

THE BUREAU OF LAND MANAGEMENT'S PLANNING 2.0 INITIATIVE

HEARING BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, FOREST, AND MINING OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

JUNE 21, 2016



Printed for the use of the
Committee on Energy and Natural Resources

Available via the World Wide Web: <http://fdsys.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

21-992

WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON ENERGY AND NATURAL RESOURCES

LISA MURKOWSKI, Alaska, *Chairman*

JOHN BARRASSO, Wyoming	MARIA CANTWELL, Washington
JAMES E. RISCH, Idaho	RON WYDEN, Oregon
MIKE LEE, Utah	BERNARD SANDERS, Vermont
JEFF FLAKE, Arizona	DEBBIE STABENOW, Michigan
STEVE DAINES, Montana	AL FRANKEN, Minnesota
BILL CASSIDY, Louisiana	JOE MANCHIN III, West Virginia
CORY GARDNER, Colorado	MARTIN HEINRICH, New Mexico
ROB PORTMAN, Ohio	MAZIE K. HIRONO, Hawaii
JOHN HOEVEN, North Dakota	ANGUS S. KING, JR., Maine
LAMAR ALEXANDER, Tennessee	ELIZABETH WARREN, Massachusetts
SHELLEY MOORE CAPITO, West Virginia	

SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING

JOHN BARRASSO, *Chairman*

SHELLEY MOORE CAPITO	RON WYDEN
JAMES E. RISCH	DEBBIE STABENOW
MIKE LEE	AL FRANKEN
STEVE DAINES	JOE MANCHIN III
BILL CASSIDY	MARTIN HEINRICH
CORY GARDNER	MAZIE K. HIRONO
JOHN HOEVEN	ELIZABETH WARREN
JEFF FLAKE	
LAMAR ALEXANDER	

COLIN HAYES, *Staff Director*

PATRICK J. MCCORMICK III, *Chief Counsel*

MICHELLE LANE, *Professional Staff Member*

ANGELA BECKER-DIPPMANN, *Democratic Staff Director*

SAM E. FOWLER, *Democratic Chief Counsel*

SPENCER GRAY, *Democratic Professional Staff Member*

CONTENTS

OPENING STATEMENTS

	Page
Barrasso, Hon. John, Subcommittee Chairman, a U.S. Senator from Wyoming	1
Murkowski, Hon. Lisa, a U.S. Senator from Alaska	1

WITNESSES

Kornze, Hon. Neil, Director, Bureau of Land Management, U.S. Department of the Interior	7
Magagna, Jim, Executive Vice President, Wyoming Stock Growers Association	15
Ogsbury, James, Executive Director, Western Governors' Association	20
Sgamma, Kathleen, Vice President of Government & Public Affairs, Western Energy Alliance	27
Squillace, Mark, Professor of Law, University of Colorado Law School	33

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

American Exploration & Mining Association:	
Letter for the Record	88
American Petroleum Institute:	
Statement for the Record	122
Barrasso, Hon. John:	
Opening Statement	1
Washington Post article dated June 20, 2016 entitled "Interior chief warns 70,000 employees: Sexual harassment is 'completely out of line with our values'"	52
Kane County, Utah Board of Commissioners, et al:	
Letter for the Record	125
Kornze, Hon. Neil:	
Opening Statement	7
Written Testimony	10
Responses to Questions for the Record	72
Magagna, Jim:	
Opening Statement	15
Written Testimony	17
Murkowski, Hon. Lisa:	
Opening Statement	1
Written Statement	3
Ogsbury, James:	
Opening Statement	20
Written Testimony	22
Response to Question from Senator Gardner	58
Sgamma, Kathleen:	
Opening Statement	27
Written Testimony	29
Responses to Questions for the Record	86
Squillace, Mark:	
Opening Statement	33
Written Testimony	35
Supplemental Letter for the Record	132

THE BUREAU OF LAND MANAGEMENT'S PLANNING 2.0 INITIATIVE

TUESDAY, JUNE 21, 2016

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:39 p.m. in Room SD-366, Dirksen Senate Office Building, Hon. John Barrasso, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. This Subcommittee meeting will come to order.

The purpose of today's hearing is to examine the Bureau of Land Management's proposed rule which is called Planning 2.0.

Before I give my opening statement I would like to turn the time over to the Chairman of the Committee, Senator Murkowski.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

The CHAIRMAN. Senator Barrasso, thank you. I apologize to our witnesses and to those in attendance today. I have a commitment with the Inter-parliamentary group from Canada, and I am supposed to speak over there as well.

I would like to, if I may, take a couple moments and just enter this statement into the record, but first thank all the witnesses for joining us here this afternoon.

As you state, Mr. Chairman, the focus of today's hearing is to provide oversight on the BLM's proposed land use planning rule, Planning 2.0, which will make broad changes to how the agency will issue resource management plans moving forward.

For an initiative that claims to engage state and local governments early in the process, Planning 2.0 is certainly taking a lot of heat right now.

The BLM outlines its engagement process online including a webinar and two public meetings that occurred prior to the development of the proposed rule. While the agency may feel that they met the FLPMA requirements for outreach, our state governments, especially my colleagues in Alaska, largely disagree. Instead they have told me their voices have been ignored as evidenced by the product BLM noticed in the Federal Register.

BLM is currently obligated to establish management plans that are consistent with state, local and tribal management practices. Under the proposed rule the time period for consistency review is limited to 60 days and the scope is restricted to officially approved and adopted.

This is particularly troublesome for folks in Alaska as the BLM has yet to fulfill Alaska's entitlement requirements, thus making it impossible for the state to adopt and improve plans for lands it has yet to receive.

As written, the proposed rule makes some sweeping changes to both the current resource management planning process and the opportunities for public engagement. The drastic changes in the process and the elimination of opportunities for formal, public comment, along with the exclusion of several transparency requirements are alarming to say the least.

While BLM attempts to justify many of these changes in the name of streamlining, I am concerned the long-term result may be a longer process with state, local and tribal governments, as well as interested stakeholders, deprived of opportunities to engage in the process in a meaningful way.

In its proposed rule, BLM includes the definition of mitigation. To explain that mitigation includes the sequence of avoiding impacts, minimizing impacts and compensating for remaining unavoidable impacts.

For the first time in a proposed planning regulation, BLM specifically states, "By including this proposed definition in the planning regulations, the BLM acknowledges that this sequence also applies to the planning process."

The emphasis on mitigation, specifically as a means of compensating for unavoidable impacts, is problematic as it moves the agency away from its mission of multiple use.

Finally, I would like to speak to one of the purported primary goals of the proposed rule which is to enable the BLM to readily access landscape scale resource issues. While I concur with the BLM that the current planning process is far from perfect, I am not convinced that the solution to all present planning issues lie in landscape scale plans as we have seen in the sage grouse plan of late.

I am particularly concerned about including Alaska in multiple state plans. While Alaskans certainly love our neighbors in the lower 48, there are certain Federal laws that apply only to Alaska that do not apply elsewhere and specifically cover Federal lands. Thus, this could prove quite problematic in developing a broad RMP that covered say our migratory bird plan for the Western United States.

So again, Mr. Chairman, I appreciate you giving me an opportunity to say a few words. I thank you for conducting this very, very important hearing on these issues and thank the witnesses again.

[The written statement of Senator Lisa Murkowski follows:]

**Statement of Chairman Lisa Murkowski
Oversight Hearing on the BLM Planning 2.0 Initiative
Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
June 21, 2016**

Thank you Chairman Barrasso for holding this hearing, and I'd like to thank all of the witnesses for joining us here today as well.

As you know, the focus of this hearing is to provide oversight on the BLM's proposed land use planning rule—known as “Planning 2.0”—which will make broad changes to how the agency will issue resource management plans moving forward.

For an initiative that claimed to engage state and local governments early in the process, Planning 2.0 sure has taken a lot of heat. The BLM outlines its engagement process online, including a webinar and two public meetings that occurred prior to the development of the proposed rule.

While the agency may feel that they met the FLPMA requirements for outreach, our state governments, especially my colleagues in Alaska, largely disagree. Instead, they have told me that their voices have been ignored, as evidenced by the product BLM noticed in the *Federal Register*.

BLM is currently obligated to establish management plans that are consistent with state, local, and tribal management practices. Under the proposed rule, the time period for consistency review is limited to 60 days, and the scope is restricted to officially approved and adopted. This is particularly troublesome for my state of

Alaska, as the BLM has yet to fulfill Alaska's entitlement requirements, thus making it impossible for the state to adopt and approve plans for lands it has yet to receive.

As written, the proposed rule makes sweeping changes to both the current resource management planning (RMP) process and the opportunities for public engagement. The drastic changes in the process and the elimination of opportunities for formal public comment, along with the exclusion of several transparency requirements, are alarming to say the least. While BLM attempts to justify many of these changes in the name of streamlining, I am concerned that the long-term result may be a longer process, with state, local, and tribal governments, as well as interested stakeholders, deprived of opportunities to engage in the process in a meaningful way.

In its proposed rule, BLM includes the definition of mitigation "to explain that mitigation includes the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts. For the first time in a proposed planning regulation, BLM specifically states, "by including this proposed definition in the planning regulations, the BLM acknowledges that this sequence also applies to the planning process." The emphasis on mitigation, specifically as a means of compensating for "unavoidable impacts" is problematic, as it moves the agency away from its mission of multiple-use.

Finally, I would like to speak to one of the purported primary goals of the proposed rule, which is to "enable the BLM to readily address landscape-scale resource issues." While I concur with the BLM that the current planning process is far from perfect, I am not convinced that the solution to all present planning issues lie in

landscape-scale plans, as we have seen in the sage grouse plan of late. I am particularly concerned about including Alaska in multiple-state plans. While Alaskans certainly love their neighbors in the lower 48, there are certain federal laws that apply only to Alaska that do not apply elsewhere, and specifically cover federal lands. This could prove quite problematic in developing a broad RMP that covered, say, a migratory bird plan for the western United States.

Again, I appreciate you all taking the time to be here today, and I look forward to hearing your testimony.

I'll now turn things back over Chairman Barrasso.

Senator BARRASSO. Thank you very much, Madam Chairman. I appreciate you taking the time to be here. I think it is going to be an interesting hearing because the BLM has been describing this Planning 2.0 as a simple initiative to so-called increase public involvement and incorporate the most current data and technology into its land use planning.

There is no doubt that the BLM's current planning process is often cumbersome. It is inefficient. But I am concerned that instead of actually increasing public involvement and streamlining the planning process, this Planning 2.0 process will be less efficient, will be more costly and will marginalize experts who are integral to public land management. Those are real concerns, and I hear them in Wyoming.

The agency seems to think that the proposed rule is a simple clarification of the planning process but this is not the case. What Planning 2.0 proposes would fundamentally alter the way that state, local, tribal, local governments, stakeholders and general public engage in the public land management planning process.

As written, Planning 2.0 will effectively ignore expert knowledge in both local agency offices and among local land users, and I believe, compromise the ability of state and local governments to represent the people and the resources in their own districts.

In an effort to make its goal of a transition to what is called, "landscape scale planning," BLM proposes to shift authority from local and district offices to Washington, DC. Now I appreciate that the BLM wants to make management plans more cohesive among local offices, but developing sweeping landscape-scale plans from the Director's office in Washington, DC, I believe, is going to result in a failure to utilize valuable, localized knowledge of ecosystems and resources. This change would result in plans that do not reflect the on the ground realities and ultimately, will disenfranchise knowledgeable, local agency employees.

It won't just be agency personnel who are overlooked. In the proposed rule, BLM seems to recognize the need for improved stakeholder involvement in the planning process, but unfortunately, the proposed changes will, in my mind, decrease stakeholder involvement at crucial points in the planning process and will further extend planned development times that are already much too long.

The BLM seems to think that the addition of the "planning assessment" period at the beginning of the planning process would help agency officials understand how the public feels. What the agency clearly fails to realize, however, is that if planning is kept at the local and the state offices' level, then officials developing the plans should already be aware of public opinion before the process even begins.

Formalizing this preemptive planning assessment period seems to be a justification for regional or Federal agency employees to implement a top-down land management agenda.

Introduction of public comment on preliminary alternatives before a draft resource management plan is published will only increase the time it takes to complete a resource management plan and, in my view, will provide no added benefit. How can the public or any relevant stakeholder be expected to comment on proposed

alternatives when the details of the plan have yet to be determined?

I am not sure if Senator Wyden is a bit delayed. He may come, and I will give him an opportunity at that point to make opening remarks.

Senator Daines, at this time, would you like to add any opening remarks or to wait until the questioning?

Thank you.

I appreciate the wonderful witnesses who are here with us today.

We are going to have Mr. Neil Kornze, who is the Director of the Bureau of Land Management; Jim Magagna, who is the Executive Director of the Wyoming Stock Growers Association; Mr. James Ogsbury, who is the Director of the Western Governors' Association; Ms. Kathleen Sgamma, who is the Vice President of Public and Government Affairs for the Western Energy Alliance; and Mr. Mark Squillace, who is a Professor of Law at the University of Colorado Law School.

Before turning to our first witness, I would like to take a moment to thank my friend, Jim Magagna, for being here today. A native of Rock Springs, Wyoming, Jim has served as the Executive Director for the Wyoming Stock Growers Association since 1998. He is a veteran witness before congressional Committees. He provides an invaluable perspective on all things related to agriculture and public land management. So I am happy, Jim, that you could join us today to share your thoughts with us and with the rest of the panel.

I would like to remind the witnesses that your full written testimony will be made part of the official hearing record. Please keep your statements to five minutes so that we may have time for questions.

Director Kornze, please proceed.

STATEMENT OF HON. NEIL KORNZE, DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. KORNZE. Thank you, Chairman Barrasso and members of the Subcommittee. I appreciate the opportunity to provide testimony on the Bureau of Land Management's proposed update to its land use planning rule.

The BLM manages ten percent of the land in the United States and 30 percent of the nation's minerals and soils.

Land use plans form the basis for every on-the-ground action that the BLM authorizes or undertakes. That's why it's critical, not just to the BLM but to communities throughout the nation, that we have an effective land use planning process that includes meaningful public process.

Since the BLM first implemented its land use planning rule in 1979, pressures on BLM-administered lands have increased and management conflicts have grown. As a result, the current land use planning process encounters more delays, higher expenses and expanded legal challenges.

We have heard from numerous governments and individuals that the BLM's notoriously long planning processes make them feel disconnected from the agency's work.

One of the first meetings I took as the head of this agency was with Governor Herbert of Utah. In that conversation he told both me and Secretary Jewell that the BLM's planning process is broken because completing the land use plan could take a decade or more. He said something must be done to make these processes more timely and transparent. I understand his concerns, and I agree. It's essential that we have a planning process that is timely, open and focused on issues that matter to the people of each of the communities that are impacted.

That's why we started the Planning 2.0 initiative. Input from Governor Herbert and many others served as a catalyst for the BLM to modernize its land use planning process.

The proposed rule under consideration today is the culmination of over two years of outreach and discussion with state and local governments, communities and the public. During those two years the BLM held public meetings and accepted comments from more than 6,000 local governments, groups and individuals. With this updated rule the BLM aims to address the concerns of governments and the public by accomplishing two primary goals.

First, the proposed rule would establish more meaningful opportunities for governments and the public to be involved earlier and more often in the land use planning process. By providing earlier and more regular check-ins and opportunities for dialog, we believe that our planning process will be more transparent and more relevant to the challenges facing counties and towns across the country.

Second, by building our planning efforts on a more complete set of information, we are confident that the need for late in the game supplementation will be greatly diminished. In turn, we will be able to finish our planning efforts in a timelier fashion and put our energy and staff time into on-the-ground projects with our partners.

Under the proposed rule, government entities that have either relevant jurisdiction or special expertise would continue to be invited to participate as cooperating agencies. Cooperating agencies work closely with BLM in every stage of the planning process to identify issues that should be addressed, to collect and analyze data, to develop and evaluate alternatives and to review preliminary documents.

This unique partnership ensures that the BLM has all the information necessary to develop a land use plan that is responsive to the needs and concerns of local communities. The BLM is committed to continuing its close collaboration with these government entities as part of the land use planning process.

Now our stakeholders told us that there was room for improvement in the way that we work, and we agree. Without close working relationships with communities that we serve, the BLM cannot develop and maintain appropriate and effective plans. The updated approach that we have in front of us today would provide for more public involvement earlier in the process, allow the BLM to better address local needs and to deal with changing land and resource conditions.

Updating our process will more fully involve local governments and the public and ensure that the BLM will have a stronger hand

in maintaining and living up to its multiple use and sustained yield mission.

Thank you again for the opportunity to be with you today, and I would be glad to answer questions from the Committee.

[The prepared statement of Mr. Kornze follows:]

**Testimony of
Neil Kornze
Director
Bureau of Land Management
U.S. Department of the Interior
Before the
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests and Mining**

Regarding

The BLM's Proposed Planning Rule

June 21, 2016

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 two 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 ten 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 included 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 timeliness 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 the 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 & 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 website.

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 two 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.

Senator BARRASSO. Thank you very much, Mr. Kornze.
Mr. Magagna?

**STATEMENT OF JIM MAGAGNA, EXECUTIVE VICE PRESIDENT,
WYOMING STOCK GROWERS ASSOCIATION**

Mr. MAGAGNA. Thank you, Mr. Chairman, and thank you for your kind words of introduction.

I believe it's useful to our discussion of our concerns with the planning rule to place it in the context of the evolution of the relationship between the BLM and the public land ranching industry.

Prior to the middle of the last century, grazing was considered just a use of the land. As we evolved during the 1960's and beyond with some of the environmental laws that were passed in this country, we came to recognize grazing, not just as a use of the land, but as a tool for managing the land and real strong partnerships developed between public land ranchers and local BLM range personnel and BLM decision makers based on bringing some new science to the practice of grazing and working together on the land, not on paper, but on the land. And it, livestock grazing, was recognized within the agency itself as being an important tool in meeting the resource management goals of the agency.

We are very concerned as an industry that several of the changes proposed in Planning 2.0 will further erode this partnership with the agency that worked toward achieving sustainable resource management.

A central component of Planning 2.0 includes a concept of landscape level planning. We find several dangers inherent in this approach. Attempts to implement broad management plans will necessarily often result in less attention to the resource management needs of a particular land area. Landscape level planning moves the input in decision-making process further from those agency personnel with a working knowledge of the resource, the resource challenges and the resource dependent community. The removal of well-defined roles of BLM state directors and field office managers in favor of "deciding officials" and responsible officials, only serves to increase the uncertainty and distrust that had been growing among resource dependent constituencies. Landscape level planning will significantly reduce the ability of local governments, resource dependent users such as grazing permittees, and the local public to engage in and influence the planning process.

A second component of Planning 2.0 addresses so-called improved opportunities for public input. While Planning 2.0 may engage a greater breadth of the public to provide input, it actually significantly lessens the ability of those most directly involved in multiple use of the resource and, therefore, most significantly impacted to have meaningful substantive impact. One example of this is the reduction in the minimum formal comment periods from 90 days to 60 days in terms of the draft proposed plan. Even today with 90 days there are typically requests for extended periods of time. Those are often granted. If we reduce this to 60 days, those requests will increase.

We're expediting the process but only in terms of the opportunities for public input. In part because grazing permittees, many of whom who have multiplied generational commitments to steward-

ship for the public lands, have been relegated to no greater opportunity for engagement than that of the public. We have become increasingly dependent on state and local governments to represent our interest in the planning process. While the rule acknowledges the role of these local entities, it is filled with undefined terms that provide BLM multiple escape routes from full cooperation. These include cooperation where possible and appropriate, collaboration as feasible and appropriate and consistency to the maximum extent that the BLM finds practical.

Another goal of Planning 2.0 is to increase the agency's ability to respond to social and environmental change in a timely manner, we find it very difficult to reconcile this stated goal with the BLM's mandate to manage for multiple use and sustained yield.

Finally, BLM Planning 2.0 replaces the requirement that BLM identifies a single, preferred alternative with the opportunity to identify one or more preferred alternatives. This, again, will further burden affected constituencies in providing input and will actually extend rather than shorten that process.

So in summary, Mr. Chairman, members of the Committee, beyond Planning 2.0 will complicate effective resource planning while reducing opportunities for meaningful public and local government input and lessening local agency decision-making authority. It will further challenge the public land rancher while eroding our partnership with local BLM personnel in ensuring resource sustainability that contributes to the long term viability of our industry.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Magagna follows:]

SENATE ENERGY & NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON PUBLIC LANDS, FORESTRY & MINING
HEARING ON BLM PLANNING 2.0

TESTIMONY OF
JIM MAGAGNA
EXECUTIVE VICE PRESIDENT
WYOMING STOCK GROWERS ASSOCIATION

Mr. Chairman and Members of the Committee, I am Jim Magagna, a life-long Wyoming public land rancher. For the past 17 years I have held the position of Executive Vice President of the Wyoming Stock Growers Association (WSGA). The Association has been a voice for Wyoming's ranching industry since 1872. I have also served as President of the National Public Lands Council and as President of the American Sheep Industry Association. I am currently serving on a FACA Committee where we have spent the past four years advising the U.S. Forest Service on implementation of their 2012 Planning Rule. To the extent that there are similarities between these two rules, my comments will reflect that experience. I appreciate this opportunity to testify before you today.

Livestock grazing is perhaps the earliest and most widespread use of public lands in the west since the founding of our nation, predating the establishment of the Bureau of Land Management. I believe it is useful to understanding our concerns with the planning rule to place it in the context of the evolution of the relationship between the BLM and the public land rancher. Prior to the mid-20th century, public land grazing was viewed primarily as "a use of the land". The role of BLM was focused on the issuance of permits and assuring general compliance with their terms and conditions.

Beginning in the 1960's, BLM range professionals became more active as "partners" with ranchers in on-the-ground management. This partnership led to more intense management of livestock and increased productivity of the land. Advances in range science influenced livestock management. As we moved toward the 21st century, livestock grazing came to be recognized not only as a use of the land but as an important tool in meeting the resource management goals of the agency.

Today, increased federal regulatory burdens and incessant legal challenges to agency decisions from a radical element within the environmental community threaten this partnership. While we commend the BLM for considering the need to make their planning process more responsive to the public, WSGA is very concerned that several of the changes proposed in Planning 2.0 will further erode our partnership with the agency in achieving sustainable resource management.

A central component of Planning 2.0 introduces the concept of landscape level planning. We find several dangers inherent in this approach. For those most knowledgeable about the resources in any given area, individual areas are most notable for their uniqueness and their unique management challenges. Attempts to implement broad management plans

will necessarily often result in less attention to the resource management needs of a particular area.

Landscape level planning moves the input and decision-making processes further from those agency personnel with a working knowledge of the resource and resource challenges. These same individuals best understand current multiple uses of these resources and the potential social and economic impacts of plan components. The removal of the well-defined roles of BLM State Directors and Field Office Managers in favor of “Deciding Officials” and “Responsible Officials” only serves to increase the uncertainty and distrust that has been growing among resource-dependent constituencies.

Landscape level planning will significantly reduce the ability of local governments, resource dependent users such as grazing permittees and local publics to engage in and influence the planning process. For all of these reasons, WSGA urges that effective planning be conducted at the smallest scale compatible with effective use of resources. In Wyoming that is the field office level.

A second component of Planning 2.0 addresses improved opportunities for public input. WSGA’s analysis confirms our early concern that, while Planning 2.0 may encourage a greater breath of the public to provide input, it actually lessens the ability of those most directly involved in multiple uses of the resource and therefore most significantly impacted to have meaningful substantive impact. Furthermore, we find no recognition of the particular need for agency planners to reach out to constituencies that have a more formal relationship on the affected lands through permits, leases, rights of way and other legal instruments including, in our case, the Taylor Grazing Act.

In addition to the challenges imposed by the landscape scale approach discussed above, minimum formal comment periods have been significantly reduced—from 90 days to 60 days on draft resource management plans and from 90 days to 45 days on draft plan amendments. This becomes even more problematic as plans become more generic due to the landscape level approach. As planning documents have become more complex and lengthy, even under the current planning rule we are most often compelled to seek extensions to the comment periods to allow for adequate analysis.

In part because grazing permittees, many of whom have multiple generational commitments to stewardship of the public lands, have been relegated to no greater opportunity for engagement than that of “the public”, we have become increasingly dependent on the unique opportunities of state and local governments to represent our interests in the planning process. Their “toolbox” has included cooperating agency status and coordination as granted by the Federal Land Policy Management Act (FLPMA).

While the proposed rule acknowledges the role of cooperating agencies, the need for collaboration and the requirement to seek consistency with local plans, it is filled with undefined terms that provide BLM multiple escape routes from full cooperation. These include cooperation “where possible and appropriate”; collaboration “as feasible and appropriate” and consistency “to the maximum extent the BLM finds practical”. The

insertion of these terms makes the proposed rule inconsistent with both the spirit and requirements of FLPMA. These changes provide the opportunity to eliminate or minimize local governmental input at the discretion of BLM.

One of the cited goals of Planning 2.0 is to “improve the BLM’s ability to respond to social and environmental change in a timely manner”. While timeliness may be a virtue to be commended, WSGA finds it difficult to reconcile response to social change” with the BLM’s mandate to manage for multiple use and sustained yield. The agency should be cautious in responding to social change without careful analysis of the impact of such changes on local communities and established resource users including grazing permittees/lessees. Meaningful discussion of the need to address economic impacts is noticeably absent from the proposed rule.

In an apparent effort to simplify and expedite the planning process and minimize the need for plan amendments, Planning 2.0 segregates the outcomes of the current planning process into two distinct categories—Plan Components and Implementation Strategies. While WSGA does not disagree with this classification, we strongly object to the lack of opportunity for formal and meaningful public and local/state governmental input into the development of Implementation Strategies. The rule requires no more than a 30 day notice with no opportunity for public input prior to implementation. Otherwise acceptable plan components can have significant unacceptable impacts on resource users dependent upon the implementation strategies selected.

In another significant departure from the current planning rule, Planning 2.0 replaces the requirement that the BLM identify a single preferred alternative with the opportunity to identify “one or more” preferred alternatives. This will serve to further burden affected constituencies such as public land ranchers in providing meaningful responses to draft RMP’s. It will increase the uncertainty that surrounds identification of the anticipated components of the final RMP and the ability to make timely business management decisions to adjust to expected changes. Finally, WSGA believes that this change will only serve to enable the agency to put forth often very biased “citizen alternatives” as alternate preferred alternatives.

In summary, BLM Planning 2.0 will complicate effective resource planning while reducing opportunities for meaningful public and local governmental input and lessening local agency decision making authority. It will further challenge the public land rancher while eroding our partnership with local BLM personnel in assuring resource sustainability that contributes to the long-term viability of our industry.

Thank you for this opportunity to share our concerns. I look forward to your questions.

Senator BARRASSO. Thank you very much, Mr. Magagna.
Mr. Ogsbury?

**STATEMENT OF JAMES OGSBURY, EXECUTIVE DIRECTOR,
WESTERN GOVERNORS' ASSOCIATION**

Mr. OGSBURY. Chairman Barrasso, members of the Committee, my name is Jim Ogsbury. I'm the Executive Director of the Western Governors' Association, an independent, bipartisan association, representing 19 Western Governors and three U.S. flag islands.

When it comes to the development of an 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 state's economies and cultures and environments. Their expertise and their perspectives 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 implementation 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 over water resources within their borders and they possess plenary authority over groundwater.

Because of the management of Federal lands implicates these authorities and because the Bureau of Land Management owns such a vast amount 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 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, plans, programs and processes of states. The proposed regulation would only consider consistencies between RMPs and officially adopted land use plans, significantly narrowing the influence of Governors.

Furthermore, the proposal eliminates the existing regulatory directive the BLM accept a governor's recommendations submitted as part of his or her consistency review if they provide for a reasonable balance between the Nation's interest and that of the state. 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 governors' 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 that 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 the new planning assessment phase. These additional opportunities, however much they may operate to elevate the role of the public and non-government 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 three years the Federal land management agencies use state information, at least with respect to wildlife data as a principle basis for land management decisions.

There is 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 the benefit of individual states, the American West and our great nation.

Thank you.

[The prepared statement of Mr. Ogsbury follows:]

Testimony of James D. Ogsbury, Executive Director
Western Governors' Association

Before the
United States Senate
Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests and Mining

Oversight Hearing on the Bureau of Land Management's Planning 2.0 Initiative
June 21, 2016

Good afternoon, Madam Chairwoman, Ranking Member Cantwell, and members of the Committee. 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 three 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 sovereigns 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.

Governors' Consistency Reviews

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 forestall 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 process" that guide state planning efforts and decision-making 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.

Governors have primary decision-making authority for management of state 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 timeframes 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 decision-making 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 timeframes as stakeholder concerns are raised later in the process. Potential litigation stemming from these stakeholder concerns could further extend planning and implementation timelines.

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 website 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.

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.

Madam Chairwoman Murkowski and Ranking Member Cantwell, thank you for the opportunity to testify today and to provide the Committee with the viewpoints of the Western Governors I serve. I hope my testimony has been helpful to the Committee. I welcome any questions you or your colleagues may have.

Senator BARRASSO. Thank you very much for your testimony.
Ms. Sgamma?

**STATEMENT OF KATHLEEN SGAMMA, VICE PRESIDENT OF
GOVERNMENT & PUBLIC AFFAIRS, WESTERN ENERGY ALLIANCE**

Ms. SGAMMA. Thank you, Mr. Chairman.

Kathleen Sgamma, Vice President of Government and Public Affairs for Western Energy Alliance. We represent oil and natural gas producers all across the West.

We believe Planning 2.0 will upend the balance enacted by Congress in FLPMA. It's converting it away from principles of multiple use and sustained yield and into those of conservation or preservation, excuse me, only.

A preservation only agenda is about locking public lands away from human uses, other than recreation. It's meant to drive out activities like energy development and grazing, and it treats people who live and work in the West as inconvenient and their livelihoods as unimportant. Simply put, it is about putting wildlife and other resource values above people.

Of course, we all know that wildlife, rivers and ecosystems don't respect state borders. Stating such has been a primary talking point from the Interior Department, as if that is some new revelation.

Asserting a new buzz word, landscape level planning, is also not particularly enlightening. The implication of this messaging is that the Federal Government is needed to step in and do something that the states aren't doing. In actuality, Western states have been conserving resources on a landscape level for decades, well before the term was coined.

Since at least 1954 states have been working together on the greater sage grouse. They've been working since the 1920's on many other non-boundary respecting species through WAFWA, the Western Association of Fish and Wildlife Agencies. They've been working together for over 100 years to manage water in rivers that obviously flow across state boundaries.

Clearly, the Federal Government is late to the game. In fact, it's as if the Federal Government is coming—arriving late to the game and not knowing the unwritten rules that everyone follows, then suddenly comes up with new rules and then complains that everybody isn't following those rules.

In reality the states have been balancing conservation with economic opportunity for its citizens, but it's being treated by the Federal Government as if it doesn't know how to handle those affairs.

Let me be clear. I'm talking about the political leadership that is promoting the environmental lobby's preservation only agenda. Many of the personnel actually in the field and on-the-ground have been working in Western states for decades, collaborating with state fish and wildlife agencies, county land planners and other local stakeholders and trying to do the right thing.

However, BLM and other agencies are being pushed away from that practical Western collaboration by Washington and those ascribing to the preservation only agenda are being pushed further down the hierarchy.

We appreciate the frankness of one such BLM employee at the March 25th meeting in Denver, the outreach meeting on Planning 2.0, who said that Planning 2.0 is 21st century conservation, that is preservation only.

BLM is conducting Planning 2.0 as if it can just wipe the slate clean and plan without respecting the realities on-the-ground and prior commitments such as oil and natural gas leases, grazing permits, community access roads and other inconvenient human uses. It's about upending the balance that Congress created in FLPMA. That balance has conserved many millions of acres while enabling productive activities on appropriate multiple use lands. Those productive uses sustain Western rural communities while providing Americans with the food, fuel and fiber upon which their lives are based.

My full testimony and our comments on the proposed rule contains several details on how the initiative will result in many new layers of overlapping NEPA analysis that BLM is not equipped to handle, particularly with all the other rules and mitigation policies that it's working on and how the proposed rule would actually diminish and not expand the level of public participation.

I look forward to questions.

[The prepared statement of Ms. Sgamma follows:]

Kathleen Sgamma
Vice President of Government & Public Affairs
Western Energy Alliance

**Testimony Before the Senate Committee on Energy and Natural Resources,
 Subcommittee on Public Lands, Forests, and Mining**

The Bureau of Land Management's Planning 2.0 Initiative
June 21, 2016

BLM's Planning 2.0 initiative would elevate wildlife and preservationist values over the needs of people; it redefines the concept of multiple use, prioritizes preservation over responsible development of the food, fuel and fiber that support human life, limits public involvement in the planning process, and further strains overburdened BLM staff. The primary justification of landscape-level planning seems compelling, but represents an attempt to treat the West as a blank slate that can simply be written on anew, ignoring realities on the ground, state borders, congressional mandates, prior commitments, community economic needs, and individual livelihoods. BLM should withdraw the proposed rule and reconsider this approach to resource management planning.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. The Alliance represents independents, the majority of which are small businesses with an average of fifteen employees.

Landscape-Level Planning

Land use planners tend to look at each new planning effort as a chance to start anew and reshape public lands management according to what they see as the pressing issues of the day, or dare I say current fashion. It's always easier to start with a blank slate and rework everything in accordance with a new concept, in this case "landscape level," than it is to take into consideration all the intricate and often conflicting details on the ground. The landscapes at issue reflect decades of management decisions and on-the-ground realities that must be taken into account in new land use plans. It would be easier to wish all those decisions and commitments away, such as leases and grazing permits, but that is neither legally feasible nor democratic. We all understand that wildlife, rivers and ecosystems don't respect state borders, but our Constitution does, and it does so within a federalist structure that allows us to think at the larger scale but within a democratic system that balances the needs of the People.

The ecosystem concept that ecologists have advanced for several decades has now morphed into the "landscape-level" term that has taken hold of the imagination of many environmental groups, public land managers and some academics. Of course looking at broad ecosystems is a very valuable perspective that can help land managers across large areas enact management strategies and on-the-ground measures suited for the particular ecosystem or "landscapes" at issue. But humans are part of the ecosystem as well, and a landscape-level planning approach cannot simply be imposed over realities on the ground and prior commitments.

That is the beauty of the balance achieved through the Federal Land Policy and Management Act (FLPMA). That balance arose from a democratic process that was enshrined into law by Congress and

the President in 1976. Is it perfect? Of course not. But did it achieve a reasonable balance between conservation and productive uses of public lands? Absolutely.

BLM is attempting to upset that balance with Planning 2.0. Updates to FLPMA-based regulation and guidance are appropriate, but updates that simply rewrite the law are not. If fully enacted as proposed, it would be a significant rewrite of Congressional intent, upending the multiple-use balance that Congress and replacing it with management for conservation only.

Obviously, there are lands that are appropriate for preservation only or limited use. The 110 million acres of wilderness lands are one example. The 85 million acres of National Parks are another. But these lands were designated through the democratic process by Congress. (I'll set aside designations of millions of acres of National Monuments as abuses of the Antiquities Act tangential to this testimony.) BLM protects 32 million additional acres for conservation only in the National Landscape Conservation System, removing those lands from multiple-use management. BLM continues to create additional designations administratively in land use plans, such as Areas of Critical Environmental Concern, lands with wilderness characteristics, wildlife emphasis areas and others.

But the vast majority of BLM's 245 million acreage is appropriate for productive multiple uses like grazing, mining, and energy development. These productive activities are important not only for supplying Americans with the basics of modern life, but also sustain rural communities across the West. Many will view these communities as inconvenient, and downplay their right to control their destinies by saying with a wave of their hand that all Americans own public lands. But the reality is that those East of the Mississippi were given their lands, and have control over how they are used, whether for state parks, productive uses, or in private ownership. Western states were deprived of much of their land. Yes, all Americans do own federal lands, but they also own the energy and minerals beneath those lands. And all Americans are not as invested in those lands as are western states, tribes and communities. FLPMA recognized the needs of states, tribes and local communities, and granted them cooperating status and a bigger voice in their lands, while still considering the interests of others.

State and Local Representation

Planning 2.0 aims to downplay the voice of communities that derive their livelihoods from appropriate multiple-use lands in the West by elevating certain conservation-only special interests over the broad public interest as represented by state governors, tribal councils, county commissioners, and other elected officials. Someone from New York cavalierly sending in a Sierra Club generated email opposing a rancher's grazing permit or a local oilfield worker's project simply is not invested as deeply as those living in western communities. Certainly, they have a say, and are often represented by various special-interest groups. Of course, they are also represented by their congressional representatives who do not have to worry that their constituents' livelihoods are directly impacted. But state governors, tribal councils, county commissioners, city councilmen, local groups and other stakeholders directly involved in the community should be afforded a higher level of deference than outside special interests.

That's the beauty of FLPMA and the cooperating agency status that has been given to local and state governments for decades. State and local governments do not represent just one interest. They must be responsive to all concerns of their citizens, from economic to conservation. They understand that their citizens need protected public lands for recreation, clean water, and wildlife, and they balance that with the need for jobs and economic opportunity. Planning 2.0 upends that balance.

Western Energy Alliance shares the goal of better public involvement. We more than many others understand how the federal government can dump obligations on the public, as we've had to wade through 49,226 pages of government documents over 47 proposed rules, policy changes, and land use plans in just the last year in an attempt to keep up with all the changes that affect responsible energy development. It's hard for the public to stay up on every public land action; thousands of bureaucrats can churn out tens of thousands of pages of dense documents, and short deadlines close off deliberative engagement. But Planning 2.0 would actually hamper public engagement by reducing the time available for public comment, and diminishing the ability of elected representatives of the People to engage effectively as full cooperating agencies.

BLM's messaging on the rule asserts that it will increase public engagement. But if it only serves to give special interests more power in the process at the expense of elected representatives of the People, then it will serve to diminish public participation. One example of how Planning 2.0 diminishes the role of elected officials is by ignoring state and county lines. BLM will have the discretion to ignore one governor's input if another governor's is more in line with its preferred approach, even though it will affect the first governor's state. The input of county commissioners is watered down even further, as an RMP amendment that covers several field offices also covers numerous counties, and one county's input can be drowned out by others. Another example is the new requirement that state, tribal and local agencies demonstrate expertise before being designated as cooperating agencies. State, local and tribal governments represent the citizens primarily affected by BLM planning decisions, and they should have every right to participate in the planning process as cooperating agencies, regardless of expertise.

But actually, in many instances, states, tribes and counties have more expertise and relevant data than the federal government. Planning 2.0 would result in numerous overlapping RMP amendments for various natural resource values, as modeled on the recent sage-grouse amendments. But sage grouse represents an area of landscape-level planning that states have been doing since at least 1954, well before the federal government got involved or the buzzword "landscape level" was coined. Last week, the 30th biennial Sage and Columbia Sharp-Tailed Grouse Workshop took place in Lander, Wyoming. An effort of the Western Association of Fish & Wildlife Agencies (WAFWA), an inter-state body that has been cooperating across state boundaries since the 1920s, the workshops are but a visible manifestation of the immense work that WAFWA and the states have been doing to conserve sage grouse for generations. There are many other examples of state cooperation across boundaries on other resource values such as water.

Additional Layers of NEPA

Another problem with landscape level planning is that it is not at the level of detail necessary for on-the-ground land management. The intent to have multiple, overlapping RMP amendments focused on particular resource values would lead to many areas being subject to several amendments depending on the number of resource values present. Counties, tribes and states would be caught in a never-ending web of RMP amendments. The result will amount to yet more layers of National Environmental Policy Act (NEPA) analysis before any meaningful public lands management decisions can be made. BLM will become trapped in paralysis by analysis while not reaching the level of detail needed by planning area to make project-specific decisions. Project approvals that create jobs and economic opportunities already take many years, which Planning 2.0 will only exacerbate.

BLM has a system of planning areas that respect state boundaries and are determined based on various factors such as number of federal acres; dispersal of that acreage; topography; and county, tribal and state boundaries. Planning areas boundaries are established with the intention of setting appropriately sized areas that can be reasonably managed by staff connected to the land who know the local stakeholders and understand the land, wildlife, cultural resources, and other on-the-ground resource values. Taking the process out of the hands of local land managers and concentrating it in Washington breaks that connection to actual conditions on the ground, elected officials, and local stakeholders. Distant, centralized control hardly seems conducive to managing the land wisely. Adding yet more layers of NEPA is especially counterproductive as BLM already struggles to conduct timely land use planning and follow it up with monitoring in the field to ensure the plans are properly implemented and resources values are protected. Yet more NEPA analysis will continue to keep BLM staff out of the field and behind their desks pushing paper.

In addition to more multi-year planning processes, BLM is struggling to formulate and implement new mitigation policies, onshore orders, sage grouse land use plan amendments for 68 planning areas, Master Leasing Plans, and rules. These significant policy changes would be difficult to implement in a perfect world, but are becoming nearly impossible when BLM already struggles to meet existing project planning, permitting, and inspection obligations. As the White House attempts to jam in as many policy changes as possible before January 2017, there are simply too many moving parts for one agency to manage in a short period of time. These policy changes are highly interrelated, and should be carefully crafted in a deliberative manner. Instead, confusion reigns on how these policies will interact without massive contradictions, much less implemented in the field by the very staff charged with protecting the land and its resources. The result will be even more delays on permitting for productive activities, creating job loss and economic stagnation in affected communities.

Conclusion

Thank you for the opportunity to testify. There are many other aspects of Planning 2.0 deserving of attention, but that time does not permit me to address. Please refer to [Western Energy Alliance's full Planning 2.0 comments](#) for additional information. I welcome questions on these and other aspects of the proposed rule.

Senator BARRASSO. Thank you so much for your testimony. Mr. Squillace?

**STATEMENT OF MARK SQUILLACE, PROFESSOR OF LAW,
UNIVERSITY OF COLORADO LAW SCHOOL**

Mr. SQUILLACE. Thank you, Mr. Chairman, members of the Committee. My name is Mark Squillace. I'm a Professor of Law at the University of Colorado Law School, and I appreciate the opportunity to share some thoughts with you today about the Planning 2.0 initiative.

Let me begin by congratulating the BLM on undertaking this land use planning effort. I think it's an important initiative that, frankly, is long overdue. But despite my general support for this initiative, I think there's much that could be improved.

I want to focus my testimony on two particular matters. The first being the landscape level planning issue that's been discussed by several witnesses.

I also want to talk about something that has not really been discussed yet today, and that is the efforts toward adaptive management which, I think, are an important part of any reform in land use planning.

When I think of landscape level planning I think about Major John Wesley Powell. If you go back and think about Powell, he was the guy who did the original exploration of the Colorado River and wrote a report about the Western United States in which he included a map that suggested that the West be divided up according to river basins. I'd like to think of Powell as, maybe, the first landscape ecologist, although he didn't talk in those terms.

But Powell, I think, understood the importance of bringing our political geography in harmony with our natural geography, and I think that's something that's missing today out of our land use planning process. I think this initiative by the BLM at least has the potential to try to move us farther in that direction.

I want to highlight one important advantage of landscape level planning that I think has been overlooked so far in the testimony. If you think about what would happen with landscape level planning it's going to bring the BLM into an analysis, not only of the BLM landscape, but of other land use plans by state and local officials at the same time. And so, the concerns about consistency reviews could be basically played out and understood right at the beginning of the planning process before we ever got to unit level planning. I think that's a huge advantage because the BLM would then proactively be identifying conflicts and working with the states to try to resolve those conflicts before we even got to unit level planning.

I want to emphasize that landscape planning is only one part of the process. I've, sort of, suggested that there might be four different levels in which we think of planning. There's the landscape level, there's the unit level, there's the resource level, and then there's the project level. At least four different ways in which we think about different decision-making.

But I do want to emphasize something that's important here which has been brought up by Chairman Barrasso and others about the complexity of the process. It's not working. I think Gov-

ernor Herbert is right that the planning process is broken the way that it works.

What our plans need to do is they need to be able to adapt and they need to be able to engage the public in a meaningful way. When it takes five years or more to develop a land use plan, that just isn't happening.

I've used the word nimble. I think our land use plans need to be nimble. When they take so long to develop they are simply not nimble, and they need to be improved.

These uncluttered plans will also really, I think, offer an opportunity to better engage the public. Right now it's only professionals that can really participate in land use planning processes. We really need a simpler process that allows the public to be engaged.

Let me briefly turn to the issue of adaptive management before closing my oral testimony. Adaptive management is this idea that the scientists talk about as learning by doing. It's an important, I think, advance in the way we think about land use planning because it allows us to, sort of, give up some of the detail and complexity at the front end in terms of the environmental assessment and the plan itself in exchange for committing ourselves to adapting at the back end after the plan is implemented, agreeing to make changes to the plan as we learn more information from the experience of actually implementing the plan.

I think the proposed rules that the BLM has promoted take us part of the way in the direction of adaptive management. They do talk about various kinds of plans having provisions that are specific and measurable and time bound objectives that can help for us to get part of the way.

What the current proposed rules do not do, however, is to focus on the importance of monitoring and evaluating and determining whether or not these objectives are actually being met. I think if we go that additional step, we will have taken a big, a leap toward better adaptive management.

I want to thank the Committee again for the opportunity to speak today. I'm happy to answer any questions that you might have.

[The prepared statement of Mr. Squillace follows:]



Mark Squillace
 Professor of Law
 Wolf Law Building | 401 UCB
 Boulder, Colorado 80309-0401
 303.492.1287 office | 303.746-7831 cell
 mark.squillace@colorado.edu

22 June 2016

**Testimony of Professor Mark Squillace, University of Colorado Law School
 on the Bureau of Land Management's Planning 2.0 Initiative
 to the Subcommittee on Public Lands, Forests, and Mining
 of the Senate Committee on Energy and Natural Resources
 114th Cong., 2nd Sess. 2016**

Senator Lisa Murkowski
 Chair, Senate Committee on Energy & Natural Resources
 United States Senate
 Washington, D.C. 20510-6150

Dear Chairman Murkowski:

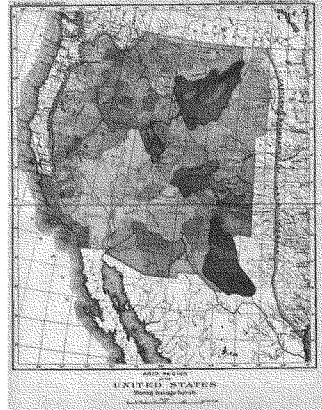
Thank you for the opportunity to share this statement on the Bureau of Land Management's (BLM) Planning 2.0 initiative with the Subcommittee on Public Lands, Forests, and Mining of the Senate Committee on Energy and Natural Resources. My name is Mark Squillace. I am a professor of law at the University of Colorado Law School. I teach primarily in the field of environmental and natural resources law and have written extensively on public lands and land use planning. I am also a former employee of the BLM and the Interior Solicitor's Office and a primary author of comments submitted on behalf of myself and 26 other law professors from around the country on the BLM's draft planning rules. I have appended a copy of those comments to this statement. The testimony I offer here is my own and does not necessarily reflect the views of the University of Colorado or its employees.

My testimony focuses on three items: (1) the structural problems with the current land use planning framework; (2) the opportunity for the BLM to incorporate landscape level planning into its planning regime; and (3) the need for the BLM to establish an effective program for monitoring and adapting to new information or changed circumstances.

I. The Structural Problems with BLM's Land Use Planning Program

In 1890 Major John Wesley Powell, the great American explorer, published a map of the western United States to support his proposal to divide the western states along watershed boundaries. 11th Annual Report of the U.S. Geological Survey, Part II, Pl. LXIX (1890). Looking at Powell's map today, it is not hard to appreciate Powell as our first landscape ecologist. While Powell's focus was on finding ways to make western irrigation more efficient, it was not lost on him that watersheds respected landscapes, and that it is easier to manage these landscapes if they are contained in a single coherent political unit. Powell's approach, of course did not carry the day and the west was carved up into boxy shapes that largely ignore the natural geography of the

western landscape. And while the BLM has been somewhat better in considering geography before designating resource management areas, the inclination to identify compact units with straight line boundaries, much like the division of western states, has seemed hard to break.



Powell's Map of the West, 1890

The BLM's current planning initiative offers an opportunity for the agency to break from these historic patterns. As proposed, however, the "Planning 2.0" effort seems like a missed opportunity to rethink in fundamental ways land use planning on BLM lands. A big part of this rethinking should involve incorporating landscape-level planning into the process as described more fully below.

II. Landscape Level Planning

The BLM has suggested that landscape-level planning is one of the goals of the Planning 2.0 initiative. Yet the phrase never appears even once in the proposed rule itself, and it is difficult to see how the current proposal will allow the BLM to move toward a planning model that looks beyond political boundaries and its traditional resource management areas. This is particularly disappointing in light of Secretarial Order 3330, which established a Department-wide mitigation strategy and directed agencies to use

a landscape-scale approach to resource management.

I am not suggesting that the BLM move away from its current unit planning process in favor of landscape-level planning altogether, although it might make sense to move in this direction over the long term. Rather I support a BLM effort to prepare a relatively simple and streamlined landscape-level plan before commencing unit planning so that the context for unit planning is better understood. One simple way for the BLM to address this problem within the framework of the proposed rules would be to require that the new "planning assessment" process (proposed 43 CFR §1610.4) be carried out at the landscape level.

The BLM has made good progress doing landscape-level inventories through its rapid ecological assessments (REAs). The agency could build on that work by requiring or at least experimenting with landscape-level planning assessments. Among many other benefits, this change would make it far easier for the BLM and the interested public to identify cross-jurisdictional issues. Such issues might include wildlife corridors, utility or development corridors, and opportunities for protecting lands with important conservation values that cross resource management area boundaries. Indeed, it is hard to see how cross-jurisdictional issues can be effectively identified and understood without some form of landscape-level analysis.

Once a landscape level assessment is completed, the BLM can tackle the unit level resource management plan (RMP). For various reasons, the RMP should be simplified and streamlined much like the landscape-level plan. Three particular reasons for simplifying the RMP stand out:

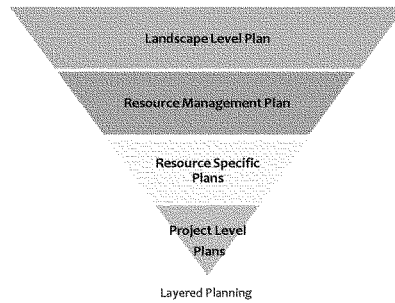
- (1) First, and as will be discussed more fully below, the BLM should employ an adaptive management strategy once its plans are completed. For adaptive management to work, however, plans must be nimble. In this context that means capable of rapid change when new information or changed circumstances demonstrate that such change is warranted. Rapid change is simply not feasible if the plans are too complex and take too long to develop.
- (2) Second, the current planning process unduly saps the BLM's resources and makes it nearly impossible for the BLM to commit sufficient resources to a new level of planning at the landscape level, not to mention a robust monitoring and adaptation program.
- (3) Third, the planning process has become so complex and time-consuming that only professionals and those with a direct stake in the outcome have the ability to participate in a meaningful way.

Simplifying the process at both the landscape and unit levels likely means focusing on just three things:

- (1) Making basic land use decisions for each tract of land within the management area;
- (2) Setting specific, measurable, and time-bound goals or objectives for each tract within the planning area; and
- (3) Establishing specific and comprehensive metrics that will form the basis for a robust monitoring program to determine whether the goals and objectives are being met.

The RMP level need not and should not address resource specific matters that can be addressed at a lower planning level, as is often done with travel management plans and, more recently, oil and gas master leasing plans.

To summarize and describe visually, I imagine four planning layers in an inverted triangle: (1) the landscape, ecosystem, or watershed layer; (2) a management unit layer; (3) a resource layer; and (4) a project layer. Each successive layer should be narrower and more specific than the layer above it. While at first blush, a layered approach might appear to impose more work on the agency, substantial time could be saved by focusing the agency's attention on the particular suite of issues that present themselves at each planning level, and *only* those issues.

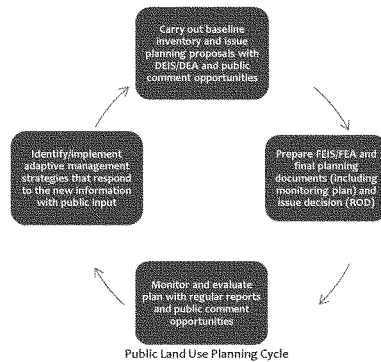


Streamlining might also be facilitated by establishing a Planning Dashboard along the lines of the Permitting Dashboard mandated by Title XLI of the Fixing America's Surface Transportation Act (FAST Act). See <https://www.permits.performance.gov/>. The permitting dashboard required under the FAST Act applies only to large infrastructure projects, its basic requirement that federal

agencies maintain an on-line system for tracking projects, with specific timetables, projected dates for completing stages of the review process, and issuance of decisions, could be readily adapted to the planning context, and could help agencies define and schedule their work so that they can better meet their target dates. Incentives might be introduced to reward offices and agency officials who consistently meet their targets while also avoiding conflict and controversy.

III. Adaptive Management

Adaptive management is often described as a simple idea of “learning by doing.” In practice, adaptive management is designed to be more forgiving on the front end of decisionmaking in terms of complexity and detail because it incorporates a program for regularly evaluating performance and then changing or adapting the original decision to reflect the lessons learned from actual experience. The diagram below offers a visual representation of adaptive management in the land use planning context.



Somewhat like landscape-level management, the BLM appears to support adaptive management but never actually refers to the term in the proposed rule. Moreover, the proposed rules do not establish any clear process for ensuring that adaptive management principles will be used to adapt plans when warranted by new information or changed circumstances.

The proposed rules do, however, make an important nod in the direction of adaptive management by requiring that plans include “goals” and “objectives.” Proposed 43 CFR §1610.1-2(a). Objectives in particular are described as being specific and measurable, with time-frames for achievement. *Id.* Unfortunately,

nothing in the proposed rules ties these goals and objectives to the monitoring program itself. Nor do the proposed rules commit the BLM to actually adapting their plans. Rather, the proposed language relating to “monitoring and evaluation” is a single paragraph that offers nothing specific about how those vital tasks will be carried out. Proposed 43 CFR §1610.6-4.

The BLM made substantial progress in developing a framework for monitoring and adaptive management with its various sage grouse management plans. While the jury is still out as to how that program will work, the BLM should use that experience to inform its final planning rules. This is particularly critical for any final planning rules because the BLM has a poor track record when it comes to robust monitoring, evaluation, and assessment of monitoring data. These are all critical elements of any program that promises to implement an adaptive management strategy. Vague language such as appears in the proposed rules is inadequate especially because it does not afford field personnel with sufficient guidance. What is needed are: (1) specific and measurable

standards that can inform the BLM about the state of the resources it is seeking to manage and protect; (2) a robust and transparent program that monitors the status of these resource with appropriate metrics that the agency has established; (3) a transparent process for evaluating the data obtained through monitoring, perhaps with public input and a regular report describing the conclusions; and (4) timely adaptation of the plans at every appropriate layer to reflect the information developed through the monitoring and evaluation process.

Before closing let me offer a few thoughts about two issues that have generated some controversy during the public comment process. The first concerns the consistency reviews mandated by FLPMA to ensure that the BLM's RMPs are consistent to the maximum extent practical with other Federal, State, local, and Tribal land use plans. While the tenor of the language both in FLPMA and the proposed rules suggests a process for resolving conflicts, the consistency review might also offer an opportunity to identify and promote common management strategies. Landscape-level planning would actually help here by allowing the BLM to better understand cross-jurisdictional issues and thereby identify and resolve possible inconsistencies with other plans. I share the concern raised in the comments submitted by the Western Governors Association about the presumption of consistency with state and local plans if a Governor fails to respond within 60 days from the date a proposed plan is received. But rather than extending the review period, this concern might be better addressed by a commitment from the BLM to work with the states and other governmental entities to identify and resolve potential conflicts as the planning process unfolds and well before the plan is submitted for the formal 60-day review.

A similar approach might be used for public participation generally. The BLM should engage interested parties in a meaningful way as plans evolve and well before they are approved. Early engagement will not necessarily resolve all of the conflicting views about the plans but it will lay them out in the open and thereby take pressure off both the agency and the public during the formal comment period. Importantly, the BLM should also recognize that streamlining each discrete layer or phase of the planning process will ensure more effective public engagement than a lengthy public comment period. Finally, a robust adaptive management program also provides assurances that planning is an ongoing, cyclical process that affords the public multiple opportunities to engage the agency, not only during the development of the plan, but also as it evolves in response to new information and changed circumstances.

I want to thank the Subcommittee once again for the opportunity to offer this testimony. I am grateful for your careful consideration of these comments and urge the Subcommittee to provide the BLM with constructive guidance as to how they can best move forward to improve their land use planning program for our public domain lands.

Respectfully submitted,



Mark Squillace

May 24, 2016

Mr. Neil Kornze
Director (630)
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW.
Room 2134LM
Washington, DC 20240

Attention: 1004-AE39.

RE: RIN: 1004-AE39, CFR: 43 CFR Part 1600, Federal Register Number: 2016-03232

Comments on the BLM's Proposed Planning Rules

Dear Director Kornze:

We appreciate this opportunity to provide comments on the Bureau of Land Management's proposal to amend existing regulations governing the procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA). As professors who have taught a variety of public lands and natural resources law courses, we support the goal of modernizing public land planning to encompass planning at appropriate scales and across jurisdictional boundaries. But we urge the BLM to consider significant changes that will improve the rule and better reflect FLPMA's goals as the BLM largely does in the preamble to the proposed rule. We think it is especially important that the final rule better implements FLPMA's requirement that the BLM give priority to the identification and protection of Areas of Critical Environmental Concern (ACECs).

On June 30, 2015, we sent you a letter encouraging the BLM to issue modern guidance that would make ACEC management more consistent and expand the ACEC concept to encompass landscape conservation more explicitly. That letter observed that despite the priority status granted to ACECs in FLPMA, ACECs are not in fact given priority in the BLM planning process, are haphazardly and inconsistently managed, and poorly monitored.

In these comments we highlight several particular concerns over how the proposed rules treat ACECs, and we also offer comments about the BLM's approach to planning more generally. In our view, the proposed rules need substantial improvements, and we make some specific suggestions as to how BLM can improve them.

Although we appreciate the BLM's commitment to modernize its planning program, as currently proposed, the "Planning 2.0" effort is a missed opportunity to rethink in fundamental ways land use planning on BLM lands. For too long, the BLM has been stuck in a box of

managing public lands in planning units that primarily reflect political boundaries rather than ecosystems and other relevant geographical features. The preamble to the proposed rule recognizes this problem, repeatedly describing the importance of “landscape-scale planning.” In fact, the preamble used some permutation of that phrase 52 times. Yet the phrase never appears even once in the proposed rule itself. Moreover, the proposal would not even require BLM to adopt a planning model that looks beyond political boundaries. The BLM’s failure to incorporate landscape-level planning into the proposed rule explicitly is especially disappointing in light of Secretarial Order 3330, which established a Department-wide mitigation strategy directing agencies like BLM to use a landscape-scale approach to resource management.

One simple way the BLM might begin to address this problem would be to require the new “planning assessment” process (proposed 43 CFR §1610.4) to be carried out at the landscape level. BLM has made good progress doing landscape-level inventories through its rapid ecological assessments (REAs). The BLM could build on that work done by requiring or at least experimenting with landscape-level planning assessments. (The preamble mentions REAs only once.) Among many other benefits, this change would facilitate identification of potential ACECs that cross jurisdictional boundaries by the public and BLM. Cross-jurisdictional ACECs can only be identified effectively through some form of regional assessment.

The proposed rule fails to tackle planning issues that arise after an RMP is completed. In particular, the proposed rule fails even to mention resource-level planning (such as Master Leasing Plans) and activity planning (such as assessing individual applications for permits to drill for oil and gas). Addressing these different levels of planning in a substantive way, and committing the agency to a robust and integrated process at these different planning levels would likely require that the RMP process itself be streamlined. Such a commitment would better accommodate adaptive management, as described in more detail below. In the end, a better, more layered planning process, will enhance decision making and save administrative resources.

We see at least four planning layers that the BLM should highlight for the public: (1) the landscape, ecosystem, or watershed layer; (2) a management unit layer; (3) a resource layer; and (4) a project layer. While at first blush, a layered approach might appear to impose more work on the agency, it could actually streamline the planning process by focusing the agency’s attention on the narrower suite of issues that present themselves at each level. A layered process might also make it easier to identify, manage, and, if necessary, adapt ACECs to achieve the protections that Congress intended they provide.

The rules could facilitate streamlining by establishing a Planning Dashboard along the lines of the Permitting Dashboard mandated by Title XLI of the Fixing America’s Surface Transportation Act (FAST Act). See <https://www.permits.performance.gov/>. Although the Permitting Dashboard required under the FAST Act applies only to large infrastructure projects its basic requirement that federal agencies maintain an on-line system for tracking projects, with specific timetables, projected dates for completing stages of the review process, and issuance of decisions, could be readily adapted to the planning context.

Another significant problem with the proposed rules concerns their weak provisions for monitoring, evaluation, and adaptive management. Like landscape-level management, the preamble mentions adaptive management often—20 times, in fact—but there’s no mention at all in the proposed rule. The proposed language relating to “monitoring and evaluation” in a single paragraph offers nothing specific about how those vital tasks will be conducted (proposed rule,

43 CFR §1610.6-4). Although the proposed rules require plans to include “goals” and “objectives” (proposed 43 CFR §1610.1-2(a)), nothing in the proposal ties these goals and objectives to the monitoring program.

The BLM made substantial progress in developing a framework for monitoring and adaptive management with its various recent sage grouse management plans. We urge the agency to use that experience to inform its final planning rules. This is particularly critical for these rules because the BLM has a weak track record when it comes to robust monitoring, evaluation, and assessment of monitoring data, to say nothing about its inability to adapt its management strategies to reflect new information. The BLM’s new planning rules offer the agency an opportunity to improve on its record for monitoring, evaluation, and adaptation but vague language that afford field personnel little guidance is not adequate. We offer specific language below that we think would improve prospects of establishing an effective monitoring, evaluation, and adaptive management program for BLM land use plans.

Turning to provisions in the proposed rule that relate specifically to ACECs, we are pleased with several improvements to the way the BLM plans would identify ACECs. For example, the proposal quotes FLPMA in defining ACECs (proposed 43 CFR §1601.0-5) and would require the BLM to look for potential ACECs during the agency’s initial planning assessment activities preparatory to initiating a plan revision (proposed 43 CFR §§1610.4(a)(1) and (c)(5)(vii)). We welcome those changes and BLM’s other efforts to increase opportunities for public participation and comment.

We remain puzzled, however, by the proposed rule’s failure to reiterate the statutory responsibility to give priority to the designation and protection of ACECs, as required by §202(c)(3) of FLPMA. We note that the proposal’s Principles statement (proposed 43 CFR §1601.0-8) directs plans to “be consistent with the principles described in Section 202 of FLPMA,” and the preamble does expressly acknowledge FLPMA’s mandate that the BLM give priority to ACECs. But the failure to include similar language in the rule itself raises questions about the BLM’s commitment to ACECs. This failure is particularly notable because the proposed rule adds a new provision explicitly quoting FLPMA’s definition of sustained yield (proposed 43 CFR §1601.0-5), and it also restates the statutory language regarding consistency with the land use plans of other federal agencies, state and local governments, and tribes (proposed 43 CFR §1610.3-2).

As you know, FLPMA’s authority to designate and manage ACECs was a deliberate decision by Congress, one preceded by substantial congressional, executive, and Public Land Law Review Commission deliberations for much of the decade prior to enactment of the law. ACECs are the only conservation designation other than wilderness expressly named and given priority in FLPMA. The language requiring BLM to give priority to the inventory, designation, and protection of ACECs in public land planning and management is a unique directive in multiple use land management law. To fulfill the statutory directive, BLM must aggressively embrace ACECs in this rule.

The proposed rule would grant functional priority to ACECs in the planning assessment phase (proposed 43 CFR §1610.4(a)(1)), as would the provision concerning designating ACECs (proposed 43 CFR §1610.8-2). We are concerned, however, that the failure to explicitly restate FLPMA’s priority status for ACECs could undermine the priority that Congress intended. The

statement that all planning activity must be consistent with §202 of FLPMA is not sufficient to overcome this concern.

We also suggest that you clarify the public's opportunity to nominate new ACECs between planning cycles if – as is increasingly likely with accelerating climate change – new information indicates an immediate need for special management attention to protect the resources and values eligible for ACEC protection. FLPMA's requirement that BLM maintain an ongoing inventory of lands, resources, and values suggests that BLM has a duty to consider such nominations. We urge you to add language to proposed 43 CFR §1610.8-2 clarifying the procedures available in such a situation.

We anticipate that your response to many of the concerns raised in these comments will be that you intend to address these issues in the land use planning manual and handbook. In our view this is entirely inadequate. The rule is mandatory and enforceable. The manual and handbook are not. Likewise, while the preamble contains important explanations of the BLM's goals for these rules, which may influence a reviewing court, a preamble commitment does not by itself establish an enforceable commitment. If the BLM is committed to promoting high quality public land management – if it is committed to landscape-level planning, adaptive management, and giving priority to ACECs – then it must promulgate a rule that reflects that commitment. The public will accept nothing less, and neither should the BLM.

Thank you again for the opportunity to offer our views on BLM's proposed changes to the planning rule. We have included specific proposals for new language for the BLM's final rules below in the hope that you will find some or all of our recommendations persuasive.

Specific suggested changes to the proposed rule

§1601.0-5 Definitions. *(Add suggested language in red.)*

As used in this part, the term:

Areas of Critical Environmental Concern or ACEC means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards. The BLM will give priority to the identification, designation, and protection of ACECs.

Resource management plan means a land use plan as described under section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), including plan revisions. The planning area for a resource management plan will be identified as an issue under 43 CFR §1610.5-1 and will be reflected in the formulation of alternatives under 43 CFR §1610.5-2.

§1610.3-2 Consistency Requirements *(Add suggested language in red.)*

(a) 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 to the

maximum extent the BLM finds practical and consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies, and programs of such Federal laws and regulations.

§1610.4 Planning assessment. *(Add suggested language in red.)*

Before initiating the preparation of a resource management plan the BLM will, consistent with the nature, scope, scale, and timing of the planning effort, complete a planning assessment.

(a) Information gathering. The responsible official will:

(1) Arrange for relevant resource, environmental, ecological, social, economic, and institutional data and information to be gathered, or assembled if already available, ~~including~~ giving priority to the identification of potential ACECs....

§1610.8-2 Designation and protection of areas of critical environmental concern. *(Add suggested language in red.)*

...
(b) The BLM will give priority to the designation of potential ACECs during the preparation or amendment of a resource management plan. The identification of a potential ACEC does not, in of itself, change or prevent change of the management or use of public lands. Potential ACECs require special management attention (when such areas are developed or used or no development is required) to protect and prevent irreparable damage to the important historic, cultural, or scenic values, fish and wildlife resources or other natural system or process, or to protect life and safety from natural hazards. The BLM will ensure that all authorized activities are compatible with the purposes of designated ACECs.

(1) Upon release of a draft resource management plan or plan amendment involving a potential ACEC, the BLM will notify the public of each potential ACEC and any special management attention which would occur if it were formally designated. The design of any such special management attention will reflect the priority protection that FLPMA requires.

(2) The approval of a resource management plan or plan amendment that contains an ACEC constitutes formal designation of an ACEC. The approved plan will include a list of all designated ACECs, and include any special management attention identified to protect the designated ACECs.

§1610.1-2 Plan components. *(Add suggested language in red.)*

(a) Plan components guide future management actions within the planning area. Resource management plans will include the following plan components:

(1) *Goals.* A goal is a broad statement of desired outcomes addressing resource, environmental, ecological, social, or economic characteristics within a planning area, or a portion of the planning area, toward which management of the land and resources should be directed.

(2) *Objectives.* An objective is a concise statement of desired resource conditions developed to guide progress toward one or more goals. An objective is specific, measurable, and realistic, and plans should include specific time-frames for achieving the objectives. Plans will include a sufficient number and range of objectives as necessary to allow the BLM and interested parties to determine whether these goals are being achieved.

§1610.4 Planning assessment. *(Add suggested language in red.)*

Before initiating the preparation of a resource management plan the BLM will, consistent with the nature, scope, scale, and timing of the planning effort, complete a planning assessment. To the fullest extent possible, the planning assessment will be carried out over entire watersheds, landscapes, and ecosystems, even when they encompass land and resources not managed or controlled by the BLM.

* * *

(c) *Assessment.* The responsible official will assess the resource, environmental, ecological, social, and economic conditions of the planning area, giving priority to the identification of potential ACECs.

43 CFR §1610.5-1. Identification of planning issues. *(Add language suggested in red.)*

* * *

(b) The public, other Federal agencies, State and local governments, and Indian tribes will be given an opportunity to suggest concerns, needs, opportunities, conflicts or constraints related to resource management for consideration in the preparation of the resource management plan, including the identification of potential ACECs.

43 CFR §1610.5-5. Selection of the proposed resource management plan and preparation of implementation strategies. *(Add suggested language in red.)*

(a) After publication of the draft resource management plan and draft environmental impact statement, the responsible official will evaluate the comments received and prepare the proposed resource management plan and final environmental impact statement, giving priority to the identification, designation, and protection of ACECs.

We suggest revising 43 CFR § 1610.6–4 entirely as follows:

43 CFR § 1610.6–4 Monitoring, evaluation, mitigation, and adaptation.

(a) The BLM will monitor and evaluate the resource management plan to determine whether the goals and objectives set out in the plan as provided under §1610.1–2(a)(1) and (2) are being achieved.

(b) The BLM will publish the results of its monitoring program for each resource management plan not less than every two years. These results will be made available to the public promptly on the BLM website in a format that will allow interested parties to readily ascertain whether the plan's goals and objectives are being achieved.

(c) If the BLM finds, based upon the information provided by its monitoring and evaluation program, that the goals and objectives are not being achieved as intended under any resource management plan, the agency will promptly take appropriate action to mitigate any unintended adverse impacts that occurred. In addition, the BLM will take one of the following actions within 180 days from publication of its findings:

(1) Propose amendments to the resource management plan, including the designation of new ACECs, including restrictions on activities previously authorized under the plan, as may be necessary to achieve the goals and objectives set out in the plan.

(2) Propose amendments to the resource management plan to change the goals and objectives in the plan that the BLM believes can be realistically achieved, but only after the BLM determines that different goals and objectives are appropriate for the planning area and that the goals and objectives for the plan are not being revised to accommodate activities that are harmful to public land resources and that could have been restricted to achieve the goals and objectives outlined in the original plan.

(d) If the BLM fails to promptly mitigate any unintended adverse impacts or fails within 180 days from the publication of its findings to take action under subsection (c) of this section, any interested party may petition the BLM to take appropriate action. The BLM will respond in writing to any such petition within 90 days and shall either:

(1) Promptly commence a process for carrying out mitigation and/or amending the plan as provided under subsection (c) of this section, or

(2) Explain why no further action is warranted.

(e) Any proposal to amend the resource management plan as provided under this section will be carried out in compliance with NEPA and will include an opportunity for meaningful public participation.

We suggest adding the following new rule:

43 CFR § 1610.10 Planning Dashboard

(a) The BLM will establish a web-based planning dashboard that sets out specific deadlines for meeting different phases of the planning process, including specifically, the following:

(1) Completion or updating of the inventory required by Section 201 of FLPMA;

(2) Completion of the planning assessment as required by 43 CFR § 1610.4

(3) Identification of planning issues, formulation of resource management alternatives, and an estimate of the effects of the alternatives, as required by 43 CFR §§ 1610.5-1, 1610.5-2, and § 1610.5-3;

(4) Preparation and release of the draft resource management plan and the draft EIS, and the selection of preferred alternatives as required by 43 CFR § 1610.5-4;

(5) Preparation and release of the proposed resource management plan and final EIS, and the selection of preferred alternatives as required by 43 CFR § 1610.5-4;

(6) Approval of the final resource management plan and issuance of the record of decision as provided at 43 CFR § 1610.6-1;

(7) Review and resolution of protests as provided at 43 CFR § 1610.6-2.

(b) Each step of the timeline shall be completed as expeditiously as practical and, to the fullest extent possible, within the time limits set out on the dashboard, with a goal of completing the entire planning process within two years from the date that the inventory is released to the public.

Possible preamble explanation: Almost everyone agrees that the public land use planning process takes too long. An important goal of any new planning rules should therefore be to promote more streamlined planning. Planning might be streamlined, for example, if specific criteria for managing particular resources could be put off to a later phase of planning. So, for example, plans must decide where oil and gas leasing will be allowed and not allowed, but the details of how leasing and development might occur can be decided at a later phase of planning

as is done through a master leasing plan. These details are important, but they do not necessarily need to be decided when land use choices are being made. Streamlining planning in this way could greatly expedite the timeline for planning.

To that end and to encourage efforts to streamline planning, the BLM will establish an online “planning dashboard” that will establish timelines for completing each phase of the planning process. Although not mandated by the FAST Act, the planning dashboard borrows the concept from that law as a way to promote more streamlined planning. The dashboard serves several important purposes. First, it provides interested parties with information about how the planning process will evolve, when the various stages for public engagement are likely to open, and when various stages of the planning process are expected to be completed. This will allow these parties to better schedule their own participation in the planning process. Second, it provides the BLM with a target date for completing each stage of the planning process. Experience with the permitting dashboard under the FAST Act suggests that targets work to move agency decisions along, even if those targets are not strictly enforceable. Finally, strict timelines can assist the BLM in identifying ways to streamline planning so that target dates can be more readily achieved.

We suggest adding the following new rule:

43 CFR § 1610.11 ACEC Databank

(a) The BLM will maintain a complete, searchable record of every ACEC within the BLM system on its website. Information about the location, protected resources, public access, restrictions on use, and the rationale for designating the ACEC will be included in the databank, and will be presented in a user-friendly format established by the Director for this purpose.

(b) The State Director of each BLM State Office will be responsible for reporting information to the Director for inclusion in the ACEC databank. Information regarding ACECs that exist at the time that this rule takes effect will be reported to the Director within 180 days from the effective date of this rule. All ACECs designated subsequent to the effective date of this rule will be reported to the Director within 90 days from the date of their designation.

(c) Upon receipt of ACEC databank information from BLM State Offices, the Director will promptly publish that information on the BLM website.

We suggest adding the following new rule:

43 CFR § 1610.12 Pilot Projects

(a) After public notice and an opportunity for comment, the Director may authorize one or more deciding official to develop and implement a land use plan that meets the general requirements of these rules but that allows for testing different strategies that might prove more effective in streamlining planning, promoting landscape-level management, and/or encouraging adaptive management of planning area resources. Plans authorized under this section will be designated as pilot projects.

(b) Pilot projects may be developed for any unit of planning, including units that are defined for purposes of the pilot project itself.

(c) A pilot project may be authorized under this section only after the Director finds in writing that the project has a significant likelihood of achieving two or more of the following objectives:

- (1) Improving opportunities for meaningful public participation;
- (2) Simplifying the planning process without undermining core planning objectives such as making specific land use choices for every tract within the planning area;
- (3) Promoting opportunities for planning at broader scales, and especially at the landscape, ecosystem, or watershed level;
- (4) Incorporating a robust and mandatory adaptive management program into the plan, with specific timetables for carrying out adaptive measures.

(d) The Director may approve multiple pilot projects that test the same or similar strategies in different environments, over different scales, and in different types of planning areas, as may be necessary to demonstrate the effectiveness of these strategies.

(e) The Director will consider amendments to the planning rules where one or more pilot projects demonstrate superior planning strategies that might be deployed widely across many or all BLM plans.

Possible preamble explanation: Just as the BLM intends that land use plans be adaptive, so too, the process for developing and implementing such plans should adapt as the BLM learns more about how to develop and implement effective planning. Adaptive management is sometimes described by the phrase "learning by doing," and pilot projects offer the perfect opportunity for the BLM to learn about superior management strategies by actually testing them in planning areas. The intent of this provision is to provide the BLM with the flexibility to experiment with new planning approaches and strategies that may deviate somewhat from the specific requirements of the planning rules while ensuring that the basic goals and principles set forth in those rules are honored. Pilot projects may be approved only where they meet strict criteria and only where they stand a reasonable chance of promoting better and more innovative planning practices.

Respectfully submitted,

/s/ Michael Blumm

Jeffrey Bain Faculty Scholar and Professor of Law
Lewis and Clark Law School

/s/ Mark Squillace

Professor of Law
Natural Resources Law
University of Colorado Law School

Additional signers listed in alphabetical order below

Titles and affiliations listed for identification purposes only and do not represent the endorsement of the signers' institutions.

Nadia B. Ahmad, Assistant Professor
Barry University Dwayne O. Andreas School of Law

Hope Babcock, Professor of Law
Co-Director, Institute for Public Representation
Georgetown University Law Center

Myanna Dellinger, Associate Professor
University of South Dakota School of Law

Debra L. Donahue, Professor of Law
University of Wyoming College of Law

Tim Duane, Visiting Professor of Law, University of San Diego
Professor of Environmental Studies
University of California, Santa Cruz

Stephen Dycus, Professor
Vermont Law School

David Favre, Nancy Heathcote Professor of Property and Animal Law
Editor-in-Chief, Animal Legal & Historical Web Center
Michigan State College of Law

Robert L. Fischman, Richard S. Melvin Professor of Law Professor of Public and
Environmental Affairs (adjunct)
University of Indiana Bloomington Maurer School of Law

Victor B. Flatt, Thomas F. and Elizabeth Taft Distinguished Professor in Environmental Law
Director, Center for Climate, Energy, Environment & Economics (CE3)
University of North Carolina School of Law

John Freemuth, Professor of Public Policy and Senior Fellow
Environment and Public Lands
Cecil D. Andrus Center for Public Policy
Boise State University

Robert L. Glicksman, J. B. and Maurice C. Shapiro Professor of Environmental Law
George Washington University Law School

Dale D. Goble, University Distinguished Professor
Schimke Distinguished Professor of Law
University of Idaho

Hillary M Hoffmann, Professor of Law
Vermont Law School

Oliver Houck, Professor of Law
Tulane University Law School

Blake Hudson, Interim Director, John P. Laborde Energy Law Center
Burlington Resources Professor of Environmental Law
Edward J. Womac, Jr. Professor of Energy Law
Joint Appointment
LSU Law Center
LSU School of the Coast and Environment

Sam Kalen, Winston S. Howard Distinguished Professor of Law
Co-Director, Center for Law & Energy Resources in the Rockies
University of Wyoming College of Law

Robert B. Keiter, Wallace Stegner Professor of Law
University Distinguished Professor
University of Utah S.J. Quinney College of Law

Christine A. Klein, Chesterfield Smith Professor of Law
University of Florida Research Professor
Director, LL.M. Program in Environmental & Land Use Law
University of Florida Levin College of Law

Sarah Krakoff, Professor and Schaden Chair
University of Colorado Law School

Joel A. Mintz, Professor of Law,
Nova Southeastern University College of Law

Michael Pappas, Associate Professor of Law
University of Maryland
Francis King Carey School of Law

James R. Skillen, Ph.D.
Assistant Professor of Environmental Studies
Calvin College

Stephanie Tai, Associate Professor of Law
University of Wisconsin Law School

Mary Christina Wood, Philip H. Knight Professor
Faculty Director, Environmental and Natural Resources Law Center
University of Oregon School of Law

Sandra Zellmer, Robert B. Daugherty Professor
University of Nebraska College of Law

Senator BARRASSO. Thank you very much for being here. Thank all of you for your testimony, your time, and your thoughtfulness.

I am going to turn to my colleagues in a second for questions.

Mr. Kornze, first, there was an article I was surprised to see in the Washington Post today, on page A15. The Interior Secretary warns staff about harassment, a pretty large article in the Post.

[The information referred to follows:]

The Washington Post**PowerPost**

Follow @powerpost

Get The Daily 202 Newsletter

Congress

Interior chief warns 70,000 employees: Sexual harassment is 'completely out of line with our values'

By Lisa Rein June 20

Interior Secretary Sally Jewell sent a warning to 70,000 agency employees last week to "comply with the ethical responsibilities expected of all Federal employees" and said she is troubled by reports of sexual harassment in the National Park Service.

The unusual email came a day after Park Service Director Jonathan Jarvis was lambasted by Democrats and Republicans on Capitol Hill for his response to allegations of sexual harassment at two parks. Lawmakers accused Jarvis — who has been embroiled in his own ethics scandal — of a slow response to what they called a culture of harassment and said they suspect the problem is widespread.

Jewell wrote that "systematically addressing sexual harassment at the Interior Department" is a "priority."

"I am particularly troubled by reports of sexual harassment and mistreatment of people in the workplace. As a Department, we have no tolerance for this type of conduct, which is poisonous to the workplace, demeaning and damaging to the affected individuals, and

<https://www.washingtonpost.com/news/powerpost/wp/2016/06/20/interior-chief-warning-l...> 6/21/2016

Interior chief warns 70,000 employees: Sexual harassment is 'completely out of line with ... Page 2 of 3

completely out of line with our values. I have spoken with senior Department and Bureau leadership about ways to better understand the scope of this problem within the Department."

The email, obtained by The Washington Post, also refers to other misconduct and lapses in judgment disclosed by the Interior Department's watchdog.

In a report released last week, Deputy Inspector General Mary Kendall found that a researcher at the U.S. Geological Survey committed scientific misconduct and data manipulation that affected two dozen research projects worth more than \$100 million.

But the Park Service's sexual harassment cases have drawn the most attention from the public.

A high-profile investigation by Kendall's office released in January documented evidence of a long-term pattern of harassment and a hostile work environment at the Grand Canyon, where boatmen and a supervisor pressured female colleagues for sex on long river trips, bullied them, then retaliated against some who rejected their advances or reported the problems, investigators found.

The report from last week disclosed that the chief park ranger at Canaveral National Seashore in central Florida was found to have sexually harassed women on his staff in three substantiated cases in less than two years. The ranger is still working at the park, although not in a law enforcement job, prompting criticism from lawmakers that Jarvis should be pursuing discipline more aggressively.

"While the vast majority of the Department's 70,000 employees work hard and play by the rules," Jewell wrote, "such lapses in judgment or outright misconduct reflect poorly on the Department as a whole, divert resources from our important missions, and are not acceptable."

She urged employees to report "ethical violations and misconduct" and warned them that retaliating against whistleblowers who bring problems to light is "expressly prohibited by the law."

The Interior Department is one of the largest federal agencies and includes the U.S. Fish and Wildlife Service, the Bureau of Indian Affairs and the Bureau of Land Management.

The Park Service is conducting an anonymous survey of all 22,000 full-time, seasonal and temporary employees across the country to gauge their perception of harassment and whether it is widespread.

<https://www.washingtonpost.com/news/powerpost/wp/2016/06/20/interior-chief-warning-l...> 6/21/2016

Interior chief warns 70,000 employees: Sexual harassment is 'completely out of line with ... Page 3 of 3

The inspector general found last year that Jarvis broke the rules when he failed to seek permission from the Interior Department's ethics office to write a book for a publisher that does business with the agency.

Lisa Rein covers the federal workforce and issues that concern the management of government.

 Follow @ReinIwapo

The article says that Secretary Jewell apparently warned 70,000 Federal employees to “comply with the ethical responsibilities expected of all Federal employees.” According to the article, this is a result of sexual harassment, scientific misconduct and data manipulation affecting research projects worth more than \$100 million and other violations of ethics standards.

I was just wondering what you are doing to address this issue at the BLM and ensure that your agency employees uphold their ethical responsibilities?

Mr. KORNZE. Well, I appreciate the question and these are very serious issues.

A number of weeks ago, perhaps a month ago, I sent out my own note to all 10,000 BLM employees noting the importance of promoting an ethical culture within our organization. Folks have known the importance of transparency, following the rules, respecting one another, and these are issues in conversations that are continuing in a very real way within all of the agencies within the Department.

Senator BARRASSO. It seems that the National Park Service is conducting an anonymous survey of all their full time, seasonal, and temporary employees to get a handle on the problem. Is that something you are considering for BLM as well?

Mr. KORNZE. We are considering it.

Senator BARRASSO. Thank you.

Senator DAINES?

Senator DAINES. Thank you, Mr. Chairman. Thanks for holding this hearing today.

I am an avid sportsman, as are most Montanans. I enjoy our public lands with my kids, and it is something I want to pass that legacy down to as well.

I am also just struck as I sit here today and looked at a quick little map here and probably should have brought a map around where the BLM lands are. It is very, very white as it relates to—I have a map here that shows BLM lands as yellow. If you look, draw a line north and south basically on the eastern border of Montana, go down the east border of Wyoming, east border of Colorado and the east border of New Mexico, there is nothing as relates to BLM lands going to the east with just a little bit of smidgen in North Dakota, South Dakota.

It is no coincidence, perhaps, we sit here. It is Wyoming, it is Alaska, it is Utah, it is Idaho, it is Montana, it is Colorado, it is Arizona that are here today.

Mr. KORNZE. Yeah.

Senator DAINES. I was struck with Mr. Ogsbury’s comment as well on the importance of our Governors, the frustration we have out West that our voices are not being heard.

With all due respect, we have many members in this Committee, the full Committee, from Vermont, from Massachusetts, from states that do not have lands that are classified as BLM. That is why you see a lot of interest here today, I think, from those who are affected every day, who hear from our ranchers, our sportsmen, our farmers, those in the energy business as well.

As I have said in Montana, we are a blend of John Denver and Merle Haggard. You have to find that melody that we want to be

able to raise our kids in our state and allow them to get jobs so they can stay in our state. Our number one export in Montana is our children. We educate them and then they have to leave because we are 49th in per capita wages, and so that is why these discussions really, really matter.

I was in the software business for a number of years. Anytime there was an upgrade from 1.0 to 2.0 oftentimes customers would be excited about that. Other customers would run for cover knowing here comes the upgrade. What is going to happen here as things will break or the upgrade was not as it was promised to be.

The decisions that are made by BLM have wide ranging implications for our farmers or ranchers and others' use of land and our sportsmen as well. That is why I think transparency, local engagement throughout the process is of utmost importance.

We have heard from Director Kornze today that the new BLM 2.0 plan gives added participation for vested interested groups. But when I am talking to folks who work in the energy and ag businesses in Montana, multigenerational Montanans, listening to the other testimony today and reading the comments from the BLM comment period, I tell you, I am hearing something a little bit different.

That is why, again, it is pretty quiet here on the other side of Senator Barrasso because most of states do not have BLM lands. It is pretty active over here because we all do.

Thousands of jobs can be at stake because the BLM does not always give due consideration to the people who responsibly use the land every day and have been doing so for generations.

Ms. Sgamma, can you address the discrepancies that I heard between Montanans and Director Kornze and what you think needs to be done in order to ensure the impacts of BLM 2.0 planning rule on the people who use the land are reflected and adequately addressed in this process?

Ms. SGAMMA. Well, I would reverse the diminishment of elected officials in the process, first and foremost. County commissioners, city councils, those directly in rural communities and local communities in the West affected should have a greater voice, just as Mr. Ogsbury has pointed out, the governors' roles are diminished as well.

When you look at things landscape scale and ignore things like counties and put conditions on their participation, that is diminishing the role of the public and giving it more to special interests, frankly.

When you take away the local elected officials and the state elected officials and give it to special interests, you know, you're really just taking away from those who actually represent the public in all facets of life, from conservation to economic.

Thank you for the question.

Senator DAINES. Director Kornze, I obviously want to get your input here. As grazing permittees and lessees have contractual relationships with the BLM, makes their livelihoods off the land, they are integral partners with BLM in managing and improving ranges across Montana and the West. They have a distinctive and integral role to play in this.

With that in mind, do you view grazing permittees as having a vested interest in BLM's RMP development process and a unique relationship with BLM relative to other interested stakeholders or the public at large?

Mr. KORNZE. Okay. Well, thank you, Senator, for the opportunity to reply on some of this. And one thing I want to point out is we've had some fantastic engagement with we're piloting this effort at a number of places. One of them is our Missoula plan. We've recently received very positive, glowing remarks from the Missoula County Commissioners and from Lewis and Clark County Commissioners.

So there are Montanans on all sides of this issue, and we've had some real progress that we're making an example of this working.

Senator DAINES. Right, and thank you for that. I will just say you have touched two counties. There are 54 more to go.

Mr. KORNZE. There are.

Senator DAINES. If you look at a balanced view here of making sure you are getting all counties represented in the voice.

Mr. KORNZE. Yes.

Senator DAINES. With all due respect, thank you.

Mr. KORNZE. But there are three counties that are involved in the planning process, and we've heard from two and it's been thumbs up. So that's the point that I'm trying to make.

Related to grazers, grazers are playing an important role in the land. There are some very important tools that come with grazing, sometimes when it comes to fire and other management programs that we have. So, you know, we've considered that an important relationship.

If grazers want to be part of resource management planning, which we hope they do, we want them at the table. We see them and talk to them, you know, very regularly, as you know. So that's a relationship that's important to us.

Senator DAINES. Okay, thank you, Director Kornze.

I am out of time. Thanks.

Senator BARRASSO. Senator Gardner?

Senator GARDNER. Thank you, Mr. Chairman, and thank you to all the witnesses for being here today, particularly the number from Colorado. So welcome to the Energy Committee. Mr. Chairman, thank you for holding this hearing.

Mr. Kornze, I wanted to just follow up with a few of the things that you had talked about in your opening comments.

You talked about local communities, local leaders, farmers, local ranchers, feeling disconnected from the agency, and you mentioned Governor Herbert and his concern with the BLM planning process. Now Governor Herbert does not support this rule as it is written today, does he?

Mr. KORNZE. We've received comments from the State of Utah with some concerns, but, you know, this is—

Senator GARDNER. But I mean, that is why—it sounds like in your opening statement when you talk about I agree with Governor Herbert. It is a little bit misleading to say that this rule, then, is a result of a conversation you had with Governor Herbert because I think they have the same objections that you are going to hear from Wyoming, from Colorado, from Montana, and from Arizona. And I also—

Mr. KORNZE. We've received comments from a lot of government, governors, governments, saying that we need a more transparent process. So the average BLM planning process takes eight years.

Senator GARDNER. To——

Mr. KORNZE. Eight years, and that's the average.

Senator GARDNER. Mr. Ogsbury, how many governors in the Western Governors' Association support the rule as written today?

Mr. OGSBURY. I would have to—Chairman Barrasso, Senator Gardner, members of the Committee, I would ask leave to respond for the record so I could give a thoughtful and accurate answer.

[The information referred to follows:]

Response for the record from Mr. Jim Ogsbury to Senator Gardner's Question:

No governors have communicated their support of BLM's proposed Planning 2.0 rule to the Western Governors' Association.

Senator GARDNER. But I think it is fair to say that the majority of Western governors do not support the plan, the rule, as it is written. Is that correct?

Mr. OGSBURY. Western Governors' Association has submitted detailed comments on the rule that express very serious concerns and reservations about it, about its provisions.

Senator GARDNER. And some of those reservations the governors do not believe that they are authentic partners, that it allows room for consistency with state plans and I believe, it creates unfettered discretion by BLM to ignore the governors' comments. That is some of the testimony you provided, correct?

Mr. OGSBURY. Those are among the concerns, yes, sir.

Senator GARDNER. That sounds like a pretty strong condemnation of the rule. I have to tell you I have traveled throughout Colorado, Dolores County, Garfield, Gunnison, Hinsdale, Jackson, Mesa, Moffat, Montezuma, Montrose, and Rio Blanco, Club 20, Western Governors' Association, a number of people who are very concerned about this rule as it is written.

Some of their overarching themes of concern, prioritization of single use of multiple use, proposed change for cooperating agency status qualifying—I mean, Mr. Kornze, do you think that a Garfield County Commissioner should have more say in Garfield County than an NGO in New York City over what happens on BLM lands?

Mr. KORNZE. So there is no change to cooperating agency status proposed here.

Senator GARDNER. I think some would disagree with you here. I think a number of people would disagree with you on how that cooperating agency status works.

But do you think, from a standpoint of philosophy, that an NGO in New York City should not have as much opinion or sway or clout over what happens on BLM land in Garfield County than a Garfield County Commissioner?

Mr. KORNZE. So the Organic Act that we have for the agency tells us that counties and states, other local governments should be the closest to us.

Senator GARDNER. Right.

Mr. KORNZE. So, but let me lay out the challenge that we have here. The average BLM resource plan takes eight years, average. It can take 10, 12, 13 years to complete one of these plans.

What Governor Herbert commented to me was that you could have two or three turnovers in your county commission during that time. Right? So the folks that come into the scoping process don't have the time to track the 12 or 13 years later that their comments have been successfully incorporated into what we've been working on.

So that's a lot of time. It's too much time. It's also a lot of money that we're spending on that process that I would prefer to spend on projects on the ground, working with your constituents.

So that question that we asked our team is how do we make this go faster? And the answer that they brought back to us is we should add more process up front because where we get caught up and where we trip very often is people bring new information to the table and we have to supplement and it adds years and years to the process.

So what you see in front of you and what all of us have in front of us with this proposal, this is an honest, genuine effort and an open effort, right? We are not, these are not final answers. This is a proposal that we're seeking comment and input on. So we're very happy to have this hearing today. But this is an honest effort to figure out how do we go faster? How do we make this more transparent?

I think the gentleman's comment about this, about planning documents which can be a thousand to many thousands of pages long, turning this more into professionalized business is relevant. And so——

Senator GARDNER. We are running out of time here.

Mr. KORNZE. Yes, yes.

Senator GARDNER. I have a couple of questions here.

Mr. KORNZE. Very quickly, we're essentially, there's two big changes here.

One, we want to start with a process where we ask all our local partners, towns, counties, others, to bring the best science and best data forward. That's the new foundation we want to build. We think it will be stronger.

And the second piece is between our scoping process and our draft EIS we want to be more transparent. We want to take a document to your county and others and say, these are the basic concepts we're exploring. Are we headed in a good direction here? Because if we're not we want to understand how you're thinking about it different.

Senator GARDNER. Can you give me a definition of what high quality information means?

Mr. KORNZE. So high quality information relates to guidance from OMB. It encapsulates best available science. It relates to, let's see, I've got a note here.

You know, information that is yes, reliable——

Senator GARDNER. Well, here is the thing, I mean——

Mr. KORNZE. Accurate.

Senator GARDNER. So we have the length of time it takes to get a plan. You have counties that maybe have one employee trying to address these issues.

Mr. KORNZE. Exactly.

Senator GARDNER. They are having to rely on bigger counties to address these issues. There is very little turnover in the agencies that are having to deal with this. I think this is putting tremendous stress on so many of our counties in Colorado and beyond that are heavily, heavily outnumbered in terms of private acres versus public acres. In terms of public acres more, far more, than private land.

This is not something that I have people calling my office and saying please embrace this rule. Maybe there are one or two people, one or two organizations, not from Colorado. Maybe a few organizations in Colorado, but the vast majority of those public land counties that I speak to have grave concerns with this.

We were looking at a map here about the BLM, the public lands in the Western United States. Do you think it is time that we move the BLM headquarters to the Western part of the United States? [Laughter.]

Mr. KORNZE. I would be open to that conversation.

Senator GARDNER. Thank you.

Senator BARRASSO. Thank you, Senator Gardner.

Senator Flake?

Senator FLAKE. Thank you.

Director Kornze, could you tell me what the role of the Resource Advisory Councils are?

Mr. KORNZE. Our Resource Advisory Councils play an important role in terms of the folks that we sit down with usually, two, three, four times a year. We go out on tours. We bring them, somebody put it to me recently, inside the tent, and we show them the processes we're working through. We show them the tough questions we're asking.

You know, we're able to consult with them in a way on an ongoing basis that's meaningful for us and that is over and above some of their—it washes away some of the restrictions we have with members of the public, right?

Senator FLAKE. Well, that is a concern I have. We know what they are supposed to do, but in a letter last month to you I listed some of the concerns that we have coming out of Arizona about the proposed rule. One of the things that I found most troubling was that I heard from the Arizona Resource Advisory Council that the proposed rule was not brought up by the BLM or discussed at any of their meetings prior to being promulgated in September.

I received a letter from you, yesterday, that detailed the interaction that BLM has had with the Arizona RAC. It consisted of an initial communication two years ago. Another providing a fact sheet after the proposed rule was published, and then an invitation to a webinar during the public comment period. Is that sufficient interaction and is that using the RAC as it was intended?

Mr. KORNZE. Well, we have had, what we think, is, you know, some fairly good engagement with the RAC in Arizona, and we've taken a number of other approaches to get word out about this proposal.

I, myself, have spoken to the National Association of Counties, at least three times in the last few years, heavily focused on this issue. Some of my deputies have done similar engagement. We've been to the North American Wildlife Conference. We've sat down with Western Governors' Association. We've had webinars. All of this information is available online. You know, we've recorded. We've broadcast.

We've had, you know, we have some limited resources, so have we been everywhere in every town? We have not, but have we done, I think, a significant and honest outreach with the basic questions of how do we improve our planning process? We have, and have we taken that input and turned it into a product? We have, and that's where we are today.

So, the additional information that we have from the Arizona RAC, from other state RACs is very valuable to us and is going to continue to shape this proposal as it moves forward.

Senator FLAKE. Well don't you think that it would have been wise, before the rule was promulgated, to seek some of that input because it seems, given the communication that you outlined and what we hear from them, that their advice and counsel was not sought in the promulgation or the formulation of the rule.

Wouldn't it have been better to have sought their counsel before promulgation of the rule rather than simply informing them, here is what it is and come to a webinar?

Mr. KORNZE. So we are happy to, you know, double down on our engagement with the Arizona RAC and we look forward to hearing their thoughts and concerns.

Senator FLAKE. The purpose is to seek their input before the issue, before the rule was promulgated. I think we could have avoided a lot of the substantial negative input that we have received had the RACs been used for their intended purpose.

But when it is a letter two years ago providing them the fact sheet after the proposed rule was promulgated and then an invitation to a webinar—that is it. That is about the only communication that they received, so I do not blame them for feeling left out.

Mr. KORNZE. Yeah.

Senator FLAKE. And can you blame them?

Mr. KORNZE. Well I think, you know, if your perspective is that the outreach here could have been better, then I would ask you to think about this rule as an effort for us to formulize making outreach stronger.

The point here is to have more upfront engagement so that even before we have a scoping meeting we've engaged with counties and towns and, you know, universities and others, you know, local grazers, citizen scientists, making sure that we're bringing data together and we're having a good conversation about what foundation should we be building this plan upon?

So, you know, I'm happy to take criticism about our outreach efforts on this rule. You know, we may disagree about the quality of that outreach, but what this rule, proposed rule, is about is making sure that we're talking to folks, local folks, early and often, because right now the criticism, they may not be calling Senator Gardner's office but they call my office.

And when I'm out West I very frequently hear from folks where they say, yes, look, we went to a scoping meeting for your plan and then you disappeared into a cave for four or five years and then suddenly we've got a 1,500 page document on our desk that we have to work through. That's not an ideal process. Right? We want folks to feel like they've been with us through multiple steps and that they're part of a live conversation, and that's what we're seeking to give them.

Senator FLAKE. Well, I would just suggest, I mean, you have this organization, this RAC, that is there for that purpose.

Mr. KORNZE. Yeah.

Senator FLAKE. It would behoove BLM to reach out.

Mr. KORNZE. Okay.

Senator FLAKE. While it still matters while the rule is being formulated and we could avoid some of the negative feedback that we have received. That is my two cents, and I yield back.

Senator BARRASSO. Thank you, Senator Flake.

Senator Lee?

Senator LEE. Thank you, Mr. Chairman.

This is an issue that is very important to me and to my state. BLM manages nearly 23,000,000 acres of public lands in Utah. Now 23,000,000 acres is an enormous amount of land. I live in a relatively big state and within my state that covers an astounding 42 percent of the surface area of the state.

Utahans depend on these lands for their way of life, for farming, livestock grazing, mining, energy development and also in many, many instances for recreation. It goes without saying that BLM's land management plans have very substantial and very lasting consequences for Utah's economy and for the well-being of individual families, individual citizens within my state.

That is why I am troubled by the proposed planning rule's disregard for state and local involvement in the planning process. The Federal Land Policy and Management Act, or FLPMA, as it is commonly known, requires BLM to give state and local governments a prominent seat at the land use planning table to ensure that plans are in harmony with local needs and with local values, with local customs and things that the land is commonly used for.

The proposed rule that we are discussing today, however, flouts, I believe, BLM's legislative mandate by undermining coordination between BLM and local officials, relaxing consistency standards and watering down state and local input and doing so in the early planning stages.

Furthermore, the proposed rule threatens to circumvent BLM's own field managers and state directors at later stages of the planning process through the introduction of so-called landscape level planning which transfers decision-making to a deciding official, hand-picked by the BLM director in Washington, DC. In the case of my state, that is a couple thousand miles away from where the affected people live and work and are trying to raise their families.

Effective land management depends on collaboration and trust between the Federal Government and local officials at every step of the process. I therefore strongly urge BLM to carefully consider the public comments submitted by state and local leaders and to incorporate their recommendations into the final rule.

But Mr. Kornze, Utah's local leaders and I are especially concerned about the new planning assessment step in the proposed rule. As you are aware, last month Utah's Governor, the Office of Governor Gary Herbert, sent you a letter expressing concern that the planning assessment does not meaningfully involve state and local governments, even though that is required by FLPMA. The letter recommends, among other changes, two amendments to the planning assessment. The first would direct the BLM to "identify state and local plans with which BLM plans must be consistent to the maximum extent consistent with FLPMA and Federal law." The second would require BLM to "coordinate with state and local governments and Indian tribes to formulate BLM planning and management objectives in the planning area."

Now these are modest and, I think, very reasonable requests that would more closely align the planning assessment with FLPMA and with what FLPMA already requires and I think, would alleviate concerns justifiably shared by states and local governments across the West.

So, Mr. Kornze, does the BLM plan to incorporate these recommendations into the final rule?

Mr. KORNZE. So we are receiving a lot of really excellent comments right now from the State of Utah, from many states, from counties, from other stakeholders and other governments. We plan, I think we have a path to accepting a number of comments. I can't tell you specifically, you know, where we are in terms of working through those two pieces, but I will say, in terms of the planning assessment and the role of state and county governments, if they are cooperating agencies they are sitting with us. Right?

So the point of a planning assessment is to bring in a whole mass of information and figure out what data, what information you're going to build your plan upon, right? What are the core—what's the core information you're going to use? You know, who sits next to us? The state and the counties, if they want to. They have to opt in to be a cooperating agency, but they sit with us and they help us work through that data that comes through the door.

So I'm confident that that is going to be, continue to be, a close relationship.

Senator LEE. Now I am out of time, but just to clarify. Is there anything about the two recommendations I outlined, the two proposed changes that strikes you as unworkable or something that is likely to be rejected or do they sound like sound recommendations to you, recommendations that presumably could be and perhaps should be incorporated into the final rule?

Mr. KORNZE. You know, we are going to take those seriously and see if there's something that we can incorporate there.

Senator LEE. Okay.

It does not sound like there is anything that is categorically, that would strike you as unreasonable about those recommendations? Okay, thank you.

Senator BARRASSO. Thank you, Senator Lee.

Senator Warren?

Senator WARREN. Thank you, Mr. Chair.

The BLM's Planning 2.0 initiative has the laudable goal of modernizing the agency's planning process and to increase public in-

v involvement in the management of 245,000,000 acres of public lands directed by the agency. The vast majority of these, of course, are out in the Western states. While BLM does not manage any lands in Massachusetts, I am very concerned about stakeholder involvement and public outreach across all Federal agencies.

In Massachusetts there have been a number of times when Federal outreach has just clearly fallen short, whether it's FERC, the FAA, NOAA, HUD or the BLM. An agency cannot insulate themselves from public engagement.

Now I should note that some agencies such as the National Park Service and the Department of Agriculture have done a good job of reaching out to communities in Massachusetts while others simply have not.

So I would like to start today by asking, Director Kornze, the 2.0 initiative is the BLM's first resource plan update in over 30 years. The agency has stated in the Federal Register that the goal of the proposed rule and I'm going to quote here, "is to affirm the important role of other Federal agencies, state and local governments, tribes and the public during the planning process and enhance opportunities for public involvement and transparency during the preparation of resource management plans."

I would just like you, if you would, to explain what steps the BLM is taking to determine the best practices to accomplish outreach and public participation goals?

Mr. KORNZE. Great. Well a few of the pieces that we're trying to pull together, one is our sister agency, the U.S. Forest Service, has gone through a number of revisions to their own land use planning regulations in recent years. In fact, I think they've done it three or four times.

One of the pieces that they have found to be the greatest success in their new process is the planning assessment, making sure that they're doing a wide call for information and building on top of that. So that's one of the pieces.

We're also, you know, we have nearly 40 years of experience in working through these planning processes. So we're really—we've relied on our sister governments, the governors, counties. We've also turned to our own folks who have a lifetime of experience in helping us understand what counties and local governments and others really have been asking for over these many years.

Senator WARREN. So thank you.

I am pleased that the BLM has made early public participation a goal. But I have got to say I am concerned that the agency is working against itself by proposing to reduce the minimum public comment period for a draft EIS level plan amendment from 90 days to 45 days and additionally proposing to reduce the minimum public comment period for draft resource management plans from 90 days to 60 days.

I just have to say, oftentimes I have been contacted by my constituents asking me to request that the Federal Government extend the period of time so that they can comment so that they have a chance to have their voices heard.

So let me ask this. Mr. Ogsbury and Ms. Sgamma, in your respective testimony you also cited concerns with the BLM's proposed reduction in the comment period. Would this proposed reduction

likely limit community participation and what do you believe would be an appropriate comment period?

Mr. OGSBURY. Chairman Barrasso, Senator Warren, members of the Committee, yes, Western Governors do share your concern about the reduction in time period for public comment and feel that the additional opportunities for input at the front end of the process are probably not a good substitute for those comment periods which are necessary to wade through extremely lengthy, complex materials and materials that might become all the more lengthy and complex if the agency does move to more of a landscape level analysis.

So I think there's been a lot of comment, commentary from the Western Governors to the effect that, rather than shortening those public comment periods, they should be extended.

Senator WARREN. Thank you.

Ms. Sgamma?

Ms. SGAMMA. Thank you for the question, Senator Warren.

I really think that the public comment period should be about 180 days because these documents are thousands of pages and they can include technical documents on wildlife, water, wild and scenic rivers, very complex issues. So I think the public should have a good chunk of time.

Thank you.

Senator WARREN. Alright.

This is very important. Look, I understand BLM's desire to move these plans in a timely fashion but I think it is important to get them done right and that everyone has a chance to have their voice heard in this process. Modernizing the planning process is a very important goal, but I do not think that shortening the comment period at the expense of public input is the way to accomplish that. I hope that BLM hears and acts on these concerns before issuing a final rule. Thank you.

Thank you, Mr. Chair.

Senator BARRASSO. Thank you, Senator Warren.

Senator Hoeven?

Senator HOEVEN. Thank you, Mr. Chairman.

Director Kornze, I have several questions regarding the Planning 2.0 initiative. It moves to what is called landscape scale planning which is much broader and more ambiguous context than currently exists.

Talk to me about oil and gas development under that approach. How is it going to change?

Mr. KORNZE. You bet. So I don't see any major change for oil and gas, specifically. So we talk about landscape level planning a number of times in the preamble to the rule. I think we may have been better served to talk about appropriate scale, right?

So at the agency, working with our partners, we have to figure out issues, you know, perhaps there's a real recreation driver for an individual town. And then maybe in that same quadrant or half of a state there's a change in economies. Let's say one resource extraction is going in, one is going out and there's a need to figure out on that scale how to work with those folks and how to serve those communities best.

And then you may have on that same landscape a bigger landscape that perhaps goes across state boundaries. Think about the way that fire is changing ecosystems and invasive species are coming in and how we're planning for transmission lines and how are we working through other large scale changes or challenges.

So right now at the Bureau of Land Management we have about, more than 160 different plans. If I gave either of you a map of the West and said, you know, here's a sharpie and here's a map of all the public lands, I would be very surprised if you came up with 160 different units as the best way to approach management of Western public lands.

So what we're trying to do here is to—it's not prescribing something that is necessarily bigger. It could end up being bigger and incorporating multiple field offices into a single plan, but it's really asking the question, you know, perhaps it's, you know, the answer might be, Senator, in practical application that it's better for oil and gas.

You could have a scenario in which our planning is better and more effective because we're looking at multiple scales; therefore, our plans are less susceptible to successful challenge.

Senator HOEVEN. Well I would also recommend that you make sure—it looks to me like you expedite the timeline for input and this is a very complicated issue and I would recommend that you make sure that you provide adequate time for input and you may get requests for extensions. I think you need to consider those very carefully given the significance of the change and the complexity.

I want to move on to leonardite. BLM is trying to decide whether leonardite is coal or humade. But in the meantime we have a plant in Williston, North Dakota that is producing leonardite and paying royalties and that matters. This classification matters because if it is classified as coal then they have to pay royalties, and if not, they do not. In the meantime, they are paying royalties. When are you going to make a decision on this?

Mr. KORNZE. Okay.

So very quickly on the public comment period that a number of folks have mentioned, we will be paying very significant attention to making sure that we get that right.

I think we had put together a, you know, a broader concept that with more information up front, perhaps comment periods would not need to be as long on the back end. But I—we are hearing a strong message from our partners that they still want that time and that makes sense to us. Right, so you've got my ear on that.

On leonardite, which is I want to know who Leonard is. [Laughter.] But on leonardite my understanding is that the lease in question has been in place for about 50 years.

Senator HOEVEN. That is a long time.

Mr. KORNZE. Right.

And so the new company that has the lease that took over ownership a few years ago is looking for a change in the position of the Federal Government in terms of the status of those minerals.

I believe our team will be visiting with the company later this week, so we should be able to move that process along.

Senator HOEVEN. So relatively soon?

Mr. KORNZE. Relatively soon.

Senator HOEVEN. Okay.

The last story I want to ask you about is coal leases. Right now companies are hearing from the BLM that it will take a decade to get approval on a coal lease. Remember in a lot of these instances you do not own the surface acres. What is happening is you are either having to try to mine around you or you are holding up that mine, but it creates a real problem because they are still mining that area, they just have to skip the coal. So you actually create more disruption, more cost and the Federal Government gets no reimbursement out of it.

Now you have got a three-year moratorium and my question is how are you going to address it and fix it? This does not make any sense.

Mr. KORNZE. So in terms of the, I mean, we are, as you know, you know, doing a top to bottom look at the coal program, and all questions are on the table, you know, so this is a legitimate question of how long does it, should it take x amount of time to go through a coal lease process?

If there are new ways to think about that and work through it, we are open to them and now is a perfect time to be bringing that to the table and we will consider that brought to the table via comments.

Senator HOEVEN. Well, and I am just encouraging you to address it because again, you do not accomplish any environmental benefit and instead you are raising costs and for the companies affecting private owners and actually losing revenue in terms of what the Federal Government takes. It seems to me this ought to be figured out sooner versus later, like having a three-year moratorium to get a resolution of the problem.

Mr. KORNZE. Yeah. You know, similar to land use plans that take eight to ten years, ten years for a coal process is too long.

Senator HOEVEN. Too long.

Thank you.

Mr. KORNZE. Thank you.

Senator BARRASSO. Thank you, Senator Hoeven.

Mr. Kornze, following up.

The NEPA, the National Environmental Policy Act, requires every Federal agency to assess the environmental impacts that would result from major actions that are taken by that agency, actions like issuing a permit or new regulation. A Federal agency assesses environmental impacts in what is known as the EIS, the Environmental Impact Statement.

But your agency, the BLM, has effectively exempted itself from complying with NEPA for the Planning 2.0 proposed rule because prior to issuing the proposed rule BLM stated that Planning 2.0 qualified for what is known as a categorical exclusion.

Given the significance of the changes that Planning 2.0 proposes, why has your agency decided not to issue an Environmental Impact Statement for its own proposed rule?

Mr. KORNZE. So we're getting into the fine details here, so bear with me. But the Department of the Interior has a categorical exclusion available to us for efforts that are procedural in nature which this rule fits. Right?

So, let me give you a parallel example. Annually, when we put out our budget, that is a high level document that comes with a CX, the same CX is used because it is not the implementation. It's not hitting the ground. It's high level and it's procedural in nature. So we're taking a similar approach here.

Senator BARRASSO. I think some folks may question that in terms of whether it is procedural or if it actually impacts on the ground. So there may be additional questions about that.

Mr. KORNZE. Sounds good.

Senator BARRASSO. Senator Warren asked a question about how long comments ought to be and Ms. Sgamma, you mentioned 180 days may be necessary just because of the complexity of trying to deal with that.

I am just going to ask Mr. Magagna and Mr. Ogsbury what your thoughts are on the amount of time.

Mr. MAGAGNA. Well, thank you, Mr. Chairman.

We certainly think the time, based on the experience of extensions being granted, that it should be longer than it is today rather than shorter.

I would add to that the other important component of this proposal that allows the agency to put out more than one proposed action during that comment period. Until this point in time I am not aware of any agency that puts out multiple alternatives.

So the fact that we may have two or more in some cases of alternatives to analyze and comment on to me, would add even another element of meeting a larger—a longer comment period.

The CHAIRMAN. Yes.

Mr. Ogsbury, from the standpoint of the governors?

Mr. OGSBURY. Chairman Barrasso, thank you very much for the question.

Western Governors do not have a specific policy on the amount of time that they would request for public comments; however, they've expressed very serious concerns about any reduction in the amount of public comment periods.

Senator BARRASSO. Thank you.

Mr. Kornze, the agency has chosen to include several new terms and objectives in the Planning 2.0 proposed rule. The BLM identified the need to respond more quickly to something called social change as part of the justification for Planning 2.0. How does the BLM define, "social change" and do you believe social change is part of the agency's multiple use management directive?

Mr. KORNZE. So the term social does find its way into the document, and what we were trying to encapsulate was the human element, right?

So it's the economic side. It's the community side. So we used a broad term and that's something we're going to think about improving to be a little bit more specific and clear in the final.

Senator BARRASSO. Getting back to this categorical exclusion and the procedural way that you described it. The Forest Service did include and issued an EIS on their similar proposed rule. So why would the exception apply to BLM but then not to the Forest Service?

Mr. KORNZE. So there's two pieces to that. One is my understanding is that they do not have a parallel categorical exclusion

available to them that matches what we have. And then the second piece is that the larger framework that they have for their similar land use regulation related to plans calls out specific standards on the ground that must be met. So ours is about how we work. Theirs is about how they work but also what they expect to see in their plans and on the ground.

So they are, as a result of what's in their rule, they are seeing impacts on the ground.

Senator BARRASSO. Yes, some may view this as a double standard in that the rules that apply to everybody else do not apply to the BLM.

Mr. Magagna, in your testimony you state the BLM's proposed rule "introduces the concept of landscape level planning." You go on to say that your organization finds several dangers inherent in this approach. Do you have a clear idea of what the term landscape scale planning actually means and would you expand a little bit about your concerns about this landscape scale planning?

Mr. MAGAGNA. Well thank you, Mr. Chairman. It's undefined in the proposal, so I can only suppose what it means.

The way we have necessarily interpreted it is that it gives the agency the ability, in any given case, to allow that to be whatever they choose it to be. It could be narrow. It could be very, very broad. There's no limitation on it, and in that context, perhaps the distinction worth making, incidentally, I've spent the last four years serving on a national advisory committee to the Forest Service, on their new planning rule. There are some fundamental similarities that are practical, a lot of differences. But in terms of that particular component of landscape scale, the Forest Service, I think, more appropriately talks about not doing plans on a landscape scale but assessing the landscape scale impacts of the plans that they do do. They're doing their plans based on forest units as they've always done, but they're sensitive to what the landscape scale impacts are, not only on other forest lands, but on private lands, on state lands, etcetera.

That seems to make some sense to us. Whereas, landscape scale planning, per se, does not and creates real concerns that you're moving further away from being able to look at the local impacts on local people on local resources. The broader you become, the more generic you necessarily become.

Senator BARRASSO. Yes.

Ms. Sgamma, is there anything you would like to add on this term landscape scale planning and concerns you might have with that phrase?

Ms. SGAMMA. Well, I think the biggest problem with it is by crossing state borders and county borders. It's just watering down the input of those counties and states.

When you've elevated a deciding official, who could be in Washington, who could be in another state, who certainly is not looking at the county's specific interests. I think that's problematic and really getting away from the specific resources on the grounds.

I mean, I sympathize with Director Kornze's point about there being a lot of planning units, but in order to do good planning you do have to take into effect those details on the ground.

Senator BARRASSO. I want to thank all of you for being here to testify today.

Decisions about the future of public lands should involve, I believe, the best science, meaningful and ongoing coordination with local stakeholders, with state and local governments, with tribal officials and then discretion that reflects a true understanding of the resource needs.

I think Planning 2.0 fails in all these categories. Director Kornze, given the feedback we have received here today and other serious concerns raised during the public comment period, it seems clear to me that the BLM must withdraw Planning 2.0.

Any future proposed rule should meet clear, defined standards for improving the planning process without compromising the basic tenants of public land management.

If there are no further questions, members may submit written follow up questions for the record.

The hearing record will remain open for two weeks.

The hearing is adjourned.

[Whereupon, at 3:59 p.m. the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

Senate Energy and Natural Resources Committee
 Subcommittee on Public Lands, Forests and Mining
 Hearing on BLM's Planning 2.0 Initiative: June 21, 2016
 Questions Submitted to Director Neil Kornze

Questions from Chairman Murkowski

Question 1: To ensure that the Planning 2.0 final rule can be appropriately administered in Alaska, will the final rule incorporate accommodations that account for Alaska-specific federal requirements contained in the Alaska National Interest Lands Conservation Act and other federal mandates?

Response: All regulations promulgated by the Department of the Interior, including the planning rule, must comply with Federal statutes. The proposed planning rule describes the procedures for the preparation or amendment of resource management plans and is consistent with existing statutes, including the Alaska National Interest Lands Conservation Act.

Question 2: Will the Handbook, which will implement the final rule, be subject to formal public review and comment? If not, will the development of the Handbook nevertheless be a transparent process?

Response: Revisions to the BLM Land Use Planning Handbook will be conducted in a transparent manner and will be available for public review and feedback. Following the approval of the final rule governing land use planning, the BLM intends to finalize and release as interim policy a draft Land Use Planning Handbook for provisional use and public review. Interim policy is necessary to provide guidance to in-progress plans while still giving the public an opportunity to offer feedback on the final policy. The BLM will consider all public comments received in preparing the final handbook.

Question 3: Under what circumstances, if any, do you see Alaska being included in a multi-state landscape scale plan in the future, as allowed for under the proposed rule?

Response: The proposed rule supports the application of a landscape-approach to land use planning, meaning that it 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 makes the most sense based on the relevant management concerns and the issues being addressed. Given Alaska's unique geographic features, the BLM cannot foresee any reasonable circumstance in which Alaska would be included in a multi-state planning effort.

Question 4: Did the Bureau of Land Management (BLM) seek and incorporate input from Governors of the Western States when it sought to shorten the formal review and comment period? Did you consult the Governor of Alaska when you reduced the scope of the Governor's Consistency Review from programs, policies and plans to "adopted and approved" plans?

Response: The BLM is currently in the process of considering input provided by the Governors of Western States during the formal public comment period for the proposed planning rule.

Senate Energy and Natural Resources Committee
 Subcommittee on Public Lands, Forests and Mining
 Hearing on BLM's Planning 2.0 Initiative: June 21, 2016
 Questions Submitted to Director Neil Kornze

Question 5: You indicated in your testimony that the opportunity for the BLM to receive constructive information from the public early in the planning process would benefit the planning process. What assurances can you provide that my constituents will be given a meaningful voice if they provide comments to the BLM during the early stages of the planning process such as during the planning assessment? How will the agency be transparent in the informal planning assessment process, and will you publish the source of comments upon which you base agency decision-making?

Response: The proposed planning rule requires that the results of the planning assessment be summarized into a written report, which must be made available to the public prior to initiating the scoping process. This report would include a summary of information provided by the public as a part of the assessment process. The results of the planning assessment will be used to inform the development of the preliminary alternatives and, eventually, the Draft Resource Management Plan (RMP).

Question 6: How can you be assured of local understanding and knowledge necessary for sound planning decisions if you replace the State Director with a "deciding official?"

Response: The BLM will continue to select line-officers who are highly qualified for any given decision-making 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 lands. The BLM's commitment to qualified and well-informed decision-making will not change under the proposed planning rule. The term "deciding official" is not meant to imply that a line-officer who is unfamiliar with local understanding and knowledge would be designated to make planning decisions. Instead, this term is intended to reflect the fact that for decisions that may affect geographic areas larger than traditional BLM administrative boundaries, an individual with knowledge related to the particular issues of concern within that landscape may be designated to be the "deciding official".

Question 7: The proposed rule suggests that Areas of Critical Environmental Concern (ACECs) will not necessarily be subject to a public comment period. As you know, ACECs play a very large role in the State of Alaska, and in many instances, they significantly impact access to federal land. It is of utmost importance to me that ACECs are subjected to a formal public review and comment period. Will the BLM continue to require a formal review and comment period for ACECs under the proposed rule?

Response: The proposed planning rule would provide for public comment on ACEC designation consistent with the type of planning process (amendment vs. revision) and the level of NEPA analysis required for the designation. We are considering the input we received on this question in determining the public comment periods in the final rule.

Question 8: Under what legal authority would BLM issue a categorical exclusion for this planning rule? Please provide specific citations and analysis.

**Senate Energy and Natural Resources Committee
Subcommittee on Public Lands, Forests and Mining
Hearing on BLM's Planning 2.0 Initiative: June 21, 2016
Questions Submitted to Director Neil Kornze**

Response: The legal authorities relevant to the BLM's use of a categorical exclusion for the proposed planning rule include:

- The National Environmental Policy Act;
- The Council on Environmental Quality (CEQ) regulations at 40 CFR 1508.4 and 1507.3; and
- The Department of the Interior regulations for implementing NEPA at 43 CFR 46.205 and specifically 46.210(i), and 46.215.

As described in the preliminary categorical exclusion for the proposed rule, the existing planning rule is entirely procedural in character. 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. The proposed modifications of this rule are entirely procedural. Any decisions that might be reached through the planning process, as proposed for revision through this rulemaking, would be subject to compliance with NEPA. For this reason, the BLM's reliance upon this categorical exclusion is appropriate.

Senate Energy and Natural Resources Committee
 Subcommittee on Public Lands, Forests and Mining
 Hearing on BLM's Planning 2.0 Initiative: June 21, 2016
 Questions Submitted to Director Neil Kornze

Questions from Sen. Barrasso

Question 1: During the hearing, we discussed an email that Secretary Jewell recently sent to all DOI employees warning them to “comply with the ethical responsibilities expected of all federal employees”. You stated that approximately one year ago, you also sent a similar email to all Bureau of Land Management (BLM) staff.

Please provide a copy of this email for the record. In addition, please outline the specific steps you are taking to ensure all BLM employees are complying with their ethical responsibilities.

Response: Director Kornze emailed all BLM employees a memorandum on promoting an ethical culture, and the 14 principles of ethical conduct on May 23, 2016. (This email and those two documents are attached.) Director Kornze also arranged for ethics training for all Executive Leadership Team members and their staff. This training was conducted by the Department's Ethics Office, and took place on June 3, 2016.

Since fiscal year 2013, annual BLM-specific ethics training has been mandatory for all employees, including the BLM's seasonal workforce.

Question 2: The National Park Service (NPS) appears to be working on an anonymous survey of all employees (including full-time, part-time, and seasonal employees) regarding violations of ethical standards within the agency. During the hearing, you indicated you are considering administration of a similar survey. Are you coordinating with NPS to ensure consistency, and when do you expect such a survey may be administered to BLM employees?

Response: The BLM is coordinating with NPS and plans to issue the same survey to BLM employees as soon as possible.

Question 3: The BLM has described Planning 2.0 as an attempt to clarify the planning process and increase public involvement. Your written testimony stated that changes to the planning process would “provide new opportunities for public input early in the planning process.” However, the agency did not hold public information or comment sessions for several months after the Planning 2.0 initiative was launched in early 2014. Did anyone outside the agency advise the BLM from the time the initiative was announced until the first public session in October 2014? Please provide a list of all meetings and attendees related to the 2.0 Planning Initiative prior to October 2014.

Response: The BLM announced the Planning 2.0 initiative on May 5, 2014, and requested public input on how the BLM's land use planning process might be improved. In advance of this formal announcement, the BLM met with representatives from the U.S. Forest Service on May 11, 2013, to discuss lessons learned from the development of the 2012 U.S. Forest Service Planning Rule. During the months between announcing the initiative and the public listening

**Senate Energy and Natural Resources Committee
Subcommittee on Public Lands, Forests and Mining
Hearing on BLM's Planning 2.0 Initiative: June 21, 2016
Questions Submitted to Director Neil Kornze**

sessions, the BLM convened a team of BLM staff to develop recommendations for how the existing planning rule might be improved. The results of this internal process were presented at the public listening sessions in October 2014; a recording of these meetings is available on the Planning 2.0 website. The BLM did not host any meetings with external participants during this time period, other than the FACA-chartered Resource Advisory Councils (RAC), nor did anyone outside the agency advise the BLM. The BLM responded to questions from members of the public and met with all members of the public that requested meetings with agency representatives. During these meetings, which took place in person or via conference call, the BLM answered questions regarding the new initiative and listened to public input or concerns.

Meetings (in-person or conference call) in which questions about Planning 2.0 were discussed with agency representatives between May 2014 and October 2014 include:

- Eastern Arizona Counties Organization Workshop & Study "Cooperating Agency & Coordination with Federal Land Managers," held at the County Supervisors Association (May 20, 2014)
- Idaho Falls District RAC (May 20, 2014)
- Outdoor Alliance (May 21, 2014)
- BLM Alaska RAC (May 24, 2014)
- Boise District RAC (June 5, 2014)
- Trout Unlimited (June 10, 2014)
- BLM Alaska RAC Members (June 11, 2014)
- Outdoor Alliance Member Organizations (June 11, 2014)
- Twin Falls District RAC (June 24, 2014)
- Wyoming RAC (June 27, 2014)
- Conservation Lands Alliance (July 2, 2014)
- Pew Foundation (July 17, 2014)
- US Forest Service (August 8, 2014)
- EMPSi Consulting (August 7, 2014)
- Western Governors' Association Natural Resources Committee (September 30, 2014)
- Shooting Sports Roundtable (October 1, 2014)
- Interstate Mining Compact Commission (October 15, 2014)
- American Wind Energy Association (October 30, 2014)

Question 4: The Federal Land Management and Policy Act requires that the BLM conduct ongoing coordination, and also requires that BLM lands should be managed for multiple-use. With this in mind, please explain why the proposed rule removes the phrase "maximize resource values for the public" when setting out BLM land management objectives.

Response: The BLM proposed to revise the stated objectives of resource management planning to reflect the language used in the Federal Land Policy and Management Act (FLPMA) and to remove vague language. In the first sentence, we proposed removing the phrase "maximize

**Senate Energy and Natural Resources Committee
Subcommittee on Public Lands, Forests and Mining
Hearing on BLM's Planning 2.0 Initiative: June 21, 2016
Questions Submitted to Director Neil Kornze**

resource values for the public through a rational, consistently applied set of regulations and procedures.” The term “maximize resource values” is vague, making it inappropriate in regulations. The rest of the phrase, “a rational, consistently applied set of regulations and procedures” is an objective of developing planning regulations; however, it is not an objective of resource management planning. The proposed objectives include to “promote the principles of multiple use and sustained yield on public lands unless otherwise provided by law” and to “ensure participation by the public, State and local governments, Indian tribes and Federal agencies in the development of resource management plans.” The proposed language is consistent with FLPMA while avoiding vague terminology that is difficult to interpret.

Question 5: Should Planning 2.0 be finalized as currently proposed, would the final rule allow the BLM to eliminate or preclude entire use-categories like grazing, mining, or recreation, on broad tracts of land? If yes, do you intend to use that authority?

Response: The proposed planning rule would not change the BLM’s authority under FLPMA to manage for multiple use and sustained yield on the public lands. As defined in FLPMA, “multiple use means the management of the 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... the use of some land for less than all of the resources.” Multiple use management often requires that specific uses are excluded in some areas to account for “the long-term needs of future generations for renewable and non-renewable resources.” Pursuant to our statutory obligations under existing law, the BLM will continue to manage for multiple use and sustained yield under any current or future planning rule.

Question 6: Significant concerns have been raised about the ability for a local government to achieve cooperating agency status under Planning 2.0. Given the proposed process changes and shorter timelines proposed under this rule, how can you expect local governments to provide meaningful comments on proposals that will undoubtedly need local perspective when Planning 2.0 effectively demotes them from a cooperating agency to part of the “general public”?

Response: The proposed planning rule does not change the requirements for participating as a cooperating agency in the planning process. These requirements are derived from the CEQ NEPA regulations (40 CFR §1501.6) as well as the DOI NEPA implementing regulations (43 CFR §46.230) and provide that any agency with jurisdiction by law or special expertise with respect to any environmental issue are eligible to participate as a cooperating agency concerning those issues relating to their jurisdiction and special expertise. The BLM values the participation of local governments as cooperating agencies in the NEPA and land use planning processes and will continue to collaborate with them in the development, revision, and amendment of resource management plans. Furthermore, the requirement for the preparation of a planning assessment, including input from locally-elected officials and relevant stakeholders, and a report to be made available at the outset of the planning process is expected to improve opportunities for cooperating agencies to participate earlier in the process.

Senate Energy and Natural Resources Committee
 Subcommittee on Public Lands, Forests and Mining
 Hearing on BLM's Planning 2.0 Initiative: June 21, 2016
 Questions Submitted to Director Neil Kornze

Questions from Sen. Wyden

Question 1: Director Kornze, are you aware of how many opportunities that State and local governments are currently afforded to participate in BLM land use planning? And do you know how many additional opportunities that Planning 2.0 would create for governments to participate in the land use planning process?

Response: Under FLPMA, state, local, and tribal governments may request to coordinate with the BLM at any time in the planning process. This affords the privilege of coordinating in the development of resource management plans, with the goal of increasing consistency between Federal, state, local, and tribal land use plans.

State and local 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. Cooperating governments have access to preliminary and deliberative draft documents that are not made available to the public.

Under existing rules, any State and local governments that do not participate as cooperating agencies may only review planning documents when they are made available to the general public with the draft resource management plan. The proposed 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 rationale for alternatives; and (5) the preliminary basis for analysis.

Question 2: Director Kornze, it is my understanding that BLM is already applying the principles of planning 2.0 in three resource management plans. Where are these 'early adopter' locales, and what has their response been to Planning 2.0, have they been supportive of what BLM is trying to do?

Response: The BLM has begun applying some principles of Planning 2.0 in several new planning starts, particularly the principle of early and frequent public involvement and planning at appropriate scales. These new planning starts include the Eastern Colorado RMP, the Missoula RMP, and the Northwestern California Integrated RMP. The response to these RMPs 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 3: Director Kornze, 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?

Response: Planning 2.0 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

**Senate Energy and Natural Resources Committee
Subcommittee on Public Lands, Forests and Mining
Hearing on BLM's Planning 2.0 Initiative: June 21, 2016
Questions Submitted to Director Neil Kornze**

provides the BLM the 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 stakeholder interests.

Question 4: Director Kornze, as you know, Oregon's O&C lands present unique forest management challenges, which I've worked closely with the BLM on in recent years as I developed my O&C bill. How would the Planning 2.0 impact the management of O&C lands? If it hasn't done so already, does the BLM plan on working with Oregon to address the unique circumstances of the O&C lands and the ways in which the Planning 2.0 would impact them?

Response: Planning 2.0 would not impact the management of O&C lands. The proposed planning rule would make changes to the general process and procedures for developing an RMP, but would not prescribe management policy for the public lands, or make changes to any other existing legal authorities governing the public lands.

Senate Energy and Natural Resources Committee
 Subcommittee on Public Lands, Forests and Mining
 Hearing on BLM's Planning 2.0 Initiative: June 21, 2016
 Questions Submitted to Director Neil Kornze

Question from Sen. Lee

Question: The planning phase relies heavily on a public data call that adopts a crowdsourcing model for introducing inputs that are off-topic and amorphous—such as “social conditions”—into the planning process.

Beyond its further demotion of State and local officials’ role, this crowd sourcing model is especially concerning since the proposed rule also appears to lower the standard across the board for the quality of inputs accepted into the planning process. For example, the public data call departs from several authorities dictating data quality used in analogous situations. Executive Order 13563, signed in 2011, provides that regulations “must be based on the best available science.” This best available scientific information standard (or “BASI”) is common sense.

However, the proposed rule appears to allow the BLM to rely on an inferior standard of “high quality information (including the best available scientific information) to inform the planning process.” Why should Utahans settle for planning assessments based on anything less than the ‘best’ information, and what types of information other than science and the inputs that have traditionally been factored into planning do you now envision being part of the planning phase under this proposed rule?

Response: The proposed planning rule affirms the existing statutory requirement from the Data Quality Act that the BLM use high quality information. The proposed planning rule has defined high quality information as “any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users.” The BLM is required by NEPA to use the best available information, and when available and as applicable, the BLM uses the best available scientific information. In situations where scientific information is not available or applicable, the BLM relies on other types of best available information such as expert opinion. The proposed rule affirms that all types of information, including expert opinion if that is the best available information, must meet high quality standards consistent with the Data Quality Act in order to be utilized in the planning process. We are considering the input we received on this topic as we develop the final rule.

Senate Energy and Natural Resources Committee
 Subcommittee on Public Lands, Forests and Mining
 Hearing on BLM's Planning 2.0 Initiative: June 21, 2016
 Questions Submitted to Director Neil Kornze

Questions from Sen. Daines

Question 1: As you know, electric energy production and delivery from public lands, including BLM lands, has been and is becoming an increasingly important function. Do you have any objections to adding this function as a specifically listed objective of BLM lands, alongside other listed uses of helping provide domestic sources of minerals, food, timber and fiber?

Response: The proposed rule specifically identifies the management objectives provided to the BLM in section 102 of FLPMA (see subsections (a)(9) and (a)(12)). These management objectives include providing for "human occupancy and use", a broad category which encompasses the many multiple uses not explicitly identified in FLPMA. As these uses are included in this category, the BLM believes that it is appropriate to use the precise language provided in FLPMA in the planning regulations.

Question 2: BLM Planning 2.0 all but eliminates the requirement that Federal land-use planning achieve consistency with State and local plans, instead requiring only "consideration" of those plans. Elsewhere, current opportunities for public input are replaced by opportunities for "review" instead. Can you explain how these changes will promote the "meaningful" opportunities for involvement the proposed rule claims to seek?

Response: The proposed planning rule would require that RMPs be consistent with established State and local plans to the extent practical and consistent with Federal laws, including the FLPMA. This proposed change was intended to align with the BLM's mandates under FLPMA. The proposed rule also would establish new opportunities for the public to review preliminary planning documents in advance of formal public comment periods. These new steps would afford the public additional opportunities to track the BLM planning process as it develops, and would provide them with more time to review interim draft documents before formal drafts are issued. The BLM believes that these new engagement opportunities will strengthen the dialog between BLM and our stakeholder and promote meaningful involvement in the planning process by increasing the transparency of the process. We are considering the input we received on these topics as we develop the final rule.

7/26/2016

DEPARTMENT OF THE INTERIOR Mail - Promoting an Ethical Culture



Dicerbo, Adrienne <adicerbo@blm.gov>

Promoting an Ethical Culture

1 message

Kornze, Neil <nkornze@blm.gov>
To: Neil Kornze <nkornze@blm.gov>
Bcc: blm_all_employees@blm.gov

Mon, May 23, 2016 at 1:50 PM

Please take a few minutes to review the attached memo and materials.

Sincerely,
Neil Kornze
Director

2 attachments

Memorandum_Promoting an Ethical Culture.pdf
272K

14 General Principles of Ethical Conduct.pdf
670K



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>



May 20, 2016

Memorandum

To: All Employees

From: Neil Kornze
Director

Subject: Promoting an Ethical Culture

As employees of the Bureau of Land Management (BLM), it is our goal to serve the public and the nation with integrity and excellence. To accomplish this it is incumbent upon each of us to contribute to the strong ethical culture we have built here at the BLM. It is important that we treat each other and the public with dignity and respect, that we demonstrate our loyalty to the United States and nurture a deep sense of responsibility for the public interest.

Accordingly, all BLM employees are expected to be thoroughly familiar with and to observe all ethics laws and regulations. Accordingly, all BLM employees must be thoroughly familiar with and faithfully observe all ethics laws and regulations, including the Federal conflict of interest statutes and applicable regulations. The regulations are codified in the Standards of Ethical Conduct for Employees of the Executive Branch and the Supplemental Standards of Ethical Conduct for Employees of Department of the Interior. While these laws and regulations are detailed and fairly technical, employees can be guided by the 14 principles of ethical conduct attached to this memorandum. The Acting BLM Deputy Ethics Counselor, as well as your State Assistant Ethics Counselors (AEC), are available to help you understand and to comply with ethics laws and regulations. Please click [here](#) for a list of [AECs](#) and their contact information.

All employees are expected to fulfill the annual BLM ethics training requirement, and to implement that training in our daily jobs. We should remember that even the appearance of impropriety and unethical conduct can have a profound negative impact on the public's perception on the employee, the BLM, and the United States government. We increase the public's confidence in the integrity and effectiveness of our programs by ensuring we know the rules and laws and abide by the letter and the spirit of both.

I ask all employees to uphold the standards of integrity and excellence of the BLM, and I expect all managers and supervisors to provide exemplary leadership in this regard.

I4 General Principles

5 C.F.R. § 2635.101(b)

Principles of Ethical Conduct

The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

- 1 Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
- 2 Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- 3 Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

4 An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

5 Employees shall put forth honest effort in the performance of their duties.

6 Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

7 Employees shall not use public office for private gain.

8 Employees shall act impartially and not give preferential treatment to any private organization or individual.

14 General Principles

9 Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

10 Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

11 Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

12 Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those--such as Federal, State, or local taxes--that are imposed by law.

13 Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

14 Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part.

Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

U.S. Office of Government Ethics
www.usoge.gov



The principles of ethical conduct were issued by George H.W. Bush, in Executive Order 12674, as amended by Executive Order 12731. The principles were subsequently issued in the *Standards of Ethical Conduct for Employees of the Executive Branch* at 5 C.F.R. § 2635.101(b). Each executive branch agency has a Designated Agency Ethics Officer responsible for oversight of the agency's ethics program.

**U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests and Mining
Hearing on June 21, 2016: BLM's Planning 2.0 Initiative
Question for the Record Submitted to Ms. Kathleen Sgamma**

Question from Senator Mike Lee

Question: Ms. Sgamma: the proposed rule introduces into the Resource Management Plan something called 'adaptive management'. This appears to be a euphemism for transforming the resource management plan into a living document, subject to unilateral change at the whim of BLM, and without the opportunity for public notice and comment. In practical terms, the management plan could be rewritten midstream based on alleged changes to difficult to quantify factors, such as social conditions. I assume this provides cold comfort to companies who drive energy production on public lands by making enormous front loaded investments in exploration and development with necessarily long time-horizons for expected return. **Is it fair to say that the mere possibility of having a management plan unilaterally revised after reliance interests have been staked could significantly chill energy development investment on public lands?**

Answer: The concept of adaptive management is being corrupted by the Administration. It was originally intended to enable BLM to monitor actual conditions on the ground and make adjustments to conserve wildlife, cultural, land, and other resource values on a project-specific basis. Adaptive management was intended to enable land use managers on the ground with the ability to address project-specific issues to ensure reasonable uses of public lands were protecting the land and other resource values. There could be significant value in adaptive management if it is about tailoring implementation actions to actual conditions on the ground within a range of alternatives addressed and analyzed in RMPs.

On the other hand, BLM's proposed Planning 2.0 rule would transform RMPs into constantly changing documents at the whim of BLM in Washington without the opportunity for public notice and comment. The rule is attempting to set in regulation a process whereby several implementation issues are left until after RMPs are finalized, kicking the can down the road, and leading to potentially perpetual plan updates without an open and public process. The changes being contemplated after plans are finalized amount to major modifications that would otherwise require public notice and comment. Divorcing the planning from how management decisions will be implemented is antithetical to deliberative policymaking and prudent land use planning. Leaving major aspects unresolved until after a plan is finalized does not give the public the certainty of how public lands will be managed and is not good policy. Implementation strategies should be vetted through the same process and at the same times as the rest of the RMP, with the same review, public involvement, protest, and appeal rights of the final action.

We have seen this play out with the sage grouse RMP amendments. The amendment Records of Decision (ROD) were released, but major aspects of implementation were left for the following year. We're seeing now that the implementation issues BLM is contemplating are major policy adjustments such as mitigation standards. They are not simply "adaptive management." It's as if BLM is creating a loophole for avoiding public scrutiny while putting in place policies and major plans.

**U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests and Mining
Hearing on June 21, 2016: BLM's Planning 2.0 Initiative
Question for the Record Submitted to Ms. Kathleen Sgamma**

The result would be to sow even greater regulatory uncertainty into energy development on public lands. Important operational aspects could be changed after companies have acquired leases and started projects, such as changes to hours of operation, sound level limits, seasonality, density and disturbance limitations, and vegetation standards. Companies consider all these types of regulatory compliance factors when determining whether to acquire leases and initiate projects. If major aspects change after development has begun, the projects may fail to achieve economic objectives, or even become uneconomic. When that happens, the uncertainty causes operators to just avoid public lands. Changing conditions on leases after they have been issued and hence become valid property rights seems to raise questions of legality as well.



American Exploration &
Mining Association

10 N Post St. Ste. 305 | Spokane WA 99201-0705
P. 509.624.1158 | F. 509.623.1241
info@miningamerica.org | www.miningamerica.org

May 24, 2016

Director (630)
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW.,
Room 2134LM
Washington D.C. 20240
Attention: 1004-AE39
Attention: OMB Control Number 1 004-XXXX

Via FEDERAL eRULEMAKING PORTAL:
<https://www.regulations.gov/#!documentDetail;D=BLM-2016-0002-0044>

Re: Comments on Proposed Amendments to Resource Management Planning Regulations (BLM 2.0)

Dear Director Kornze:

American Exploration & Mining Association (AEMA) hereby submit the following unique comments in response to the Bureau of Land Management's (BLM's) notice of proposed amendments to the BLM's resource management planning regulations, which was published in the Federal Register on February 25, 2016 (81 FR 9674).

AEMA is a 2,100-member national association representing the minerals industry with members residing in 42 U.S. states. AEMA represents the entire mining life cycle, from exploration to reclamation and closure, and is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands. Our broad-based membership includes many small miners and exploration geologists as well as junior and large mining companies, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. More than 80 percent of our members are small businesses or work for small businesses. Most of our members are individual citizens.

AEMA has routinely provided comments and other input during BLM land use planning activities. As such, AEMA has an interest in ensuring that BLM's resource management planning regulations continue to provide for multiple-use, meaningful public involvement, and are based on the best available scientific information.

As described below, AEMA is extremely concerned due to the significant impact the proposed amendments contained in the proposed rule will have on AEMA members. Specifically, AEMA is concerned the proposed rule will establish a method for prioritizing largescale, value-based decision making instead of resource based decision making, which is a fundamental shift in traditional land use planning, and will have significant impacts to principal uses (defined under 43 U.S.C. § 1702(l)). AEMA also is concerned that the proposed rule diminishes coordination between local governmental entities and the Federal government, fails to acknowledge statutory obligations related to multiple-use, mineral exploration and production, and ensuring access to public lands. AEMA's comments focus on a number of areas in which the proposed rule fails to comply with applicable laws, regulations, policies, and planning procedures, and overall responsibilities to manage our public lands, especially related to minerals. AEMA has identified several deficiencies and statutory violations in the proposed rule including those associated with:

- Mining Law of 1872 (30 U.S.C. 21a *et seq.*, hereinafter General Mining Law);
- Mining and Minerals Policy Act (30 U.S.C. §21a; hereinafter MMPA);
- Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 *et seq.*, hereinafter FLPMA);
- National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*, hereinafter NEPA); and
- Data Quality Act (Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2764a-153-154 (2000), hereinafter DQA).

AEMA contends the following issues must be addressed before the proposed rule is finalized:

- Prepare an environmental impact statement (EIS) in compliance with NEPA;
- Ensure compliance with FLPMA;
- Ensure compliance with the General Mining Law;
- Ensure compliance with the MMPA;
- Ensure compliance with the DQA.

In response to our comments, BLM must eliminate all elements of the proposed rule that do not comply with applicable laws, regulations, policies, and planning procedures, and prepare an EIS, then allow the public an opportunity to comment.

I. THE PROPOSED RULE MUST COMPLY WITH FLPMA

BLM must ensure that the proposed rule complies with FLPMA's multiple-use and sustained yield mandate under § 102(a)(7), and in the land use planning title of FLPMA at § 202(c)(1), and the directive under § 102(a)(12), to recognize the Nation's need for domestic sources of

minerals. Under the proposed rule (§1610.0-2 Objective; 81 FR 9725), BLM unlawfully prefers preservation values to the exclusion of other uses and values, including grazing, agriculture, and mineral development. FLPMA's land use planning requirements mandate the Secretary consider the relative scarcity of values, weigh long-term benefits, and use and observe principles of multiple-use and other applicable laws (such as the General Mining Law and MMPA), rather than subordinate all other uses of public land in order to make conservation and preservation values the dominant focus of public land management.

A. The proposed rule fails to comply with FLPMA §§ 102(a)(7), 102(a)(12), and 103(c);

In enacting FLPMA in 1976, Congress directed the Secretary of the Interior to consider a broad range of resource issues, land characteristics, and public needs and values in determining how public lands should be managed. FLPMA directs BLM to manage public lands for multiple-uses and to consider a wide range of resource values – including the need to protect wildlife and quality of habitat – in the context of the Nation's needs for minerals, energy, food, fiber, and other natural resources (43 U.S.C. 1701(a)(12)). Section 102(a)(8) requires BLM to manage the public lands in a “manner that will protect the quality of scientific, scenic historical, ecological, environmental...values...and human occupancy and use” (43 U.S.C. 1701(a)(8)).

Section 102(a)(7) establishes multiple use and sustained yield land management directives and requires the Secretary to develop “... goals and objectives [that are] established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law” (U.S.C. 1701(a)(7)). In defining the term “multiple use” FLPMA § 103(c) directs the Secretary to ensure:

...the management of the 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; making the most judicious use of the land for some or all of these resources...to conform to changing needs and conditions; the use of some land for less than all of the resources; *a combination* of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, *minerals*, watershed, wildlife and fish, and natural scenic, scientific and historical values. (43 U.S.C § 1702(c), emphasis added).

Under the multiple-use requirements, minerals and other values are on equal footing. Consequently, BLM must strike an appropriate balance between potentially competing interests and land management objectives. For BLM, this balance is to be achieved in the § 202 land use planning process and the resulting resource management plans (RMPs). FLPMA does not authorize the prioritization of any of these uses outside the requirements under § 202(c)(3).

Under the proposed rule (§ 1601.0-2 Objective) BLM does not fully represent the policy directives under FLPMA, and therefore, the proposed rule is not in compliance with the specific directive pertaining to minerals in FLPMA § 102(a)(12):

... the public lands [shall] be managed in a manner that recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including the implementation of the Mining and Minerals Policy Act of 1970 [at] 30 U.S.C. 21a... (43 U.S.C. 1701(a)(12)).

Specifically, BLM proposes language that is nearly verbatim from § 102(a)(8), and (12); which establishes the policy of the United States in governing the public lands under the jurisdiction of the BLM. However, conspicuously absent from the proposed objective is the language directing implementation of the MMPA (43 U.S.C. § 1708(a)(12)).

Instead, the proposed rule unlawfully prefers preservation values to the exclusion of other uses and values, including grazing, agriculture, and mineral development. FLPMA's land use planning requirements mandate the Secretary consider the relative scarcity of values, weigh long-term benefits, and use and observe principles of multiple-use and other applicable laws (such as the General Mining Law and Mining and MMPA) rather than subordinate all other uses of public land to make conservation and preservation values the dominant focus of public land management. BLM must reconcile this significant omission in the proposed objective, by adding reference to the MMPA as established under FLPMA's declaration of policy. 43 U.S.C. § 1708(a)(12). *See* Table 1 at 1 for additional comments regarding proposed § 1601.0-2.

BLM has not documented its rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the proposed objective will help achieve the required balance in managing the public lands, or comply with § 102(a)(7) multiple-use mandate, or respond to the directive under FLPMA § 102(a)(12), to recognize the Nation's need for domestic sources of minerals. For the reasons discussed herein, AEMA objects to the proposed rule, specifically proposed § 1601.0-2.

B. The proposed rule must comply with FLPMA § 1732(b)

FLPMA expressly provides that none of its land use planning provisions, among others "*shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress*" (43 U.S.C. § 1732(b), emphasis added).

In enacting FLPMA, Congress explicitly acknowledged the continued vitality of the Mining Law of 1872. Section 302(b) of FLPMA states:

Except as provided in Section 1744, Section 1782, and Subsection (f) of Section 1781 of this title and in the last sentence of this paragraph, no provision of this section or any other section of this act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or

claims under the act, including, but not limited to, rights of ingress and egress (43 U.S.C. § 1732(b)).

The House Committee on Interior and Insular Affairs described this provision more particularly when it stated:

This section specifies that no provision of the Mining Law of 1872 will be amended or altered by this legislation except as provided in Section 207 (recordation of mining claims), Subsection 401(f) (regulation of mining in the California desert), Section 311 (wilderness review areas and wilderness areas), and except for the fact that the Secretary of the Interior is given specific authority, by regulation or otherwise, to provide that prospecting and mining under the mining law will not result in unnecessary or undue degradation of the public lands. The secretary is granted general authority to prevent such degradation (H.R. Rep. No. 94 1163 at 6 (1976)).

As such, BLM cannot in any way impair the rights of locators or mining claimants, or interfere with ingress and egress rights through the land use planning process.¹ Therefore, the proposed rule must ensure compliance with the explicit statutory language in FLPMA, and § 22 of the General Mining Law.

AEMA is concerned that under the proposed rule BLM has not adequately considered the rights of locators, including rights of ingress and egress. Specifically, under the proposed formalization of the mitigation hierarchy (avoid-minimize-compensate), BLM indicates that during preparation of a land use plan they will:

first and foremost appl[y] the principle of avoidance through the identification of planning issues and the formulation of alternatives that are guided by the planning issues (*i.e.*, identifying potential impacts and developing alternatives that avoid those potential impacts) (81 FR 9686).

Based on the language above, the proposed rule injects bias into the land use planning process from the outset, and allows for early decisions to be made about alternatives that will at the very least limit allowable uses or “designations.” BLM must tread lightly, and recognize they have a statutory obligation to ensure the rights of ingress and egress of locators under FLPMA and the General Mining Law.

In response to our comments, BLM must revise the proposed rule to ensure compliance with the FLPMA mandate to balance a wide range of resource values and uses of public lands including the directive in the MMPA at 43 U.S.C. §1701(a)(12) and 30 U.S.C. § 21(a) to recognize the Nation’s need for domestic sources of minerals. BLM must also

¹ An example of the continued strength of the General Mining Law is observed in roadless areas. The USFS 2001 Roadless Rule prohibits new roads in inventoried roadless areas. However, the Rule specifically recognizes General Mining Law Rights and new roads in inventoried roadless areas have been approved for mineral exploration activities under interim management approved by Agriculture Secretary Vilsack.

preserve the rights of ingress and egress to locators and claims under § 1732(b). Because the proposed rule fails to ensure compliance with FLPMA, it cannot be implemented and thus, is fatally flawed.

C. The proposed rule fails to ensure compliance with § 202(c)(9)

Section 202(c)(9) mandates that the Secretary coordinate the land use planning process with State and local governments and that the resulting federal land use management plans must be substantially consistent with State and local land management plans.

Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act (43 U.S.C. 1712(c)(9)).

FLPMA § 202(c)(9) gives State governments a specific statutory role in the federal land use planning process:

Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him.

In enacting this FLPMA provision, Congress recognized the unique expertise of state and local governments in land use planning and the scope of the States' long-established police powers over land use within its borders. AEMA contends there are several amendments in the proposed rule that significantly diminish consistency and coordination with governmental entities, prevent meaningful public involvement, and marginalize the expertise of local officials, both State and local, which violate § 202(c)(9) (*See* Table at 5, 11-14, 17-18). In response to our comments, BLM must revise the proposed rule to comply with FLPMA § 202(c)(9), and restore the role of stakeholders and local governmental entities in land use planning. Because the proposed rule violates FLPMA, it cannot be implemented and thus, is fatally flawed.

II. THE PROPOSED RULE MUST COMPLY WITH THE MINING LAWS AND AGENCY POLICY FOR MANAGING MINERALS

A. The proposed rule must ensure compliance with § 22 of the General Mining Law

AEMA contends that several of the amendments (*see* Table I) contained in the proposed rule are not consistent with rights under the General Mining Law which allow citizens of the United States the opportunity to enter, use and occupy public lands open to location to explore for, discover, and develop certain valuable mineral deposits (30 U.S.C. §22), subject to the FLPMA mandate to prevent unnecessary or undue degradation of public lands. The General Mining Law authorizes and governs the exploration, discovery, and development of valuable minerals:

Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and un-surveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase... (*Id.*)

30 U.S.C. § 22 ensures pre-discovery access, use, and occupancy rights to enter lands open to location for mineral exploration and development. BLM's proposal to base land use planning "first and foremost" on the principles of the mitigation hierarchy, i.e. avoid-minimize-compensate (81 FR 9686), and unlawful resource prioritization through "designations" (*see* proposed 1610.4), among others (*see* Table I), is contrary to the rights granted by § 22 of the General Mining Law. Therefore, the proposed rule is in violation of the General Mining Law and cannot be implemented.

1. BLM's proposed imposition of the mitigation hierarchy is in violation of § 22 of the General Mining Law and BLM's surface management regulations

As previously discussed, under the proposed rule BLM will formalize the mitigation hierarchy into several steps of the land use planning process. Surprisingly, under the proposed rule BLM fails to recognize its surface management regulations at 43 CFR § 3809. AEMA contends that BLM does not have the authority outside of the regulations at 43 CFR § 3809 to impose mitigation-especially compensatory mitigation- on operators exercising their rights under the General Mining Law. First, FLPMA does not authorize BLM to impose prescriptive mitigation or offset outside the requirement to prevent "unnecessary or undue degradation (hereinafter UUD):

no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands (43 U.S.C. 1732(c)).

In adopting the UUD standard for managing the public lands, Congress understood there would be degradation of those lands. In other words, FLPMA authorizes necessary degradation and due degradation, meaning that some degradation of the public lands will be necessary and due or reasonable under the circumstances. Congress could have, but did not require the public lands to be managed for a net resource benefit, or to a no net loss of resources standard or to standard that elevates conservation and preservation above other values. As Justice Scalia explained in his concurrence in *Whitman v. American Trucking*, "Congress... does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not, one might say, hide elephants in mouse holes." (531 U.S. 457, 468 (2001)).

While there is not a lot of guidance in FLPMA or its legislative history as to the meaning of UUD, with respect to locatable mineral activities authorized by the General Mining Law, BLM has defined UUD to mean conditions, activities, or practices that:

- (1) Fail to comply with one or more of the following: the performance standards in §3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources;
- (2) Are not “reasonably incident” to prospecting, mining, or processing operations as defined in §3715.0-5; or
- (3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas. (43 CFR § 3809.415).

Outside of the special management areas in (3) above, BLM, under the General Mining Law and FLPMA, simply has no authority to require locatable mineral operations on the public lands provide a level of protection or reclamation great than preventing UUD. Furthermore, FLPMA does not authorize BLM to require compensatory mitigation that goes beyond the direct impacts from mining activities, or to require offsite mitigation including advanced mitigation.

The preamble to the November 21, 2000 amendments to BLM’s 43 CFR 3809 Surface Management Regulations for activities under the General Mining Laws clarifies that neither the Mining Law, FLPMA nor the 3809 regulations require compensatory mitigation (65 Federal Register 70012). The preamble goes on to state: “BLM will approach mitigation on a mandatory basis where it can be performed onsite, and *on a voluntary basis*, where mitigation (including compensation) can be performed offsite” (*Id.* Emphasis added).

For the reasons cited herein, proposed § 1601.1-2 (a)(2) must be modified to remove “(i) identify standards to mitigate undesirable effects to resource conditions” and the definition of “mitigation” at proposed § 1601.0-5 must be removed. FLPMA does not authorize the inclusion of mitigation *standards* in the land use planning process.

Even if BLM retains the language in the proposed rule for some uses, the rule should recognize that BLM has no authority beyond the UUD standard for activities under the General Mining Law. BLM’s planning authority, set forth in § 202 of FLPMA, is not included in the expressly limited list of FLPMA provisions that amend the General Mining Law (43 U.S.C. 1732(c)). Therefore, BLM has no authority to impose these new requirements, through land use plans or otherwise, on activities authorized under the Mining Law.

2. The proposed rule must ensure compliance with § 21(a) MMPA

As previously discussed, BLM must recognize the need for mineral development to reduce the Nation’s reliance on foreign sources of minerals, to maintain our way of life and defend the country. As such, BLM must demonstrate its compliance with the

mandate under the MMPA (30 U.S.C. §21(a)), and FLPMA (43 U.S.C. §1701(a)(12)) to recognize the Nation's need for domestic minerals, (*see also*, Table I at 1, 17-18).

BLM has not explained the rationale for its decisions regarding the management of minerals. Specifically, those decisions associated with how the amended "objective" (§ 1601.0-2), prioritization of conservation and preservation values (proposed rule generally), "Guidance" (§ 1610.1-1), "plan components" (§ 1610.1-2), and "planning assessment" (§ 1610.4) recognize the Nation's need for domestic sources of minerals. BLM is in violation of § 21(a) of the MMPA. For the reasons described herein, the proposed rule is unlawful; it cannot be implemented and thus, is fatally flawed.

III. BLM FAILED TO COMPLY WITH NEPA

The primary purpose of NEPA is to provide for informed decision-making and to publically disclose the potential impacts of various management strategies under consideration by the Federal government. The Council on Environmental Policy (CEQ) regulations at 40 CFR §§1500-1508 implement the statutory mandates under NEPA. CEQ regulations require Federal agencies to "[i]ntegrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively" (40 CFR §1500.2). BLM implementing procedures establish a framework for complying with NEPA. CEQ regulations require that agency implementing procedures, among other things, identify criteria for actions:

- (i) Which normally do require environmental impact statements.
 - (ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (Sec. 1508.4)).
 - (iii) Which normally require environmental assessments but not necessarily environmental impact statements.
- 40 CFR 1507.3(b)(2)

A "categorical exclusion" is category of actions that do not typically result in individual or cumulative significant environmental effects or impacts, and allow Federal agencies to expedite the environmental review process. The CEQ regulations define "categorical exclusion" as:

a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. *Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect* (40 CFR § 1508.4, emphasis added.)

In its NEPA implementing procedures, BLM addresses the use of categorical exclusions (43 CFR § 46.205), identifies actions categorically excluded (43 CFR § 46.210), and “extraordinary circumstances” in which a categorical exclusion is not permitted for those actions (43 CFR § 46.215).

BLM asserts that the actions taken to amend the land use planning regulations at subparts 1601 and 1610 are subject to the categorical exclusion found at 43 CFR § 46.210(i):

Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

BLM explains that the categorical exclusion is applicable because “the proposed modifications of [the proposed rule] are entirely procedural” and future planning decisions will be subject to compliance with NEPA (81 FR 9724).

Unfortunately, BLM failed to consider the extraordinary circumstances surrounding the proposed amendments to the land use planning regulations. In its NEPA implementing procedures, BLM identifies the circumstances in which a categorical exclusion would not be appropriate including those circumstances that:

(c) Have highly controversial environmental effects or *involve unresolved conflicts concerning alternative uses of available resources* [NEPA section 102(2)(E)].

(d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(e) *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

(f) *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects...* (43 CFR 46.215, emphasis added).

Under the proposed rule, BLM establishes a method for prioritizing largescale, value-based decision-making instead of resource based decision-making. It is a fundamental shift in traditional land use planning that will have significant impacts to principal uses (defined under 43 U.S.C. § 1702(l)). Clearly, BLM’s proposed shift in land use planning from principal uses to a preservation centric focus creates conflict “concerning alternative uses of available resources.” Moreover, it is astonishing that BLM has failed to recognize that by finalizing the proposed rule BLM will be “establishing precedent for future action” and presents a “decision in principle” about future plans that will have potentially significant environmental effects. Finalization of the proposed rule necessarily leads to the content of plans and plan amendments on *all* BLM lands in the future, and has a “direct relationship to other actions with individually insignificant environmental effects.” As such, BLM has not accurately applied its own NEPA implementing

procedures, concerning “extraordinary circumstances” in which a categorical exclusion will not apply.² BLM must conduct NEPA analysis consistent with prior BLM actions.³

IV. BLM MUST COMPLY WITH THE DQA

The proposed rule at §§1610.1-1(c) and 1610.4(a)(b) fails to comply with the DQA. The DQA requires that information used by agencies, including the BLM, be based upon verifiable data and reproducible results, and not based upon opinion. Under DQA, Congress directed the Office of Management and Budget (OMB) to issue guidelines to “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information” disseminated by the federal agencies (DQA §515(a)), as a result of the federal governments recognition that “[b]ecause the public disclosure of government information is essential to democracy, the management of Federal information resources should protect the public’s right of access to government information.”⁴

The final OMB guidance was issued in 2002 (67 Fed. Reg. 8452 (Feb. 22, 2002)), (hereafter OMB Guidance). The OMB provided further guidance with respect to proper peer review procedures and public transparency in a 2004 memorandum (hereafter, OMB Bulletin).⁵ The OMB Guidance defines four substantive characteristics for information disseminated by federal agencies: quality, utility, objectivity, and integrity (67 Fed. Reg. 8453, 58, 59).

“Quality” is defined by OMB as the all-encompassing term of which utility, objectivity, and integrity are a part of (*Id.* at 8453). “Utility” is defined by OMB as “the usefulness of the information to its intended users, including the public,” and states:

...the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information’s usefulness from the public’s perspective the agency must take care to ensure that the transparency has been addressed in its review of the information (*Id.* at 8453).

“Objectivity” involves whether “disseminated information is being presented in an *accurate, clear, complete, and unbiased manner*. This involves whether information is *presented within proper context*” (*Id.* at 8459, emphasis added). An additional requirement of the “objectivity” standard, among other things, includes a high level of transparency and reproducibility, which is defined as “the information is capable of being *substantially reproduced*, subject to an acceptable degree of imprecision” (*Id.* at 8460, emphasis added).

² See generally, *California v. Norton*, 311 F.3d 1162, 1168 (9th Cir. 2002).

³ See Final Rulemaking: Public Lands and Resources; Planning, Programming, and Budgeting, 44 Fed. Reg. 46386 (Aug. 7, 1979); Final Rulemaking: Planning Programming, Budgeting, Amendments to the Planning Regulations; Elimination of Unneeded Provisions, 48 Fed. Reg. 20364 (May 5, 1983); and Final Rule: Land Use Planning, 70 Fed. Reg. 14561 (March 23, 2005).

⁴ OMB, Circular No. A-130 Revised, Memorandum for Heads of Executive Departments and Agencies: Management of Federal Information Resources, 7.f. (originally issued Feb. 8, 1996)

⁵ OMB, Memorandum for Heads of Department and Agencies: Issuance of “OMB’s Final Information Quality Bulletin for Peer Review” (Dec. 16, 2004).

If an agency is responsible for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information... (*Id.*).

The OMB Guidance requires federal agencies to issue its own DQA implementing guidelines; BLM responded by issuing its own 2012 Guidelines.⁶ BLM's 2012 Guidelines require a higher level of scrutiny including transparency and reproducibility (*See* BLM DQA Guidelines at 8-9) for information characterized as "influential" which is defined as information:

...[T]hat which is expected to have clear and substantial impact at the national level for major public and private policy decisions as they relate to Federal public lands and resources. The accuracy of this information is significant due to the critical nature of these decisions... (BLM DQA Guidelines at 7).

BLM considers information to be influential when:

- Information is disseminated in support of top BLM actions (i.e.; substantive notices, policy documents, studies, guidance) that demand the ongoing involvement of the Director's office;
- Information used in cross-bureau issues that have the potential to result in major cross bureau policies and highly controversial information that is used to advance the BLM's priorities (*Id.* at 7-8).

AEMA contends that resource management plans fall under the definition of "influential information" as they meet the BLM criteria pursuant the 2012 Guidance. As such, a higher degree of scrutiny in terms of quality, utility, objectivity, and integrity would be applied. AEMA further contends that the inclusion of non-traditional information sources, including but not limited to "traditional ecological knowledge," which is purely anecdotal, and "other high quality information," described in the proposed rule (*see* proposed §§ 1601.0-5, 1610.4; *see also* Table I), fails to meet the standards of "utility" and "objectivity" pursuant the DQA and subsequent guidance documents.

BLM must ensure that its planning procedures will not improperly inject opinion rather than data into the land use planning process. Data and science must inform land use planning, not opinion, or other non-traditional sources of information that is anecdotal and cannot be verified. AEMA recommends that all references to "high quality information" as it is defined, be removed from the final rule. Any information that does not comply with the criteria described under the DQA will lead to poorly informed land use planning, and will be subject to "correction" under the DQA (DQA §515(a)(2)(B)).

⁶ BLM, Assistant Director, Information Resources Management, Peer Review of Influential Scientific Information (June 6, 2013).

V. OTHER COMMENT LETTERS

AEMA incorporates by reference as though fully set out herein the Comment Letters submitted by the Arizona Mining Association and National Mining Association.

VI. CONCLUSION

As discussed above and in Table I (attached), the proposed rule is fraught with substantial procedural and legal flaws. The flaws are so serious and numerous they cannot be addressed and cured in the final rule. BLM must prepare a revised rule with the necessary NEPA analysis, and then allow the public to comment upon both documents.

AEMA appreciates the opportunity to provide these comments on the **Proposed Amendments to Resource Management Planning Regulations (81 FR 9674)**. We believe that the proposed rule needs to be substantially modified and improved, as described above, and re-issued as another draft document for public review. For AEMA's comments specific to subparts, please see Table I (attached hereto).

Respectfully submitted,



Executive Director

LES/mm/mg

Table I
AEMA COMMENTS BY SUBPART

TABLE 1 AEMA COMMENTS BY SUBPART Subpart 1601-Planning		
Existing §§	Proposed §§	Comment
§ 1601.0-2 Objective The objective of resource management planning by the Bureau of Land Management is to maximize resource values for the public through a rational, consistently applied set of regulations and procedures which promote the concept of multiple use management and ensure participation by the public, state and local governments, Indian tribes and appropriate Federal agencies. Resource management plans are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.	§ 1601.0-2 Objective The objective of resource management planning by the BLM is to promote the principles of multiple use and sustained yield on public lands unless otherwise provided by law, ensure participation by the public, State and local governments, Indian tribes and Federal agencies in the development of resource management plans, and ensure that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; that will provide for outdoor recreation and human occupancy and use, and which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands.	The language of the proposed change is almost verbatim from 43 U.S.C. § 1701(a)(8), and (12); which establishes the policy of the United States in governing the public lands under the jurisdiction of the BLM. However, conspicuously absent from the proposed objective is the language directing implementation of the Mining and Minerals Policy Act. 43 U.S.C. § 1708(a)(12) states in full: The Congress declares that it is the policy of the United States that- the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands <i>including implementation of the Mining and Minerals Policy Act of 1970</i> (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands... (emphasis added). Congress expressly provides in its declaration of policy under FLPMA that the Mining and Minerals Policy Act (MMPA) is to be implemented/recognized through FLPMA. Congress would not have singled-out the MMPA if it did not intend to establish a relationship between the policy under MMPA ("to foster and encourage private enterprise in...the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries," and to promote "the orderly and economic development of domestic mineral resources [and] reserves") with land management and planning. AEMA contends that BLM has a legal obligation to comply with the MMPA and FLPMA to recognize the Nation's need for domestic sources of minerals, and the right to explore. It is at best careless, and at worst remarkably disingenuous, to omit reference to the MMPA from the proposed objective given that the remainder of the objective is taken directly from FLPMA. This omission represents a fundamental paradigm shift from traditional land use planning to that with a preservation focus which AEMA contends is unlawful. The proposed objective unlawfully prefers preservation values to the exclusion of other uses and values, including grazing, agriculture, and mineral development. FLPMA's land use planning requirements mandate the Secretary consider the relative scarcity of values, weigh long-term benefits, and use and observe principles of multiple-use and other applicable laws (such as the General Mining Law and Mining and Minerals Policy Act), rather than subordinate all other uses of public land to make conservation and preservation values the dominant focus of public land management. BLM must reconcile this significant omission in the proposed objective, by adding reference to the MMPA as established under

§ 1601.0-4 Responsibilities (a) National level policy and procedure guidance for planning shall be provided by the Secretary and the Director. (b) State Directors will provide quality control and supervisory review, including plan approval, for plans and related environmental impact statements and provide additional guidance, as necessary, for use by Field Managers. State Directors will file draft and final environmental impact statements associated with resource management plans and amendments. (c) Field Managers will prepare resource management plans, amendments, revisions and related environmental impact statements. State Directors must approve these documents.	§ 1601.0-4 Responsibilities (a) The Secretary and the Director provide national level policy and procedure guidance for planning. The Director determines the deciding official and the planning area for the preparation of each resource management plan. The Director also determines the deciding official and the planning area for plan amendments that cross State boundaries. (b) Deciding officials provide quality control and supervisory review, including approval, for the preparation and amendment of resource management plans and related environmental impact statements or environmental assessments. The deciding official determines the planning area for plan amendments that do not cross State boundaries. (c) Responsible officials prepare resource management plans and plan amendments and related environmental impact statements or environmental assessments.	FLPMA's declaration of policy. 43 U.S.C. § 1708(a)(12). Under the existing regulations, BLM District and Field Managers are responsible for preparing and amending resource management plans and the related NEPA analyses, while the State Director provides supervisory review and eventual approval. However, under the proposed rule the national Director will have the sole discretion of determining the "deciding official" who is responsible for overseeing and approving resource management plans which deepens an already politicized process. In addition, the proposed rule provides that the national Director and the "deciding official" would also be responsible for determining the planning area. This is a fundamental shift in traditional resource management planning, increases national micromanagement of local resource issues, and marginalizes local managers (with presumably greater understanding of local resource issues). The changes proposed in § 1601.0-4 seem to be consistent with BLM's intent to expand traditionally drawn administrative boundaries (i.e. field office) to that of landscape scale planning. However, AEMA objects to this formal change in administrative boundaries because BLM already has the ability to establish a larger planning area under existing regulations as noted at 81 FR 9684. In the preamble to the proposed rule, the BLM explained that it modified current § 1601.0-4 "to facilitate planning across traditional BLM administrative boundaries" 81 FR 9685. The BLM explains further that: In making these changes, the BLM acknowledges that conservation, resource management, development activities, <i>or other priorities such as landscape-scale mitigation</i> may benefit from planning area boundaries that cross traditional BLM administrative boundaries and may require greater coordination of land use planning across BLM States and national level programs. 81 FR 9684, emphasis added. The explanation provided by BLM makes clear the intent of these changes are not simply to "improve the land use planning procedures" 81 FR 9674; but rather to establish a method for prioritizing largescale, value-based decision making instead of resource based decision making. It is a fundamental shift in traditional land use planning that will have significant impacts to principal uses (defined under 43 U.S.C. § 1702(l)). <i>See also</i>, comment relating to § 1610.1-2(a)(ii)(2). Moreover, FLPMA directs BLM to manage public lands for multiple uses and to consider a wide range of resource values – including the need to protect wildlife and quality of habitat – in the context of the Nation's needs for <i>minerals</i>, energy, food, fiber, and other natural resources. § 1708(a)(7)(8)(12). In defining the term "multiple use" FLPMA directs the Secretary, among other things, to balance resources 43 U.S.C § 1702(c). Therefore, under the multiple use requirements, minerals and conservation values are on
---	---	--

		equal footing. Consequently, BLM must strike an appropriate balance between potentially competing interests and land management objectives, while considering the needs of <i>all</i> resources – including the needs of for domestic sources of minerals. This balance is to be achieved in Section 102 land use planning process and the resulting resource management plans (RMPs). <i>FLPMA does not authorize the subordination of any of these uses in preference for a single land use.</i> AEMA contends that prioritizing resources outside of the requirements under § 202(c)(3), and BLM’s planning regulations at 43 C.F.R. § 1610.7-2, is not consistent with FLPMA. In addition, setting “landscape scale” planning as the standard and not the exception will likely complicate the National Environmental Policy Act of 1969 (NEPA) analysis associated with plan development/amendments, delay decision-making associated with implementation level proposals and result in the imposition of excessive mitigation obligations.
§ 1601.0-5 Definitions No similar definition	§ 1601.0-5 Definitions¹ High quality information means any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users. No similar definition Implementation strategies means strategies that assist in implementing future actions consistent with the plan components of the approved resource management plan. An implementation strategy is not a plan component. No similar definition Mitigation means the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.	<i>See comments relating to §§ 1610.1-1(c), and 1610.4(b)</i> <i>See comments relating to § 1610.1-3</i> BLM explains in the preamble that the addition of the term and definition “mitigation” to the planning regulation is to: “acknowledges that this sequence also applies to the planning process. For example, during the preparation of resource management plans, the BLM <i>first and foremost applies the principle of avoidance through the identification of planning issues and the formulation of alternatives that are guided by the planning issues</i> (i.e., identifying potential impacts and

¹ The BLM proposes to add the definitions of 14 new terms; revise five terms, and remove six terms from § 1601.0-5. Only the terms at issue are represented in the table

		developing alternatives that avoid those potential impacts). During the preparation of a resource management plan, the BLM also identifies mitigation standards, which help to guide the future application of the principles of minimization and then compensation.” 81 FR 9686, emphasis added. BLM goes on to cite Departmental Manual chapter on “Implementing Mitigation at the Landscape-scale” (600 DM 6), for its authority in adding the mitigation hierarchy to FLPMA’s implementing regulations. <i>Id.</i> However, BLM fails to recognize that FLPMA does not authorize the imposition of mitigation obligations. While BLM may consider Departmental guidance in preparation of its land use plans, BLM lacks the authority to create out of whole cloth implementing regulations that are not authorized under FLPMA. Furthermore, BLM already has the ability to implement policies such as the mitigation framework, in accordance with the law, through section § 1610.1(a) of the existing regulations. AEMA contends that BLM does not have the authority, outside of the regulations at 43 CFR §3809 to impose the mitigation hierarchy locatable mineral operations. In enacting FLPMA, Congress explicitly acknowledged the continued vitality of the Mining Law of 1872. Section 302(b) of FLPMA states: Except as provided in Section 1744, Section 1782, and Subsection (f) of Section 1781 of this title and in the last sentence of this paragraph, no provision of this section or any other section of this act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under the act, including, but not limited to, rights of ingress and egress (43 U.S.C. § 1732(b)). The House Committee on Interior and Insular Affairs described this provision more particularly when it stated: This section specifies that no provision of the Mining Law of 1872 will be amended or altered by this legislation except as provided in Section 207 (recordation of mining claims), Subsection 401(f) (regulation of mining in the California desert), Section 311 (wilderness review areas and wilderness areas), and except for the fact that the Secretary of the Interior is given specific authority, by regulation or otherwise, to provide that prospecting and mining under the mining law will not result in unnecessary or undue degradation of the public lands. The secretary is granted general authority to prevent such degradation (H.R. Rep. No. 94 1163 at 6 (1976)). As such, BLM cannot in any way impair the rights of locators or mining claimants or interfere with ingress and egress rights through the land use planning process. Therefore,
--	--	--

(j) Officially approved and adopted resource related plans means plans, policies, programs and processes prepared and approved pursuant to and in accordance with authorization provided by Federal, State or local constitutions, legislation, or charters which have the force and effect of State law.	Officially approved and adopted land use plans means land use plans prepared and approved by other Federal agencies, State and local governments, and Indian tribes pursuant to and in accordance with authorization provided by Federal, State, or local constitutions, legislation, or charters which have the force and effect of State law.	the proposed inclusion of mitigation into the planning regulations is contrary to explicit statutory language in FLPMA and § 22 of the Mining Law of 1872 (which allow citizens of the United States the opportunity to enter, use and occupy public lands open to location to explore for, discover, and develop certain valuable mineral deposits). <i>See also</i> comments relating to § 1610.1-2(a)(ii)(2) The proposed change would mean there would no longer be a regulatory requirement for consistency with the “policies, programs, and processes” of other Federal agencies, State and local governments, and Indian tribes. BLM claims that the proposed change is consistent with § 202(c)(9) of FLPMA, 81 FR 9686. However, by removing the language “policies, programs and processes” BLM marginalizes the role of the public and state and local governments, and violates the spirit of FLPMA which seeks to be consistent with other resources related management (policy and programs) of other governmental entities (“coordinate the land use inventory, planning, and management activities...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...considering the policies of approved State and tribal land resource management programs.”) 43 U.S.C. § 1712 (c)(9). Further, by removing the existing regulatory requirement to be consistent with policies and programs of other governmental entities could lead to important Federalism Implications, defined as: “having substantial direct effects on states or local governments (individually or collectively), <i>on the relationship between the national government and the states</i>, or on the distribution of power and responsibilities among the various levels of government” (https://www.epa.gov/laws-regulations/summary-executive-order-13132-federalism, emphasis added). The recently approved Greater sage-grouse land use plans are an example where BLM, for the first time, introduced landscape planning, and where State policies and programs were largely ignored leading to three States (Idaho, Nevada, and Utah), as well as local governmental entities suing the Federal government for, in part, failing to consider existing plans and policies related to Greater sage-grouse. AEMA opposes the removal of “policies, programs, and processes” from the proposed rule because in doing so BLM creates important Federalism Implications, which would require a Federalism Assessment pursuant to Executive Order 13132, and violates § 202(c)(9) of FLPMA which requires BLM to seek consistency with policies and programs of other governmental entities. <i>See also</i> comments relating to § 1610.3-2.
---	---	---

No Similar Definition (m) Resource area or field office means a geographic portion of a Bureau of Land Management district. It is the administrative subdivision whose manager has primary responsibility for day-to-day resource management activities and resource use allocations and is, in most instances, the area for which resource management plans are prepared and maintained. (n) Resource management plan	Planning assessment means an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area. A planning assessment is developed to inform the preparation and, as appropriate, the implementation of a resource management plan. Eliminated Plan components means the elements of a resource management with which future management actions will be consistent.	See comments relating to §1610.4 et seq. The proposed removal of the term “Resource area or field office” is necessary in order to be consistent with BLM’s intent to expand traditionally drawn administrative boundaries (i.e. field office) to that of landscape scale planning. However, AEMA objects to this formal change in administrative boundaries because BLM already has the ability to establish a larger planning area under existing regulations as noted at 81 FR 9684. See also comments relating to §§ 1601.0-4; existing 1610.1(b) See comments relating to §§ 1610.1-2 and 1610.1-3.
Subpart 1610-Resource Management Planning		
Existing §§ § 1610.1 (b)-Resource management planning and guidance A resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area.	Proposed §§ Eliminated	Comment The proposed removal of § 1610.1(b) is necessary in order to be consistent with BLM’s intent to expand traditionally drawn administrative boundaries (i.e. field office) to that of landscape scale planning. However, AEMA objects to this formal change in administrative boundaries because BLM already has the ability to establish a larger planning area under this existing regulation. Because BLM already has the authority to expand planning area boundaries beyond traditional boundaries (i.e. field office/State), the only potential change that could be made to the regulations is changing the label of the responsible parties from State Director and Field Manager to that of the proposed Deciding Official or Responsible Party, and revise the proposed duties of those titles.

		<i>See also comment relating to § 1601.0-4.</i>
§ 1610.1(c) Resource management planning guidance An interdisciplinary approach shall be used in the preparation, amendment and revision of resource management plans as provided in 40 CFR 1502.6. The disciplines of the preparers shall be appropriate to the values involved and the issues identified during the issue identification and environmental impact statement scoping stage of the planning process. The Field Manager may use any necessary combination of Bureau of Land Management staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.	Guidance and general requirements § 1610.1-1(b) The BLM will use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences. The expertise of the preparers will be appropriate to the resource values involved, the issues identified during the issue identification and environmental impact statement scoping stage of the planning process, and the principles of multiple use and sustained yield, or other applicable law. The responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.	The proposed rule would require BLM to use an interdisciplinary approach in resource management planning stating: "to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences." AEMA agrees that BLM must consider all relevant scientific information during resource management planning, and while BLM does not supply an exhaustive list of scientific disciplines, it is concerning to AEMA that "geology" was omitted, given that mineral exploration and production are considered a principal use (43 U.S.C. § 1702(l)). This omission is of particular concern given that during the recent Greater sage-grouse land use plan revisions, geologic data was completely omitted. Consideration of geologic resources is critical to informed decision-making. As such, proposed §1610.1-1(b) should be revised to include a reference to geological sciences. AEMA believes the addition of the language "principles of multiple use and sustained yield, or other applicable law" is an appropriate change to the regulations, especially given that it is the first criteria listed in FLPMA followed by the requirement to use an interdisciplinary approach. § 202(c)(1-2). However, AEMA believes the reference to multiple use and sustained yield is oddly placed. AEMA proposes the following language in order to provide for inclusion of geologic data, reduce confusion, increase readability, and better reflect the direction under FLPMA: (b) The BLM will use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, <i>geological</i>, biological, ecological, social, economic, and other sciences, <i>while abiding to the principles of multiple use and sustained yield, or other applicable law</i>. The expertise of the preparers will be appropriate to the resource values involved, the issues identified during the issue identification and environmental impact statement scoping stage of the planning process. The responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach (emphasis added).
No similar regulation	Guidance and general requirements § 1610.1-1(c) The BLM will use high quality information to inform the preparation, amendment, and maintenance of resource management plans.	AEMA agrees that high quality information is critical to making informed decisions regarding resource management planning. BLM discusses in the preamble that "high quality information" would extend to information other than the best available science, so long as the "high quality information" is relevant to the planning effort and documented using methodologies designed to maintain accuracy and reliability, and to avoid bias, corruption, or falsification; and gives the examples, ethnographic research methods, and "Traditional Ecological Knowledge" (TEK) 81 FR 9689; neither of which are traditional sources of information as they relate to resource management. AEMA is concerned that the way in which BLM has woven the definition of "high quality

		information” (§1601.0-5), in with the proposed §1610.4(a),(b), will result in an increased reliance on non-traditional sources of information such as TEK, “citizen-science,” and “professional judgement” in place of actual scientific studies. The inclusions of these non-traditional sources are not reproducible. As such, these information types violate the Data Quality Act. Further, despite BLM’s proposal to require the responsible official to vet information supplied to the BLM from outside sources (see proposed § 1610.4(b)), to ensure it is “high quality” will only politicize information gathering, lead to “cherry-picking” of sources and promote the twisting of facts to suit pre-conceived theories or desired outcomes, instead of the data and facts leading to responsible, non-biased decision-making. <i>See also comments relating to § 1610.4(a)(b)</i>
§§ 1601.0-5(n)(1)-1601.0-4) and 1601.0-5(n)(8)). (n) <i>Resource management plan</i> means a land use plan as described by the Federal Land Policy and Management Act. The resource management plan generally establishes in a written document: (1) Land areas for limited, restricted or exclusive use; designation, including ACEC designation; and transfer from Bureau of Land Management Administration; (2) Allowable resource uses (either singly or in combination) and related levels of production or use to be maintained; (3) Resource condition goals and objectives to be attained; (4) Program constraints and general management practices needed to achieve the above items;	§ 1610.1–2 Plan components (a) Plan components guide future management actions within the planning area. Resource management plans will include the following plan components: (1) <i>Goals.</i> A goal is a broad statement of desired outcomes addressing resource, environmental, ecological, social, or economic characteristics within a planning area, or a portion of the planning area, toward which management of the land and resources should be directed. (2) <i>Objectives.</i> An objective is a concise statement of desired resource conditions developed to guide progress toward one or more goals. An objective is specific, measurable, and should have established time-frames for achievement. To the extent practical, objectives should also: (i) Identify standards to mitigate undesirable effects to resource conditions; and (ii) Provide integrated consideration of resource, environmental, ecological, social, and economic factors.	The proposed rule will establish “plan components” (goals, objectives, designations, resource use determinations, monitoring and evaluation standards, and lands identified for disposal), that are distinguished from “implementation strategies” (see comments relating to proposed § 1610.1-3). As BLM explains in the preamble, the plan components would provide planning-level direction which future management actions and decisions must be consistent with; while implementation strategies would contain detailed guidance on how the BLM intends to implement future actions consistent with the planning-level management direction, such as withdrawals. 81 FR 9689-90. The proposed distinction will purportedly afford BLM “increased flexibility” and opportunities to engage in “adaptive management.” 81 FR 9689-90. Plan components and changes to plan components beyond what qualifies as maintenance would be subject to NEPA and protest procedures (<i>see</i> proposed § 1610.6-2); however, implementation strategies would not, which AEMA contends substantially diminishes the role of stakeholders, and could have devastating impacts to public land users. Moreover, BLM has an obligation to provide a reasonable opportunity for comment on implementation strategies. FLPMA provides: In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures... to give the Federal, State, and local governments and the public adequate notice <i>and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of the public lands.</i> 43.U.S.C. § 1739(e). Consequently, division of plan components into plan content and “implementation strategies” (which are exempt from public comment, not subject to protest and changeable at any time) is unlawful, and the proposed rule must be revised. <i>See also</i> comment relating to § 1610.1-3. In addition, proposed § 1610.1-2(a) establishes and defines “Goals” and “Objectives” for

(8) Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision.	(b) Resource management plans also will include the following plan components in order to achieve the goals and objectives of the resource management plan, or applicable legal requirements or policies, consistent with the principles of multiple use and sustained yield or other applicable law: (1) <i>Designations</i>. A designation identifies areas of public land where management is directed toward one or more priority resource values or uses. (i) Planning designations are identified through the BLM's land use planning process in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies such as the designation of areas of critical environmental concern (ACEC) (see § 1610.8-2). (ii) Non-discretionary designations are designated by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities. (2) <i>Resource use determinations</i>. A resource use determination identifies areas of public lands or mineral estate where specific uses are excluded, restricted, or allowed, in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies. (3) <i>Monitoring and evaluation standards</i>. Monitoring and evaluation standards identify indicators and intervals for monitoring and evaluation to determine whether the resource management plan objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan. (4) Lands identified as available for	resource management planning. Included in "goals" is reference to desired outcomes for economic, social, and environmental conditions. However, under the related "objectives" BLM fails to include economic and social conditions. AEMA suggests that the language in the proposed rule be revised to clarify that "objectives" may be established to achieve goals for desired economic and social outcomes, as well as desired resource conditions. Proposed § 1610.1-2(b) would describe four additional plan components (designations, resource use determinations, monitoring and evaluation standards, and lands identified as available for disposal. Proposed § 1610.1-2(b)(1) establishes "designations," which identify areas where management is directed towards "priority resource values or uses," while proposed § 1610.1-2(b)(2) establishes "resource use determinations" which identifies areas where certain uses are excluded, restricted or allowed. In the preamble BLM explains that a "designation" highlights BLM's intent to prioritize certain resource values in order to achieve the goals and objectives of the plan or to comply with applicable legal requirements such as congressional mandates (i.e. wilderness designations). BLM claims there would be no substantive change in the proposed rule, other than identifying designations as a plan component. 81 FR 9691. AEMA cautions BLM on distinguishing and defining "designations" in the proposed rule. While it is current practice to identify some lands for certain uses (use determinations) or those that require special management, such as "herd management areas" or "migration corridors," BLM lacks the authority to administratively prioritize one resource over another through "special designations" outside those having been congressionally mandated, or those having met the criteria for Area of Critical Environmental Concern (ACEC). 43 U.S.C. § 1712(c)(3). Therefore, the proposed change regarding designations and BLM's intent to use special designations to prioritize certain resource values is outside its authority. The only administrative designations where one resource is given priority over all others, and where BLM has the authority to make the designation are those related to ACECs or are congressionally mandated, and must be consistent with the criterion used under those designations. No plan component, including any designation or resource use determination can, in any way, impair the rights of locators or mining claimants or interfere with ingress and egress rights through the land use planning process. FLPMA expressly provides that none of its land use planning provisions, among others "<i>shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress.</i>" 43 U.S.C. § 1732(b), emphasis added. Similarly, BLM cannot remove lands from operation of the General Mining Law. See 43 U.S.C. § 1712(e)(3); such an action may only be accomplished by an Act of Congress or by the Secretary pursuant to the requirements and procedures of FLPMA § 204(c) for a period not to exceed 20 years. 43 U.S.C. § 1714.
--	--	--

	disposal from BLM administration under section 203 of FLPMA, as applicable. (c) A plan component may only be changed through a resource management plan amendment or revision, except to correct typographical or mapping errors or to reflect minor changes in data.	
§ 1601.0-5(n) Resource management plan (4) Program constraints and general management practices needed to achieve the above items; (5) Need for an area to be covered by more detailed and specific plans; (6) Support action, including such measures as resource protection, access development, realty action, cadastral survey, etc., as necessary to achieve the above; (7) General implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action;	§ 1610.1–3 Implementation strategies (a) A resource management plan may also include, but is not limited to, the following types of implementation strategies: (1) <i>Management measures.</i> A management measure is one or more potential action(s) the BLM may take in order to achieve the goals and objectives of the resource management plan. Management measures may include, but are not limited to, resource management practices, best management practices, standard operating procedures, provision for the preparation of more detailed and specific plans, or other measures as appropriate; (2) <i>Monitoring procedures.</i> Monitoring procedures describe methods for monitoring the resource management plan (see § 1610.6–4 of this part). (b) Implementation strategies are not a plan component. Implementation strategies are intended to assist the BLM to carry out the plan components. (c) Implementation strategies may be updated at any time if the BLM determines that relevant new information is available. Updates to an implementation strategy do not require a plan amendment or the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3. The BLM will	Proposed § 1610.1-3 describes two types of implementation strategies: management measures and monitoring procedures. Management measures would replace several existing elements of a “resource management plan” (see existing § 1601.0-5(n)). Implementation strategies will not be subject to public notice, NEPA, comment or protest. These changes will purportedly afford BLM “increased flexibility” and opportunities to engage in “adaptive management,” 81 FR 9689-90, but substantially diminish the role of stakeholders including other governmental entities. Despite BLM’s proposal to make implementation strategies available for public “review” at the time a RMP is subject to comment, there is no opportunity for involvement in the formulation of standards or criteria for the <i>execution</i> of a plan. While it may be convenient for BLM to have the “flexibility” to change implementation strategies at any given time without public involvement, it is contrary to FLPMA. FLPMA requires BLM coordinate land use planning <i>and management</i> with State and local efforts, provide for “<i>meaningful public involvement</i>” of State and local government officials, both elected and appointed in the development of land use programs, land use regulations and <i>land use decisions</i> for public lands, including early public notice of proposed decisions which may have a significant impact on-Federal lands,” and allow for State officials to “<i>furnish advice</i>” to the Secretary with respect to the development and revision of land use plans, land use <i>guidelines</i>, land use rules, and land use regulations for the public lands within such State.” 43 U.S.C. § 1732 (b)(9), emphasis added. As previously discussed, FLPMA also requires BLM to establish procedures to allow for stakeholders to comment upon “the formulation of standards <i>and criteria</i> for, and <i>to participate in, the preparation and execution of plans</i> and programs for, and the management of, the public lands.” 43 U.S.C. § 1739 (e). AEMA opposes the proposed rule and specifically the distinction between “plan components” and “implementation strategies” because as the proposed rule is written, implementation strategies will be developed and modified at the sole discretion of the BLM-discretion unintended by Congress- and will not be subject to formal public involvement procedures. The division of plan components into “plan content” and “implementation strategies” is not permissible and should be revised in the final rule.

	make updates to an implementation strategy available for public review at least 30 days prior to their implementation	
1610.2 Public participation	1610.2 Public involvement 1610.2-1 Public notice 1610.2-2 Public comment periods 1610.2-3 Availability of the resource management plan	The proposed rule will distinguish between a process for making planning documents "available for public review" and specifically requesting public comments. BLM will make some documents available for public review at varied points during the planning process. BLM explains in the preamble that when documents are made available for "public review," it is merely BLM's way of providing a progress update to the public. BLM explains further that the public may offer input at this point, and clarifies that they (BLM) will not request public comment, will not establish any public comment period, and will not formally respond to comments for these documents. 81 FR 9694. In contrast, where BLM "requests written comments," BLM will provide a minimum of 30 days for response (<i>see</i> proposed § 1610.2-2(a)), and BLM will summarize and respond to substantive comments. <i>Id.</i> Importantly, the distinction between "public review" and "requests for written comments" raises standing issues, and the question of whether or not comments received during "public review" would be part of the administrative record and fails to ensure that public input will be considered and included in the administrative record. AEMA believes that all comments made during the land use planning process should be made part of the formal administrative record, irrespective of whether BLM defines a request as "public review" or "request for written comment." AEMA recommends that in order to facilitate and ensure consideration of comments made during "public review" and inclusion in the administrative record, BLM must establish a reasonable comment period for documents subject to the proposed "public review" provisions. Proposed §1610.2-1(d) will replace existing § 1610.2(d), which requires BLM to maintain a list of parties known to have interest in land use planning issues, and to provide notice of public involvement opportunities to those known parties when conducting land use planning. By contrast, the proposed rule will place the burden on the public to contact BLM if they are interested in land use planning issues. On its face this change seems reasonable; however, AEMA is concerned that by requiring interested parties to contact individual BLM offices will disrupt meaningful public involvement opportunities, especially considering the expansion of traditional administrative boundaries to landscape scale will mean that under proposed § 1610.2-1(d) interested parties may be required to contact dozens of BLM offices. Under the existing rule it is challenging enough for the public to stay apprised of BLM activities. However, one method that is useful to the public for staying apprised of activities under the existing rule is the ability to create alerts in the Federal Register of certain BLM activities.

		Under the proposed rule; however, BLM will not be required to provide notice in the Federal Register of certain planning activities. AEMA believes that the proposal to place the burden of notice on the public in combination with removing the requirement to provide notice in the Federal Register undermines BLM's proposal to provide more opportunities for public involvement. It is useless to provide more opportunities for public involvement, if BLM is not required to provide adequate notice of those opportunities. AEMA recommends that BLM retain the requirement to provide notice of all land use planning activities in the Federal Register, and BLM must clarify and simplify in the final rule the steps involved in placing the burden of notice on the public, and how the proposed rule complies with FLPMA's mandate to provide for meaningful public involvement. 43 U.S.C. 1712(c)(9).
§ 1610.3-1 Coordination of planning efforts	§ 1610.3-1 Coordination of planning efforts	Proposed § 1610.3-1(c) establishes coordination requirements between BLM and other governmental entities. However, § 1610.3-1(c)(3) is inconsistent with § 1610.3-1a(4), which requires BLM to "[p]rovide for meaningful public involvement of other Federal agencies, State and local government officials, <i>both elected and appointed...</i> in the development of resource management plans..." 81 FR 9728, <i>emphasis added</i>. In contrast § 1610.3-1(c)(3) improperly narrows coordination with local officials by limiting coordination to "elected heads of county boards, other local government units, and elected government officials of Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment." 81 FR 9729. Further, FLPMA expressly provides that: [the Secretary] shall provide for meaningful public involvement of State and local government officials, <i>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</i> of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. 43 U.S.C. 1712(c)(9), <i>emphasis added</i>. BLM cannot dismiss the importance of coordination with local governmental entities, both elected and appointed, or deny the opportunity of these officials to furnish advice early in the land use planning process. AEMA contends that BLM must coordinate, which necessarily includes notification, with both elected <i>and appointed</i> officials. The proposed rule must be revised to include appointed officials, and/or clarify what is meant by "other local government units." In addition, BLM proposes to remove language (existing § 1610.3-1(b)) regarding notification to the State Director when cooperating agency status is denied, and explains

		that the language is not necessary because the proposed rule provides that the responsible official will follow applicable regulations concerning “eligible governmental entities” at 43 CFR 46.225. 81 FR 9702. However, the DOI NEPA regulations cited by BLM regarding “eligible governmental entities,” provides no redress for agencies denied cooperating agency status, as does the existing regulation. As such, AEMA opposes the removal of the language concerning review of cooperating agency denials by the State Director.
1610.3-2 Consistency requirements (a) Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans.	1610.3-2 Consistency requirements inter alia (a) 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 to the maximum extent the BLM finds practical and consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations. (1) The BLM will, to the extent practical, keep apprised of officially approved and adopted land use plans of State and local governments and Indian tribes and give consideration to those plans that are germane in the development of resource management plans.	There are several proposed changes to § 1610.3-2, which AEMA contends will substantially reduce BLM’s obligation to ensure consistency with state, local and other government land and resource management plans, policies, and programs, and marginalize the role of local governmental entities in land use planning. Section 202(c)(9) mandates that the Secretary must coordinate the land use planning process with State and local governments and that the resulting federal land use management plans must be substantially consistent with State and local land management plans. <i>Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.</i> 43 U.S.C. 1712(c)(9), emphasis added. Pursuant to FLPMA and existing § 1610.3-2(a), the Secretary cannot lawfully ignore or reject state and local plans found to be consistent with Federal law. However, proposed §1610.3-2(a) only requires BLM to ensure consistency with State, local and Indian plans, to the extent that BLM finds it to be “practical,”-discretion not intended by Congress as stated clearly in FLPMA. <i>Id.</i> FLPMA does not authorize BLM to disregard State and local plans simply because BLM finds that they are in some way impractical. As such the proposed rule is unlawful and must be revised to reflect the directive under § 202(c)9 of FLPMA. Under proposed § 1610.3-2(a), BLM also improperly narrows the RMP consistency requirement to “land use plans” of other government agencies, rather than considering other resource related plans, policies and programs, as is currently required. BLM explains in the preamble that removal of “policies and programs” is appropriate because such policies and programs of other governmental entities would have been considered in their “officially approved or adopted” land use plans, and therefore by default, BLM would consider these policies and programs through the officially approved or adopted land use plans. 81 FR 9703. <i>See also</i> comment relating to the definition of “officially approved or adopted land use plans.” Unfortunately, BLM fails to recognize that State and local governments commonly govern resources through resource specific planning documents opposed to all inclusive “land use plans.” Under the proposed rule, BLM is likely to ignore an entire body of planning documents that are important to local governance of resources. BLM must explain why it “is inappropriate for the BLM to seek consistency with policies and programs that may or

(b) In the absence of officially approved or adopted resource-related plans of other Federal agencies, State and local governments and Indian tribes, guidance and resource management plans shall, to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes. Such consistency will be accomplished so long as the guidance and resource management plans are consistent with the policies, programs and provisions of Federal laws and regulations applicable to public lands, including, but not limited to, Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise and other pollution standards or implementation plans. § 1610.3-2(e)	Eliminated § 1610.3-2(b)	may not be officially approved or adopted by the Federal agencies, State and local governments, and Indian tribes. <i>Id.</i> AEMA recommends BLM retain the existing rule or revise the proposed rule to address the flaws cited herein. AEMA opposes the removal of existing § 1610.3-2(b) for the reasons cited above, and because not all local governmental entities may have the ability or resources to have comprehensive resource management or land use plans that are "officially approved." The inclusion of § 1610.3-2(b) is necessary because in the absence of an officially approved plan this provision carries forward and ensures that BLM will continue the policy of cooperative federalism, and provide assurance to the public, and other governmental entities, that to the maximum extent practical, RMPs will be consistent with officially approved and adopted resource related policies and programs. Further, AEMA disagrees that this provision is outside the authority of FLPMA. To the contrary, FLPMA does indeed direct BLM to be consistent with policy and programs of other agencies and governmental entities: ...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, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 4601-4 et seq. note], and of or for Indian tribes by, <i>among other things, considering the policies of approved State and tribal land resource management programs.</i> 43 U.S.C. 1712(c)(9), emphasis added. BLM also misrepresents the current rule stating "it would be inappropriate for BLM to seek consistency with State and local programs and policies that may not have been officially approved or adopted by the responsible State or local government. 81 FR 9703. In fact, the existing regulation is explicit that the consistency requirement applies only to "officially approved and adopted resource related policies and programs" of other governmental entities. The existing regulations properly reflect the directives under FLPMA, as such, existing § 1610.3-2(b) should be retained in the planning regulations. Proposed § 1610.3-2(b), also inappropriately narrows the scope of the Governor's Consistency Review for consistency between RMPs and "officially approved and adopted land use plans of State and local governments." For the reasons cited herein, the Governor's Consistency Review should apply to all officially adopted State and local resource related plans, policies or programs. To that end, the existing rule relating to Governor's Consistency Review (§ 1610.3-2(e)) should be retained.
§ 1610.4-2 Development of planning criteria	Eliminated	<i>See comments relating to proposed § 1610.5-3.</i>

§1610.4-3 Inventory data and information collection	Eliminated	See comments relating to proposed § 1610.4 et seq.
§1610.4-3 Inventory data and information collection; §1610.4-4 Analysis of the management situation.	§ 1610.4(a)(1-4) (a) <i>Information gathering.</i> The responsible official will: 3) Provide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other policies, guidance, strategies, or plans described under paragraph (a)(2) of this section, for the BLM's consideration in the planning assessment; and	BLM explains in the preamble that proposed § 1610.4(a)(1) satisfies FLPMA's mandate to conduct inventory of "public lands and their resource and other values," 43 U.S.C. 1711 et seq., and also would provide for the additional gathering and consideration of the best available scientific information, or other types of "high quality information," provided by sources "outside" of the BLM. 81 FR 9706. AEMA is concerned that by allowing non-traditional sources to inform the planning assessment, which would have to be properly vetted, will lead to delays in planning or worse, the inclusion of ill-informed opinion, and pseudo-science in place of actual data. <i>See also</i> comments relating to "high quality information" and "information quality." BLM should clarify the process for providing public input during the preparation of planning assessments, and should delineate a timeframe for the public input period concerning preparation of the planning assessment.
No similar regulation	§ 1610.4(b) Information quality	Proposed §1610.4(b) addresses "information quality" for the newly proposed planning assessment, and establishes a new step in the planning process where BLM determines what information is of "high quality" for use in the planning assessment BLM asserts in the preamble that this provision in the planning regulations communicates to the public that any information submitted during the call for public input relating to the planning assessment, in order for it to be considered further then it must meet the standard of "high quality." 81 FR 9707. BLM's defines "high quality" as: any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users. 81 FR 9686. BLM's definition of "high quality" shares similarities to the requirements pursuant to the Data Quality Act (DQA); however, BLM cherry-picked those aspects which appear to be consistent with BLM's proposal to include non-traditional sources of information. BLM's definition of "high quality" and the related regulations for proposed 1610.101(c), and 1610.4(b) do not meet the standards pursuant the DQA and guidelines, including those for objectivity-specifically reproducibility. Reproducibility means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision." <i>See</i> OMB Guidelines V10. The more important the information disseminated, the more rigorous the standard. <i>See</i> OMB Guidelines V10. The DQA requires that information used by agencies, including the BLM, be based upon verifiable data and reproducible results, <i>and not based upon opinion.</i>

		Under DQA, Congress directed the OMB to issue guidelines to “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information” disseminated by the federal agencies (DQA §515(a)), as a result of the federal governments recognition that “[b]ecause the public disclosure of government information is essential to democracy, the management of Federal information resources should protect the public’s right of access to government information.” (OMB, Circular No. A-130 Revised, Memorandum for Heads of Executive Departments and Agencies: Management of Federal Information Resources, 7.f. (originally issued Feb. 8, 1996). BLM must revise the proposed rule to be consistent with all aspects of the DQA, not just those portions that BLM finds appropriate.
§1610.4-4(a) The types of resource use and protection authorized by the Federal Land Policy and Management Act and other relevant legislation	§ 1610.4(c) Assessments Inter alia (c) The responsible official will assess the resource, environmental, ecological, social, and economic conditions of the planning area. At a minimum, the responsible official will consider and document the following factors in this assessment when they are applicable: (1) Resource management authorized by FLPMA and other relevant authorities; (3) Current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions;	The proposal to add the language “other relevant authorities” is not authorized outside Congressional mandates. In enacting FLPMA, Congress was clear on what resources and management considerations BLM can consider in land use planning. 43. U.S.C. 1712 <i>et seq.</i> By adding the language “other relevant authorities,” BLM opens the door for the inclusion of guidance documents and other secondary considerations to play an improper role in land use planning. The existing rule should be retained, as it better reflects the directives under FLPMA. As previously discussed, BLM must include geologic factors in the regulations as a factor to be considered during resource management planning, given that mineral exploration and production are considered a principal use (43 U.S.C. § 1702(l). Consideration of geologic resources is critical to informed decision-making. As such, the proposed rule should be revised to include a reference to “geological” trends.
§1610.4-4(i) Critical threshold levels which should be considered in the formulation of planned alternatives	§1610.4(c)(4) Known resource thresholds, constraints, or limitations;	Mineral potential and production are considered a principal use, as such, discussion of mineral occurrence must be considered. Economically viable mineral deposits are rare and hard to find, and must be developed where they are found. Minerals are of substantial socioeconomic importance, especially in rural areas. As such, mineral occurrence and constraints and limitations must be identified early in the land use planning process to ensure that BLM adequately considers mineral exploration and production in the planning area. Moreover, FLPMA requires “the public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands.” 43 U.S.C. § 1701(a)(12). As such, BLM must ensure that principal uses are included in the planning assessment not just ecological factors, as is suggested in the preamble.
Generally §1610.4-4	§1610.4(c)(5) Areas of potential	The list of areas of importance proposed under § 1610.4 (c)(5) should be expanded to

	importance within the planning area...	include areas with mineral potential, because mineral exploration and production is considered a principal use 43 U.S.C. § 1702(l). <i>See also</i> comments relating to proposed § 1610.4 (c)(4)
§1610.4-4(c)(d)(g)	§1610.4(c)(7) The various goods and services, including ecological services, that people obtain from the planning area such as: (i) The degree of local, regional, national, or international importance of these goods and services; (ii) Available forecasts and analyses related to the supply and demand for these goods and services; and (iii) The estimated levels of these goods and services that may be produced on a sustained yield basis.	BLM proposes to replace the terms “use” and “uses” with “goods and services.” BLM explains in the preamble that this change is appropriate because “use” – including “principal uses” - are included in the term “goods and services” 81 FR 9708. AEMA contends that as the rule is written it is not inherent that “goods and services” include “principal uses” or traditional thinking concerning land use. In order to provide clarity, AEMA recommends that BLM either add a definition of “goods and services” which specifically identifies “principal uses” in addition to “ecological services” or revise § 1610.4(c)(7) as follows: The various goods and services, including <i>principal uses</i> and ecological services, that people obtain from the planning area such as... emphasis added. In addition, BLM proposes to expand consideration to the degree of regional, national, or international dependence on goods and services. AEMA is concerned the proposed rule may lead to a marginalization of local and regional dependence/importance factors in favor of national or international considerations. BLM needs to define “importance,” because the term importance as it applies to land use planning is subjective- what is important to local stakeholders-will likely differ to those residing in Washington D.C. BLM needs to identify the factors that will inform whether national, international; or local and regional considerations will take precedence, as there is a strong likelihood that local and regional perspectives on resource use and “goods and services” will differ greatly from national or international perspectives.
§1610.4-4(e) Specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes;	Eliminated	AEMA opposes the elimination §1610.4-4(e). A primary tenet of FLPMA is to coordinate and seek consistency with local policies, plans, and programs. As such, §1610.4-4(e) is necessarily related to the coordination and consistency requirements under existing §1610.3 and proposed §§ 1610.3-1, and 1610.3-2. Moreover, proposed § 1610.4(a)(1) requires BLM to “[i]dentify relevant national, regional, or local policies, guidance, strategies or plans for consideration in the planning assessment.” It is important to identify conflicts in consistency early in the land use planning process in order to develop viable planning alternatives, and avoid conflicts late in the process. Ignoring early identification of conflicts undermines FLPMA’s mandate to seek consistency. Instead early identification of potential conflicts should be encouraged, as such the existing rule should be retained.
§ 1610.4-5 Formulation of Alternatives	§ 1610.5-2(a) (c) Alternatives development	Under proposed § 1610.5-2(a) formulation of the management alternatives will be “informed by the Director and deciding official guidance (<i>see</i> § 1610.1(a)), the planning assessment (<i>see</i> § 1610.4), and the planning issues (<i>see</i> § 1610.5-1).” For this reason, it is of critical importance that the planning assessment contains comprehensive evaluation of the variety of resources in the planning area, which includes the “principal uses.” <i>See also</i> comments relating to proposed §1610.4. BLM also proposes to make preliminary alternatives available for “public review.” As

		previously discussed, there is no assurance that comments made on documents made available for “public review” will be given adequate consideration, and included in the administrative record. BLM needs to clarify and delineate a timeframe for supplying comments made available for public review in order to ensure adequate consideration and resolve any potential standing or other administrative issues.
§§ 1610.4-6 Estimation of effects of alternatives 1610.4-2 Planning Criteria	§ 1610.5-3 Estimation of effects of alternatives	In the first sentence of paragraph (b) BLM proposes to replace, “physical, biological, economic, and social effects” with “environmental, ecological, economic, and social effects” For the reason cited herein, BLM must include reference to “geology.” Mineral exploration and production is not only a principal use, but FLPMA directs BLM to manage public lands for multiple uses and to consider a wide range of resource values in the context of the Nation’s needs for minerals, energy, food, fiber, and other natural resources. As such §1610.5-3(b) must be revised to include reference to geology, which necessarily includes mineralization. Proposed § 1610.5-3 encompasses aspects of existing § 1610.4-2(a)(2) “Planning criteria.” BLM proposes to eliminate the existing regulation relating to planning criteria because the planning assessment and “basis for analysis” established under § 1610.5-3 “provide the appropriate information to guide the effects analysis.” 81 FR 9712. AEMA disagrees because important aspects of § 1610.4-2 have not been properly absorbed in the proposed rule, significantly narrowing public involvement, coordination, and guidance. Specifically, § 1610.4-2(c) requires BLM to make “proposed planning criteria, including any significant changes, available for public comment prior to being approved by the Field Manager.” However, the proposed planning assessment (§ 1610.4), and the “preliminary basis for analysis” (§ 1610.5-3(a)) are only available for “public review.” As discussed throughout, “public review” is not analogous to public comment. Even worse is BLM’s proposal to make the preliminary basis for analysis and the preliminary alternatives only available “as practical.” The proposed changes significantly reduce opportunities for the public and other stakeholders to provide meaningful input, required under FLPMA. 43 U.S.C. 1712(c)(9), for use in the planning process. In addition, BLM’s proposal to replace the planning criteria under existing § 1610.4-2 with the planning assessment (§ 1610.4) and the basis for analysis (§ 1610.5-3), is inappropriate because neither of the proposed sections start the basis of analysis with applicable law, as required under existing § 1610.4-2(b). BLM must initiate any analysis or information gathering effort with identification of applicable law first, then move on to secondary authorities and sources, such as guidance documents, and public opinion or input. AEMA contends that BLM has a duty to comply with law including FLPMA, the General Mining Law, and the MMPA, before any policy or guidance suggestions identified during the planning assessment.
§ 1610.4-7 Selection of preferred alternatives	§ 1610.5-4 Preparation of draft resource management plan and selection of preferred alternatives	Proposed paragraph (a) of this section states that the “responsible official will prepare a draft resource management plan based on the Director and deciding official guidance, the planning assessment, the planning issues, and the estimation of the effects of alternatives.” 81 FR. 9731. As previously discussed, AEMA contends that BLM has a legal obligation to

		comply with the General Mining Law, MMPA, and FLPMA. Proposed paragraph (a) of this section must be revised as follows: the responsible official will prepare a draft resource management plan based on <i>applicable law</i> , the Director and deciding official guidance, the planning assessment, the planning issues, and the estimation of the effects of alternatives, emphasis added.
§ 1610.4-8 Selection of resource management plan	§ 1610.5-5 Selection of proposed resource management plan and preparation of implementation strategies	Under proposed § 1610.5-5, BLM will prepare implementation strategies for proposed RMPs <i>after</i> publication of the draft RMP and BLM's selection of the proposed alternative. As previously discussed, it is inappropriate for BLM to develop potential management strategies that may guide future actions and act as <i>de facto</i> prescriptions, after the comment period on the draft RMP/EIS has closed. When a key piece of information comes late and is not subject to fair comment, it is fatal to the mandatory “meaningfulness” of this NEPA process. <i>See</i> 40 C.F.R. § 1506.6(b) Federal government shall “[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and BLM who may be interested or affected” by proposed actions of the United States.” <i>See also</i> , CEQ, A Citizen’s Guide to the NEPA at 26 “Agencies are required to make efforts to provide meaningful public involvement in their NEPA processes. As written, the proposed rule completely diminishes “meaningful” public involvement under FLPMA, and NEPA, making BLM vulnerable to future legal challenges. Consequently, any directives concerning implementation strategies should be removed from the final <i>See also</i> comments relating to § 1610.1-3.
Generally §1610.4-1	§ 1610.5-1 Identification of planning issues	BLM proposes to prepare a preliminary statement of purpose and need, provide notice that the document is available for “public review.” As previously discussed, documents proposed to be available for “public review” are not subject to the same type of response from BLM, and it is unclear whether comments received on these documents will be part of the administrative record, leading to standing issues. In addition, BLM needs to clarify and delineate a timeframe for submitting comments.
§ 1610.5-2 Protest procedures	§ 1610.6-2 Protest procedures	On its face, the proposed changes to the protest procedures seem to reflect minor changes. However, the changes to the protest procedures must be considered in the context of all the proposed changes. Under the proposed rule BLM modifies what is considered a “valid protest.” Under the existing rule, protests can include: any issue or issues that were submitted during the planning process by the protesting party” and must include “a concise statement explaining what the State Director’s decision is believed to be wrong, 43 CFR § 1610.5-2 (a)(2)(v).

		However, under the proposed rule, protests must “identify <i>the plan component(s)</i> believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations.” 81 Fed. Reg. at 9732. By limiting protest to “plan components” (goals, objectives, designations, resource use determinations, monitoring and evaluation standards, and lands identified for disposal), BLM eliminates the ability of the public to protest other important issues such as, but not limited to: the planning area boundary; implementation strategies; underlying data and “information” used in preparing the planning assessment and plan components; and failure of BLM to identify issues or other relevant information in the planning assessment and/or plan components. For the reasons cited herein, AEMA opposes the proposed changes to the protest procedures, because they improperly narrow the scope of what may be protested. As such, AEMA recommends the existing protest procedures are retained.
§ 1610.5-4 Maintenance	§ 1610.6-5 Maintenance	BLM proposes to remove the following language with respect to “maintenance:” maintenance must not result in the expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan. Existing § 1610.5-4. AEMA is concerned that removing this language will allow BLM unfettered discretion to impose “implementation strategies” without requiring the preparation of a plan revision or amendment. As previously discussed, “implementation strategies,” which in effect result in <i>de facto</i> prescriptions, can have significant implications on principal uses. As such, AEMA opposes § 1610.6-5, and recommends BLM retain the existing “maintenance” regulations at § 1610.5-4.
§ 1610.7-2 Designation of areas of critical environmental concern	§ 1610.8-2 Designation of areas of critical environmental concern	BLM needs to resolve inconsistent direction under proposed § 1610.8-2(b). First BLM states that identification of an ACEC does not change the management or use of public lands, then in the next sentence BLM states potential ACECs require special management attention. This is confusing and redundant because the definition of ACEC includes reference to “special management.” Under the proposed rule BLM would will no longer publish notice and provide a 60-day comment period for all proposed ACECs as is the case under the existing rule (<i>see</i> § 1610.702(b)). BLM explains in the preamble that it considers this change appropriate because the public is provided opportunity to comment on the draft RMP/EIS. 81 FR 9720. While it may be convenient for BLM to consolidate ACEC notice with notices related to the release of a RMP/EIS, BLM fails to consider circumstances associated with RMPs where only an EA is prepared. Under the proposed rules, BLM is not required to request comment on EA level amendments. Therefore, BLM must include a requirement to allow public comment on any EA prepared for an RMP that includes changes in ACEC designations.

American Petroleum Institute
 Independent Petroleum Association of America
 Statement for the Record
 U.S. Senate Committee on Energy and Natural Resources
 Subcommittee Oversight Hearing on the Bureau of Land Management's Planning 2.0 Initiative
 June 21, 2016

API is a national trade association representing over 650 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry.

IPAA is the national association representing the thousands of independent crude oil and natural gas explorer/producers in the United States. It also operates in close cooperation with 44 unaffiliated independent national, state, and regional associations, which together represent thousands of royalty owners and the companies which provide services and supplies to the domestic industry.

Access to affordable energy gives U.S. manufacturers a competitive edge, putting downward pressure on power and materials costs for producers of steel, chemicals, refined fuels, plastics, fertilizers and numerous other products. According to a recent study from the Boston Consulting Group (BCG),¹ U.S. industrial electricity costs are now 30-50 percent lower than those of our foreign competitors. BCG also found that American manufacturing costs are 10 to 20 percent lower than those in Europe and could be 2 to 3 percent lower than China's by 2018.

API and IPAA provide this statement regarding Bureau of Land Management (BLM) management of public lands, in particular BLM's proposed rule entitled "Resource Management Planning," 81 Fed. Reg. 9673 (Feb. 25, 2016) (the "Proposed Planning Rule"). Many of API's and IPAA's member companies have a direct interest in how BLM plans to manage public lands. These companies hold valid existing leases and are interested in future oil and natural gas leasing, exploration, and production activities in areas that will be directly affected by BLM's management decisions. These companies are also dedicated to meeting environmental requirements, while economically developing and supplying affordable energy to consumers. Issues raised by the Proposed Planning Rule will have a direct impact on the future viability of oil and natural gas development on public lands throughout the United States.

BLM stated in the preamble to the Proposed Planning Rule that the agency "initiated this rulemaking as part of a broader effort known as 'Planning 2.0' to improve the land use planning procedures required by FLPMA [the Federal Land Policy and Management Act]." 81 Fed. Reg. 9674. Under this Planning 2.0 initiative, "the BLM aims to improve the land use planning process in order to apply this policy and strategic direction and to complement related efforts within the BLM." *Id.* BLM has described the goals of its Planning 2.0 initiative as:

- (1) Improve the BLM's ability to respond to social and environmental change in a timely manner;
- (2) provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans; and
- (3) improve the BLM's ability to address landscape-scale resource issues and to apply landscape scale management approaches.

Our general comments on the Proposed Planning Rule are as follows:

¹ BCG, America's Unconventional Energy Opportunity (June 2016).

- BLM must explain how the Proposed Planning Rule—as a whole—changes the agency’s resource management planning process and must allow the public to review, understand, and comment on all elements of BLM’s new planning approach together at one time.
- The Proposed Planning Rule introduces significant uncertainty into the resource management planning process by proposing numerous provisions that create ambiguous standards or otherwise expand agency discretion.
- API and IPAA are concerned that a process redesigned by the Proposed Planning Rule would disfavor multiple use interests, including the development of oil and natural gas resources on public lands, by potentially subjecting each step in the process to a new round of objections by parties committed to opposition of resource development.
- The Proposed Planning Rule violates other federal requirements because BLM has put it forward without engaging in National Environmental Policy Act analysis or completing a Statement of Energy Effects, both of which are required.

API and IPAA believe the Proposed Planning Rule shows a bias against oil and gas interests

- For example, the Proposed Planning Rule would remove the phrase “maximize resource values for the public” from the objectives of resource management planning, 81 Fed. Reg. 9683, a step that appears to be a thinly-veiled effort to bias the planning process against resource extraction.
- BLM’s proposed objective “recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands,” 81 Fed. Reg. 9684, but fails to provide any commitment to protecting valid existing mineral rights and interests. The Proposed Planning Rule must clearly state that BLM will honor these rights and interests in carrying forward resource management planning.
- While BLM concedes that “mineral exploration and production” are “principal or major uses” under FLPMA, 81 Fed. Reg. 9708, the Proposed Planning Rule would dilute the value of such congressionally designated uses by placing them into a newly concocted basket of goods and services including such vague terms as “ecosystem services,” *id.*
- Specific programs like oil and gas development, which are facilitated by FLPMA, must not be excluded, delayed, or obstructed in favor of vague objectives.

America’s emergence as a global energy leader has fundamentally reordered the world’s energy markets. It has elevated the importance of North American energy production and reduced what had been the once-dominant roles of OPEC and Russia. This unique American moment is the result primarily of American ingenuity and technological advancements in hydraulic fracturing and horizontal drilling, with market-based leasehold access to the privately held subsurface estate and – at least up to now – access on reasonable terms and under a predictable regulatory regime to the mineral estate held by the government. This “energy renaissance” has resulted in cost savings for American consumers and good paying jobs here at home; provided renewed opportunities for the U.S. manufacturing sector; and strengthened our economy and strategic alliances abroad. In the Western states where most of the government-held mineral estate is found, the share of the energy renaissance from BLM-managed lands has proven to be a major benefit to state and regional economies, and an important contributor to our national energy security.

API and IPAA are concerned that a process redesigned by the Proposed Planning Rule would disfavor multiple use interests, including the development of oil and natural gas resources on public lands, by potentially subjecting each step in the process to a new round of objections by parties committed to opposition of resource development. The overhauled resource management planning process that the Proposed Planning Rule envisions would lead to regulatory and legal uncertainty, delays, and costs. The Proposed Planning Rule and its preamble mark a shift from BLM’s historic conformity to the principles outlined in FLPMA that include support for balanced multi-use resource development and recognition of

the benefit from such development for local and regional economies where BLM administers lands and minerals for which it is responsible.

If BLM intends to develop a new rule to revise its resource management planning process, it should do so only when the agency has completed its work on the supporting policies, guidance documents, and other tools discussed in the Proposed Planning Rule that have not yet been prepared or published. The regulated community and the public need to understand how the different elements of BLM's resource management process will work as a coherent whole, and fulfill the statutory mandate of FLPMA that America's public lands be managed under the principle of multiple use and sustained yield – and in a manner that does not close off access to the resources that a robust national economy will continue to require.

For these reasons the Proposed Planning Rule as published should be withdrawn.

Kane County, Utah Board of Commissioners
Garfield County, Colorado Board of Commissioners
Chaves County, New Mexico Board of Commissioners
Big Horn County, Wyoming Board of Commissioners
Custer County, Idaho Board of Commissioners
Modoc County, California Board of Supervisors
Winkelman Natural Resource Conservation District, Arizona
Hereford Natural Resource Conservation District, Arizona
Doña Ana Soil and Water Conservation District, New Mexico

May 24, 2016

VIA FEDERAL EXPRESS AND
U.S. MAIL, RETURN RECEIPT REQUESTED

Ms. Kristen Bail
Acting Assistant Director
Resources and Planning
Bureau of Land Management
1849 C Street NW, Rm. 5665
Washington DC 20240

Re: Coordination Request; 8300 (WO200)

Dear Ms. Bail:

We are writing you on behalf of Kane County, Utah; Garfield County, Colorado; Chaves County, New Mexico; Big Horn County, Wyoming; Custer County, Idaho; Modoc County, California; Winkelman Natural Resource Conservation District, Arizona; Hereford Natural Resource Conservation District, Arizona; and, Doña Ana Soil and Water Conservation District, New Mexico (the Coordinating Local Governments) in response your letter of May 10, 2016. For the reasons set forth below, the Coordinating Local Governments are extremely disappointed by your letter, which glosses over their request for coordination pursuant to Section 202(c)(9) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1712(c)(9).

The Coordinating Local Governments have written to the Bureau of Land Management (BLM) Director on two occasions, requesting that the Director coordinate on the BLM's Resource Management Planning Rules, 81 Fed. Reg. 8674 (Feb. 25, 2016) (the Proposed Planning Rules). Our first letter requesting coordination was dated April 12, 2016, and was sent to Director Kornze by Federal Express and by certified mail. Our second letter was dated May 4, 2016. It was also sent to the Director by Federal Express and by certified mail.

Both letters requested coordination on the Proposed Planning Rules, not a "webinar" or someone to answer questions. As explained in our prior letters, under FLPMA Section 202(c)(9), the BLM is required to coordinate its "land use inventory, planning, and management activities" pertaining to the public lands "with the land use and planning programs" of State and

local governments. 43 U.S.C. § 1712(c)(9). Among other things, this provision requires the BLM to “assure that consideration is given” to relevant State and local government plans and programs, to attempt to resolve conflicts and inconsistencies between BLM land use plans and State and local government land use plans, and to provide State and local governments with meaningful involvement “in the development of land use programs, land use regulations, and land use decisions for public lands.” *Id.*

Thus, coordination under FLPMA requires far more than allowing comments on a proposal. The verb “coordinate” means “to put in the same order or rank” or “to bring into common action, movement, or condition: HARMONIZE.” Merriam-Webster’s Collegiate Dictionary 255 (10th ed. 2000). In other words, the requirement to “coordinate” requires that the BLM treat the land use planning and management activities of State and local governments as equal in rank and harmonize its land use inventory, planning, and management activities with the activities of State and local governments.

The requirements imposed by FLPMA Section 202(c)(9) were not an accident. In its seminal report to the President and to the Congress, which provided the underpinning for much of FLPMA, the Public Land Law Review Commission recommended that State and local governments have an integral role in federal agency land use planning. The Commission explained that these units of government “represent the people and institutions most directly affected by Federal programs growing out of land use planning.” *One Third of the Nation’s Land* 61 (1970).¹ The Commission felt so strongly about this point that it recommended:

To encourage state and local government involvement in the planning process in a meaningful way, as well as to avoid conflict and assure the cooperation necessary to effective regional and local planning, the Commission believes that consideration of state and local impacts should be mandatory. To accomplish this, *Federal agencies should be required to submit their plans to state or local government agencies. . . .*

The coordination [between federal agencies and State and local governments] which will be required if the Commission’s recommendations are adopted is so essential to effective public land use planning that it should be mandatory. . . . *The Commission recommends, therefore, that Congress provide by statute that Federal action programs may be invalidated by court orders upon adequate proof that procedural requirements for planning coordination have not been observed.*

Id. at 63 (italics in original).

¹ Available at <https://archive.org/details/onethirdofnation3431unit> (visited May 21, 2016). The Public Land Law Review Commission was established as an independent federal agency by an act of September 19, 1964 (78 Stat. 982). Its function was to review the federal public land laws and regulations and recommend a public land policy. For more background see National Archives, Records of the Public Land Law Review, available at <http://www.archives.gov/research/guide-fed-records/groups/409.html>.

Ms. Kristin Bail
May 24, 2016
Page 3

The Proposed Planning Rules are subject to these coordination requirements. The development of the Proposed Planning Rules are a “land use inventory, planning, and management activit[y]”—indeed, the rules are intended to change the way the BLM manages the public lands. The Proposed Planning Rules also constitute “land use regulations” for the public lands and “land use guidelines, land use rules, and land use regulations for the public lands” within the meaning of the statute. They must be coordinated with State and local governments.

And, as explained in our previous requests for coordination, each of the Coordinating Local Governments are “local governments” within the meaning of FLPMA Section 202(c)(9). They are recognized units of local government, and their respective areas of jurisdiction contain substantial amounts of public lands managed by the BLM. As such, the BLM is legally obligated to coordinate its land use planning and management activities, including the development of rules governing land and resource management planning, with the Coordinating Local Governments. To date, however, the BLM has ignored this requirement.

Your letter, unfortunately, continues to ignore the plain language of FLPMA Section 202(c)(9). You state that the “BLM takes seriously” its responsibility under FLPMA “to provide for meaningful public involvement of State and local government officials in the development of land use regulations.” However, you then assert that the BLM’s obligations were satisfied by hosting public “listening sessions” in Denver and Sacramento in 2014, which were attended by just over 100 persons in total. These sessions involved a very general presentation by a BLM employee followed by “small group” meetings led by facilitators to control the discussion. A total of 50 unique written comments were subsequently provided, according to your agency’s summary report. To our knowledge, ensuring consistency with State and local land use plans and policies was not addressed, nor did the BLM engage in any specific coordination efforts directed at State and local governments in developing the Proposed Planning Rules.

You also state that the BLM conducted two public “webinars” on March 21, 2016, and April 13, 2016—after the Proposed Planning Rules were issued—and hosted a public meeting in Denver on March 15, 2016—again, after the Proposed Planning Rules were issued. FLPMA Section 202(c)(9) requires that State and local governments be provided “early public notice of proposed decisions which may have a significant impact on non-Federal lands,” which allows meaningful input to be provided before the decision-making process has proceeded beyond the point where coordination cannot be accomplished.² Finally, you note that the BLM extended the public comment deadline on the Proposed Planning Rules by 30 days.

Your letter states that “the BLM” will be attending a meeting sponsored by the National Association of Counties, being held in Jackson Hole, Wyoming on May 25-27, 2016, and that “we look forward to engaging in dialogue.” Putting aside the fact that most of our coalition members will not be attending this event, coordination is not a casual discussion. Effective and

² Representatives of our coalition members watched these “webinars” and also attended the meeting in Denver. Again, there was no mention of coordinating the development of the Proposed Planning Rules with State and local governments, and no discussion about potential conflicts with State and local land use plans and policies or how these conflicts would be resolved in connection with this rulemaking.

Ms. Kristin Bail
May 24, 2016
Page 4

meaningful coordination requires serious effort and necessarily involves face-to-face meetings between the decision-makers on both sides.

Finally, you have offered to set up a conference call or “webinar” with representatives from our coalition. The purpose of this call would be to “listen to their concerns and answer any questions regarding the proposed rule.” Again, this is not coordination. Coordination isn’t a listening session or opportunity to comment. Instead, it involves a meaningful government-to-government dialogue. For this reason, we have requested a meeting with the Director in a major western city, preferably Albuquerque, New Mexico. This will allow the elected officials from the members of our group to attend the meeting and participate in the discussion.

The bottom line is that none of these activities described in your letter satisfies the requirements of FLPMA Section 202(c)(9). In fact, what your letter demonstrates is that the BLM believes that State and local governments are just like any other member of the public, with, at most, a right to comment on proposed rules affecting the management of the public lands. This belief conflicts with the plain language of FLPMA Section 202(c)(9) and would effectively read the coordination requirements imposed by that provision out of the Act.

Margaret Byfield, who is serving as the facilitator for the Coordinating Local Governments and has previously contacted Director Kornze regarding coordination logistics, was told by an agency representative that a coordination meeting cannot take place because the BLM is very busy. We don’t doubt that Director Kornze and other senior agency officials are very busy—the local government officials representing our coalition members are also very busy. However, if the decision-makers cannot find time for coordination, the BLM will be unable to finalize the Proposed Planning Rules without violating FLPMA. Our members’ officials are committed to working with Director Kornze to effectively coordinate.

Accordingly, we urge the Director to set aside time for coordination. As stated in our prior letters, we will do our best to accommodate his schedule. In the alternative, we urge the BLM to put the Proposed Planning Rules on hold until the Director’s schedule permits him to devote time to meaningful coordination. There is no compelling need for an immediate revision of the current resource management rules, and none has been provided in the preamble of the Proposed Planning Rules.

We appreciate your assistance in responding to our previous coordination requests. Please confirm the Director’s willingness and availability to conduct coordination within 14 days, and advise us of your preferred meeting day. Also, please contact Ms. Byfield as soon as possible so that we can make the necessary meeting arrangements.

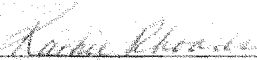
Alternatively, please confirm that this rulemaking will be postponed until coordination has been properly completed.

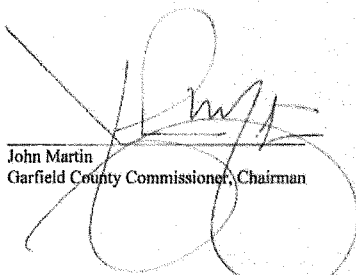
Ms. Kristin Bail
May 24, 2016
Page 5

Thank you for your cooperation and assistance. We look forward to working with you.

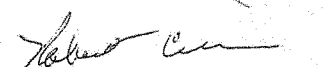
Very truly yours,

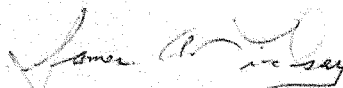

Dirk Clayson, Chair
Kane County, Utah Board of Commissioners


Kathie Rhoads, Chair
Board of Supervisors
County of Modoc


John Martin
Garfield County Commissioner, Chairman


William Dunn,
Chairman,
Winkelman Natural Resource Conservation District

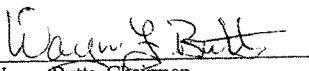

Robert Corn, Chairman
Chaves County Board of Commissioners


JAMES LINDSEY
Chairman
Hereford Natural Resources
Conservation District


Jerold S. Ewen, Chairman
Big Horn County, Wyoming


Joe Dolk, Chairman
Dona Ana Soil and Water Conservation District
New Mexico

Ms. Kristin Bail
May 24, 2016
Page 6


Wayne Butts, Chairman
Custer County, Idaho

cc: The Honorable Rob Bishop, Chairman, House Natural Resources Committee
The Honorable John Barrasso, M.D., Chairman, Senate Western Caucus
The Honorable Lisa Murkowski, Chairman, Senate Environment and Related Agencies
The Honorable Steve Pearce, Chairman Emeritus, Congressional Western Caucus
Leah Baker, Acting Branch Chief, Planning and NEPA (BLM WO)
Shasta Ferranto, Planning 2.0 Project Manager (BLM WO)

COORDINATING LOCAL GOVERNMENTS

Kane County Board of Commissioners
76 North Main Street
Kanab, UT 84741

Garfield County Board of Commissioners
108 8th Street, Suite 101
Glenwood Springs, CO 81601

Chaves County Board of Commissioners
1 St. Mary's Place
Roswell, NM 88203

Big Horn County Board of Commissioners
420 West C Street
Basin, WY 82410

Custer County Board of Commissioners
801 E. Main Avenue
Challis, ID 83226

Modoc County Board of Supervisors
204 South Court Street, Suite 100
Alturas, CA 96101

Winkelman Natural Resource Conservation District
P.O. Box 486
Kearny, AZ 85137

Hereford Natural Resource Conservation District
P.O. Box 3361
Sierra Vista, AZ 85635

Dona Ana Soil and Water Conservation District
760 Stern Drive, Suite 118
Las Cruces, NM 88005



Mark Squillace
 Professor of Law
 Wolf Law Building | 401 UCB
 Boulder, Colorado 80309-0401
 303.492.1287 office | 303.746-7831 cell
 mark.squillace@colorado.edu

24 June 2016

**Testimony of Professor Mark Squillace, University of Colorado Law School
 on the Bureau of Land Management's Planning 2.0 Initiative
 to the Subcommittee on Public Lands, Forests, and Mining
 of the Senate Committee on Energy and Natural Resources
 114th Cong., 2nd Sess. 2016**

Senator Lisa Murkowski
 Chair, Senate Committee on Energy & Natural Resources
 United States Senate
 Washington, D.C. 20510-6150

Dear Chairman Murkowski:

Please accept this supplemental testimony, which affords me an opportunity to address an issue that was raised by several witnesses and Senators during the hearing. The issue concerns the sufficiency of the comment periods and consistency review period as proposed in the BLM's draft Planning 2.0 initiative.

My reasons for submitting this supplemental statement are primarily to explain why the length of a comment period alone does not fairly resolve whether public's opportunities for comment are sufficient. Two other aspects of the public role in the planning process are arguably far more important to the sufficiency of the public's opportunity to meaningfully engage the BLM than the length of time allowed for public comment. The first concerns the extent to which the public has a fair opportunity to engage the agency throughout the development of land use plans. Unlike other types of notice and comment rules, planning documents lend themselves to robust public involvement throughout the period of time that the agency is formulating the plan. The BLM should encourage participation throughout the development process and well before an actual plan is proposed or consistency determination is made. If the BLM were to develop an effective and proactive strategy for engaging the public as they work through the development of the relevant planning documents, the public should have a very good idea what the proposed plan is going to look like well before it is actually published. In such a case, a lengthier comment period may be unnecessary.

Moreover, if the BLM decides to embrace landscape-scale planning, consistency reviews should prove much more robust and meaningful. This is because a landscape-scale plan will necessarily encompass all related state and local plans within the region. Thus, the BLM will not be reliant on the States to identify conflicts but instead will be in a position to identify and hopefully resolve potential conflicts and issues among the various state, local and federal plans well

before the federal plan is even proposed. This too should minimize the need for an extended period for consistency review.

A second aspect of planning that is very much relevant to the length of the comment period concerns the complexity of the proposed plans. As several witnesses at the hearing noted, draft land use plans are generally accompanied by an environmental impact statement and numerous appendices. All told, relevant documents can number well in excess of 1,000 pages in length. Most people lack the capacity to review such a lengthy document no matter how long the public comment period, and that can be discouraging. This is especially true for those with a dedicated but non-professional interest in a plan. As Director Kornze noted at the hearing, the average length of time for development BLM land use plans today is eight years, and much of the reason for this concerns the complexity of the plans. If the BLM wants to more effectively engage the public it must find a way to reduce the complexity of the planning documents. In my written testimony, I outline a proposal for a layered planning process that could help move the agency in this direction. By breaking down planning into more easily digestible and distinct parts, the BLM can also promote more meaningful public engagement.

Finally, let me be clear that I am not necessarily opposed to affording the public additional time for comment. That may be appropriate in many cases. And regardless of the minimum length of time, I believe that the BLM should look favorably on requests to extend comments period whenever legitimate concerns about the length of the original comment period are raised. My primary reason for providing this supplemental testimony, however, is to highlight that fact that the adequacy of public comment opportunities involves far more than just the length of time for comment.

I want to thank the Subcommittee once again for the opportunity to offer this testimony. I am grateful for your careful consideration of these comments and urge the Subcommittee to provide the BLM with constructive guidance as to how they can best move forward to improve their land use planning program for our public domain lands.

Respectfully submitted,



Mark Squillace