, and to be told that BLM was a superb partner and asked, “What would it take to get the Forest Service to function the way the BLM did?”

I think you automatically see the difference. They have landscape-scale designs around those forests. They do not have any kind of geographic boundaries that align with political boundaries. While that is convenient for them and good for the forest, they are not the greatest of partners. I used to have my counterpart, Chief of the Forest Service, say this, “It is great to partner with the BLM, because they are open-armed.” But he says, “If you want to partner with the Forest Service, you have really got to want to partner, because we will not make it easy.”

Mr. Ogsbury. Chairman Gohmert, Congressman Westerman, members of the committee, WGA does not have a specific policy on the movement toward landscape planning. But as you so articulately observed, whatever process is pursued, it is critical to preserve the special role of governors and the substantive role in the BLM planning process.

Mr. Westerman. I am almost out of time, Mr. Chairman. I will yield back and hang around.

Mr. Gohmert. Thank you. We will have a second round, and I will now recognize Chairman Bishop for 5 minutes.

The Chairman. Thank you again.

Mr. Lyons, I have a couple of questions for you, one in response to your testimony to Chairman Gohmert just a second ago, that you were thinking of making comment periods in BLM 2.0 longer. So I guess the question is why, then, do you refuse to extend the comment periods about BLM 2.0 more than 30 days, even though you had requests from numerous special interest groups to do so?

Mr. Lyons. Thank you for that question, Mr. Chairman. We have gone through an extensive process in developing the rule and in seeking input from various sources. We have held workshops, we have held webinars, we have had a 60-day comment period, which was extended another 30 days. We do not want the process of
preparing the planning rules to last as long as it takes today to prepare a plan.

The CHAIRMAN. Even though you have had repeated requests for extended comment periods?

Mr. LYONS. We will continue to accept input from those who want to provide that input. In fact, we continue to look at that input and will factor that into the completion of the final rule.

The CHAIRMAN. I guess it comes back again to, it is not where the input is coming from, but who is actually making the decisions on this input, which is one of the other questions that we have coming up here.

Let me ask you one other question, as well. Are you aware of any instances, including the management of national monuments, where BLM is currently using Planning 2.0 procedures or where BLM has told communities that the Planning 2.0 procedures would be used, regardless of whether or not they had been finalized?

Mr. LYONS. Mr. Chairman, we have pilot-tested the application of Planning 2.0 principles. In particular, I would offer work that was done in western Montana, in and around the communities of Missoula. And the response was quite positive. In fact, if I may——

The CHAIRMAN. No, just answer the question. Have you done it?

Mr. LYONS. We have pilot-tested this in a number of places, and it has been a very positive response.

The CHAIRMAN. Have you told communities that you would use 2.0 regardless of whether they have been finalized or not?

Mr. LYONS. We did not use 2.0, we applied the principles and concepts as we are developing this to try to do what I think any prudent organization would do. We are testing the approach——

The CHAIRMAN. OK, come on, in English. The answer is yes, then?

Mr. LYONS. No.

The CHAIRMAN. The answer is no. So you have not implemented——

Mr. LYONS. No, we have not implemented Planning 2.0 yet. It is not the rule——

The CHAIRMAN. Except even though you said you have already pilot-tested——

Mr. LYONS. We have pilot-tested elements of it. Yes, sir.

The CHAIRMAN. And there has not been a situation in which you told communities you are going to be using this whether it is finalized or not?

Mr. LYONS. No, sir. We have not completed the rule.

The CHAIRMAN. OK. Then I hope some of the input we are having has been inaccurate.

Let me go back to that “deciding official” concept again. Mr. Fontaine, let me ask you the same thing I asked Mr. Ogsbury earlier on. Is it ever appropriate to have that defining official be somebody who lives outside the jurisdiction of either a county or a state, if the entire plan is within the jurisdiction of that county or state?

Mr. FONTAINE. Chairman Bishop, thank you for the question. I don’t understand how you can have a deciding official make a decision about a place where they don’t have knowledge, haven’t resided, haven’t spent time with the community, or haven’t worked with that community to understand what the needs are in that——
The CHAIRMAN. You have never seen the administrative state in action, then.

Ms. Clarke, let me come back to you on that. Do you have any concerns on how BLM will select these deciding officials under this new plan?

Ms. CLARKE. I have grave concerns about it, because I do not think there is anything I have seen in the rule that limits who that might be. And I do not see anything that says it needs to be someone local, someone who understands the culture.

But, there has been discussion here about “we are not going to diminish the role of the cooperators.” Yet, I think it will fundamentally be diminished if, after you have talked and worked with them, they pull in someone to decide who has never been party to those conversations. So, it is another way to really diminish the input of state and local governments.

The CHAIRMAN. Let me go back to another one, then. States do have primacy over allocation and administration of water resources within state borders. So, Mr. Lyons, the BLM proposals here indicate the agency may add provisions to its RMPs to increase agency involvement in water management. Specifically, what aspects of water management allocation would BLM incorporate into the future in new or amended RMPs?

Mr. LYONS. Mr. Chairman, I am actually not aware of that, so I am going to have to do a little homework and try to understand where that impression has come from.

The CHAIRMAN. Well, good. If we gave you an extended comment period, maybe you could answer that.

Mr. LYONS. Thank you, sir.

The CHAIRMAN. I see a yellow light over there. Let me yield back and see how many other people have something else to go with.

Mr. GOHMERT. Thank you. The Chair yields back. I am struggling here. Given the significant impact that this rule is going to have on the 12 western states where the Federal Government, the BLM, owns so much of that land, and given the disproportionate impact that this rule 2.0 is going to have on these 12 states, why did the BLM choose not to travel to those states and have field hearings and hear directly from the people most affected?

And, as Mr. Fontaine points out, some of these counties, because there is so much Federal land in their county, do not have the resources to come to Washington to lobby like other special interest groups do. Why was there not even a trip to the sites that are going to be so materially affected before this was put out as the rule?

Mr. Lyons?

Mr. LYONS. Yes, Mr. Chairman. I would say this. We have done outreach, as I said before. We have sought input. We have gotten over 6,000 comments on the rule, which I am glad to provide for the record, if you like. Our intent is not to have people come to Washington. Our goal is to engage with people on the ground. That is the way the plans would be implemented. It is no different than the way things occur now with regard to cooperators.

Mr. GOHMERT. That is what we are worried about.

Mr. LYONS. I would emphasize that we have worked through our resource advisory committees—and again, I can provide this infor-
information for the record—who are locally representative, to secure additional input and feedback on the rules, as well. We are trying to engage at that level, and to engage as well on a regional level to secure information that will help us improve the rule.

This conversation is interesting and helpful in helping us to decide how we are going to finalize the rule. As I indicated to the Chairman, we are not done yet, and we certainly appreciate the feedback.

Mr. Gohmert. Well, what about extending the rule, or extending the comment period for the rule itself? Since you and Director Kornze talked and you think it would be a good idea to extend it within the rule, how about extending the comment period for the rule?

Mr. Lyons. Frankly, Mr. Chairman, I think this is a conversation to be had with the Director, but I would suggest that we have done our utmost over the period of time that we have been working on this rule to try to secure additional input, and now it is time to finalize a rule based on all the input we received and then apply it.

Mr. Gohmert. You are hearing from people who represent areas in the West. You are hearing from others saying, “Give us more time.” We invited Director Kornze, and they sent you to answer for him. That is why you are being asked the question. You are answering for the Director, you are the one they sent. So, I would appreciate it if you would not pawn it off on the Director when he sent you to answer.

It sounds like you are saying, “We are not extending the comment period. We have our little bevy of folks around here in Washington; we haven’t been to those areas. We are going to materially impact them, and we don’t care. We have our plan, and we may extend the comment period within the plan for other rules, but the big killer plan, we are going to leave it right where it is. We are satisfied with our little crew right here in Washington.” That is the impression you are giving. Then, when you throw it back to Director Kornze, when he sent you to testify on his behalf, it gives me a lot of concern.

Mr. Ogsbury, aren’t the Western Governors pleading for more comment period before 2.0 is put in as a finalized rule?

Mr. Ogsbury. Chairman Gohmert and members of the committee, the Western Governors are pleading for BLM to take a step back and take their concerns into account.

Mr. Gohmert. Let me just say this, since my time is running out. It looks like we are heading to a CR or an omnibus, and the Republican leaders come to people like me and they say, “Look, we need you and we need other conservatives like you. What will it take?” And I tell you what. We are about to get to the point where it is going to take gutting BLM’s leadership until we get people who will be responsive to the people that they are gutting. That may be what I need to support, the CR or omnibus, if we do not get more responsiveness out of BLM.

At this time, the Chair recognizes Mr. Labrador for 5 minutes.
Mr. Labrador. Thank you, Mr. Chairman.
Ms. Clarke, just to follow up on the questions I was asking you—do you think that the shift to multi-state landscape management benefit the actual landscapes?

Ms. Clarke. Not necessarily, because I believe that the best stewardship of the land comes when there is a partnership that empowers local people to be engaged, and that has solicited their commitment to the plan. If they are a part of it, I think they will honor it; and they will do their utmost to take care of the land.

The land is often where they live, where they play, and, for many, where they make a living. I think they will be good stewards. I think if you go to landscape level you lose that very personal touch. Unlike the Forest Service, that can draw a circle around their land, the BLM land is so fragmented that BLM has to partner with its neighbors. This is not going to lead to good partnership.

Mr. Labrador. Thank you. Do you think there is any statutory authority for this change?

Ms. Clarke. No, I do not. I think this is moving beyond the statute, and kind of ignoring the statute.

Mr. Labrador. OK. Mr. Lyons, you state that the proposed rule is intended to “improve opportunities for state and local government, stakeholders, and the public to better provide input to plans from the outset.” Based on the comments from the witnesses here today, and the comments submitted to BLM by the state of Idaho, it appears that the proposal fails to meet that goal.

Based on the fact that state and local elected officials from all over the country are commenting on the rule and expressing concerns that their ability to participate in the planning process with BLM will be reduced, does BLM still contend that the draft rule satisfies the requirements of FLPMA?

Mr. Lyons. I am confident, Congressman, that the proposed rule is consistent with FLPMA and our authorities. My takeaway is we have a lot of work to do to help correct some misperceptions and misunderstanding of the rule, and——

Mr. Labrador. You are smarter than all the governors and all the county commissioners. You just need to convince them of your brightness.

Mr. Lyons. No.

Mr. Labrador. Is that what you are telling us?

Mr. Lyons. No, no. What I am saying, Congressman, is that we have work to do to consider all the input that was provided today and has been provided throughout this period, and to see, to what extent we can address those concerns, but I am confident——

Mr. Labrador. You have the Western Governors’ Association, all the western governors, telling you that it does not comply with FLPMA. Their concern about their inability to be able to participate in the process—that you are actually taking their ability away that FLPMA clearly provides. It is not like we are making it here out of whole cloth. We are not just inventing it from the dais. We are actually reading the statute that says that they have to have significant impact and significant input.

Mr. Lyons. Well, I would suggest, Congressman, that everyone is rendering opinions, including myself. I am not an attorney. I will let our solicitor’s office confirm that, if that is helpful.
Mr. LABRADOR. No, it is not helpful. The state of Idaho has requested that BLM discard the proposed rule and that a new proposal be drafted with the BLM appropriately engaging the states. Has BLM received similar requests from other states?

Mr. LYONS. We have heard from a number of states who are concerned about the rule. Yes, sir.

Mr. LABRADOR. And have they specifically made that request to just start the process over?

Mr. LYONS. I would have to check on the specifics, Congressman.

Mr. LABRADOR. Do you know, Mr. Oggsbury, if other states have made the same request?

Mr. OGSBURY. I believe the state of Wyoming has asked for a withdrawal of the rule. The state of Utah has asked for a withdrawal of the rule, as well.

Mr. LABRADOR. But Washington knows better, right?

Mr. Lyons, does BLM plan to comply with these requests, or is the agency committed to finalize the draft rule?

Mr. LYONS. I think we are going to do everything we can, Congressman, to address the concerns that have been raised, and attempt to complete the rule.

Mr. LABRADOR. Mr. Lyons, is BLM using these proposed regulations in the development of the management plan for Oregon National Monument?

Mr. LYONS. I am not aware of that. I can't answer that, sir.

Mr. LABRADOR. OK. So, your testimony today is that you are going to take these comments back, but you are going to do nothing with it, because you are going to continue with the proposed rule; correct?

Mr. LYONS. That is not what I said, sir.

Mr. LABRADOR. I want to be clear. Are you willing to start all over with this rule?

Mr. LYONS. No. What I said was, we are willing to listen as we have, and will continue to do. We are going to listen to the comments that have been provided——

Mr. LABRADOR. And what are you going to do with those comments?

Mr. LYONS. Attempt to address the issues to the best of our ability in attempting to finalize the rule.

Mr. LABRADOR. So, you are going to attempt to educate us on the wisdom of Washington, DC, because you are not going to do anything to change the proposed rule. I am asking a serious question. Are you going to do anything to change the proposed rule?

Mr. LYONS. I think we are in the process of working that through right now, sir.

Mr. LABRADOR. All right. Thank you very much.

Mr. GOMERT. The gentleman from Arkansas is recognized for 5 minutes.

Mr. WESTERMAN. Thank you again, Mr. Chairman. Mr. Lyons, welcome to the committee. In full disclosure to the committee, the last time I think Jim and I were in the same room, he was a visiting professor at Yale when I was taking a policy class; so I am glad you gave me a good grade in the class.

Mr. LYONS. Where did I go wrong?
Mr. WESTERMAN. I remember from that class one of the discussions we had was in resource management, that government is more effective when it was closest to the people. That was a topic we discussed quite a bit. I still believe that is true and hold true to that. I am very concerned about when we enact policy that moves government or moves decisions further away from the people.

I am also concerned that when we are looking at resources, we get the policy and the science on the same page. As I said earlier, the science behind landscape management is not all bad, you get some benefits from things like landscape-wide stewardship contracting, or areas to maximize the use of the resource much better. But I am really concerned if we do not do this correctly, then we will be taking the decision away from the people who are most affected by the decision; and the decisions will be based more on politics, rather than science. And in the end, the American public loses because our resources are not managed well.

Could you just elaborate a little bit on how we can be assured that this rule will still keep decisions local, that there will be collaborative efforts, and that those that are most affected by these management decisions will have, not only a seat at the table, but the front seat at the table.

Mr. LYONS. Thank you, Congressman. I appreciate the opportunity, and I am proud to see one of my students, at least, has been successful.

What I would say is that I agree completely that local input is essential to making sound resource management decisions. You have heard me say that before. I think, unfortunately, the way in which this rule has been characterized misrepresents, at least from my perspective—and I realize there are different perspectives in the room—how this would work.

The goal here is to provide additional opportunities for input up front. That is what the assessment process is about, so everyone has the same basic information going into the planning process.

We would require, before plan alternatives are developed, that there be a discussion with all the local interests, all interests, including locally elected officials and cooperators, about the construction of those alternatives; and the responsible official who is developing the plan has an obligation to explain why those alternatives fit with the resource conditions and the baseline information provided. I think that helps improve local collaboration, coordination, and should produce a better product.

What was indicated in the pilot we did in Missoula was that that was, in fact, the case. In fact, many of the issues that probably would have been exposed much later in the process surfaced early, and discussions began among various parties toward resolving those issues, and they were pleased with the outcome.

We are trying to find ways to expedite a process that should be driven by local interests and local concerns, recognizing that these are public lands and every American may have an interest in these lands. But local interest, locally elected officials, cooperators, have a unique role to play. FLPMA acknowledges that, and that is why they have a seat at the table. Or, put another way, that is why they are in the tent. They are a part of the process from start to
finishes, and that would continue under this proposed rule. That would not change.

So, I think the perception that this drives all decisions back to Washington is a gross misunderstanding of what the rule intends to achieve. It is, in fact, intended to capitalize on lessons learned over a long period of time in planning to respond to what we heard from local interests and from our own planners, who said we have to change the process.

In fact, in part it reflects a conversation that Director Kornze relayed to us as we began this process. In one of his first meetings, he met with Governor Herbert and Secretary Jewell. One of the requests that Governor Herbert made was, “Can you please fix this process? It just takes too long, and by the time you are done it is irrelevant.” And this is what we are seeking to do in the changes we have made in this proposed rule.

Mr. WESTERMAN. I yield back.

Mr. GOHMIERT. All right, thank you. I thank the witnesses for their testimony. Thank you for being here.

Members of the committee may have some additional questions. Under Committee Rule 4(h), they may have some written questions to submit, in which case the record will be held open for 10 additional days. The witnesses agree to respond in the event there are questions—Ms. Clarke, Mr. Lyons, Mr. McAfee, Mr. Fontaine, and Mr. Ogsbury.

All right, thank you, everyone. For the record, we have comments from the Nevada Association of Counties dated May 25, 2016, and from the National Association of Counties, a letter dated June 21, 2016. Without objection, those will be submitted as part of the record, as well.

If there is no further business—hearing none, without objection, the committee stands adjourned.

[Whereupon, at 11:25 a.m., the subcommittee was adjourned.]
5. Letter dated May 12, 2016 addressed to Neil Kornze, Director of the Bureau of Land Management, from the Park County Board of Commissioners located in Colorado, expressing support for BLM Planning Rule 2.0.

6. Letter dated June 21, 2016 addressed to Chairman Gohmert and Ranking Member Dingell from the National Association of Counties, providing comment on BLM Planning Rule 2.0.


9. Letter dated May 25, 2016 addressed to Neil Kornze, Director of the Bureau of Land Management, from Director Clarke, providing comment on BLM Planning Rule 2.0.