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BLM - Proposed Land Use Planning Rule 2.0 Impact on Subsurface Mineral Rights

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October 3, 2016

International Oil & Gas Compact Commission



- What is BLM's planning regime *Today* with respect to subsurface rights?
- What is being proposed - *Tomorrow*
- What is the *Impact* on private and State subsurface mineral rights?



Today

- **National Environmental Policy Act**
- **Federal Land Policy and Management Act**
 - requires public lands to be managed . . .
 - *“on the basis of multiple use and sustained yield.”*
 - *“in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archaeological values.”*
 - *“in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber.”*
 - *“and so as to take any action necessary to prevent unnecessary or undue degradation.”*



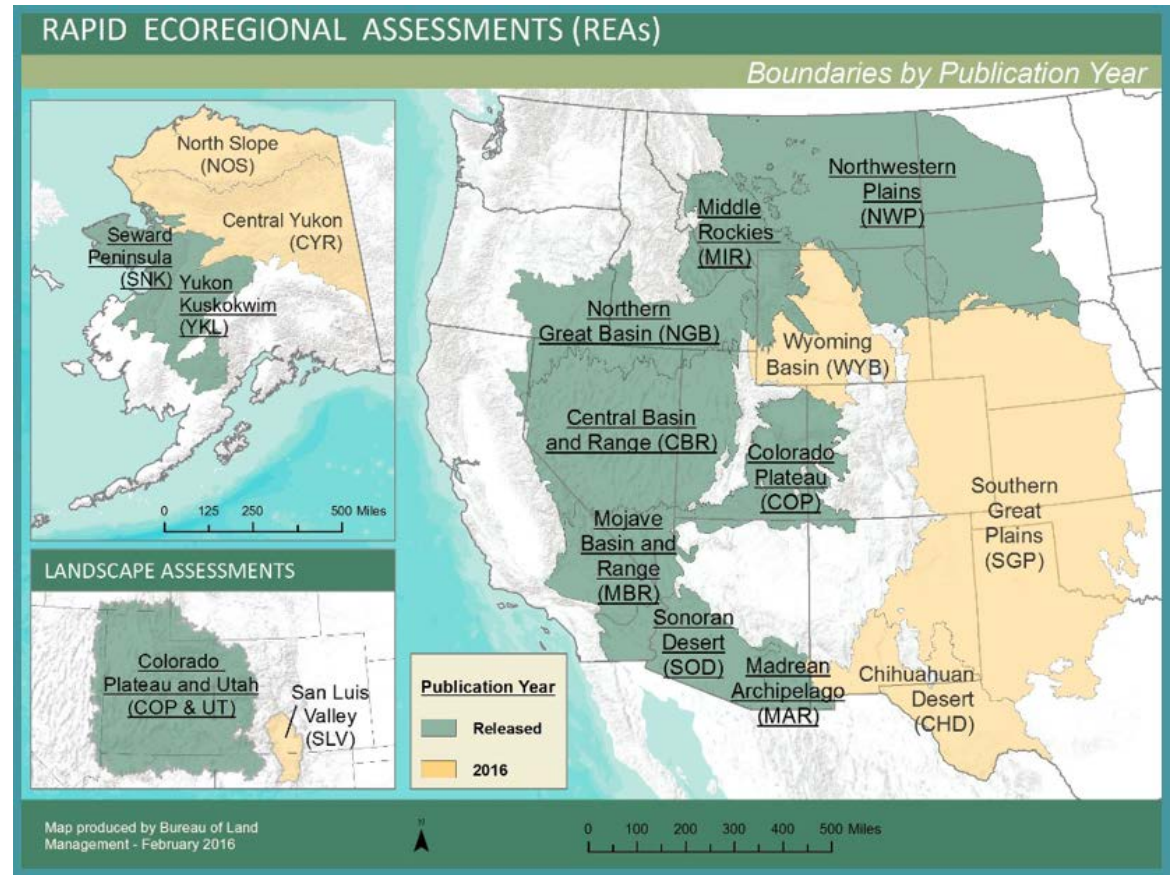
Tomorrow – Proposed

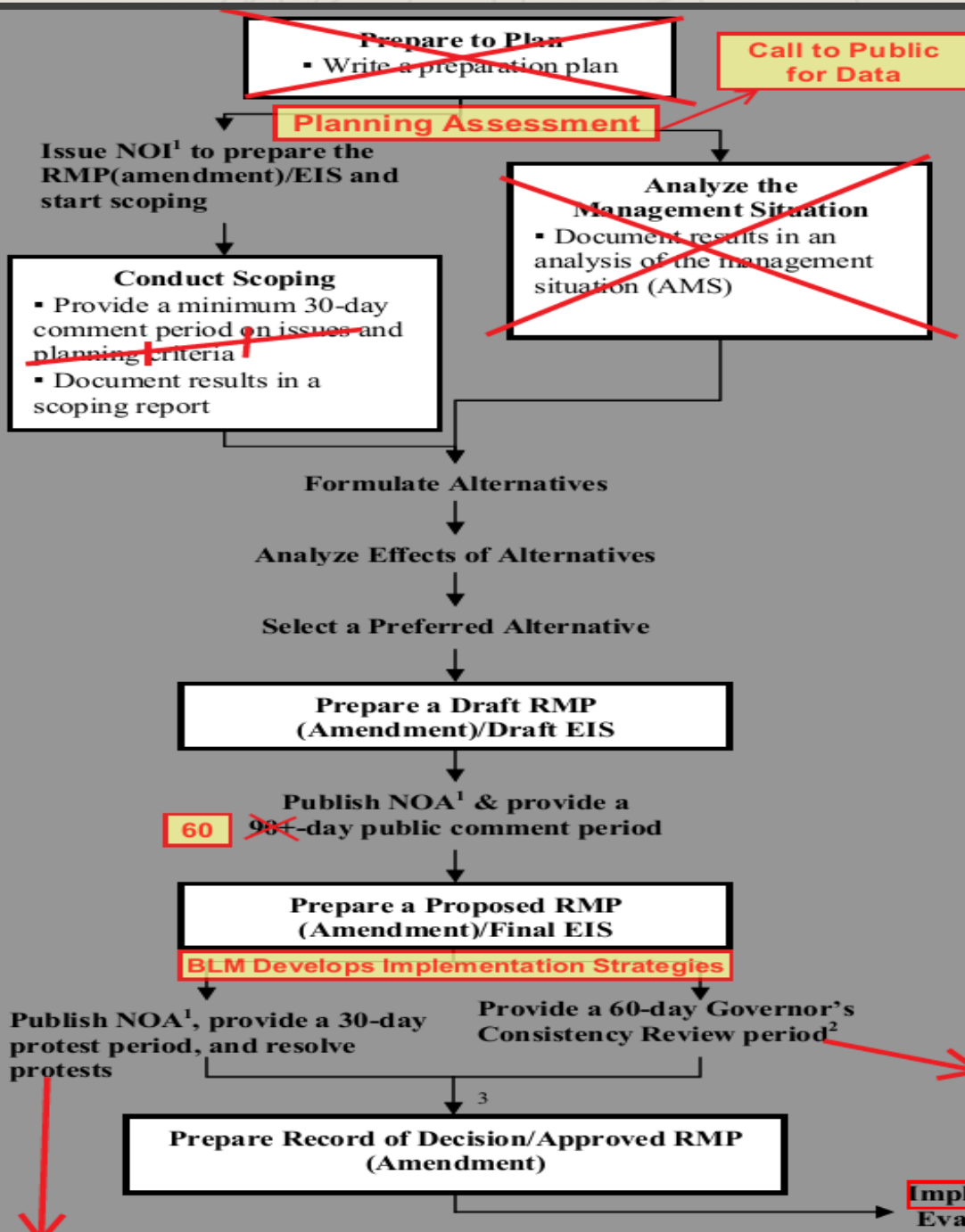
- www.blm.gov: *“BLM Planning 2.0 will shift planning to Landscape-Scale approaches to resource management with a “net benefit goal, or at a minimum, a no net loss goal.”*
- Developed as a result of DOI Secretary Jewell’s Order No. 3330 – *“Improving Mitigation Policies and Practices of the Department of Interior”* (October 31, 2013) and BLM’s *“Interim Policy, Draft – Regional Mitigation Manual.”*
- Two webinars – livestreamed – and one live meeting.
- 60-day comment period; extended 30 days; closed May 25, 2016.
- BLM RAC’s – no stakeholder coordination.
- No NEPA analysis – Categorical Exemption.



Tomorrow – Proposed

- Planning areas will change from intra-state boundaries to “eco-regions.”
- “Landscape-Scale” Planning.
 - Washington office will make determination as to which State office will lead and determine Plan content.





NOTES

1) The chart shows minimum planning requirements according to law, regulation, or BLM policy. BLM managers can go beyond these requirements as needed or desired.

2) Boxes around steps indicate required documents.

3) Inventory of resource extent and condition should occur as needed, but is most useful prior to the analysis of the management situation.

Abbreviations:

EIS ~ Environmental Impact Statement
NOI ~ Notice of Intent
NOA ~ Notice of Availability
RMP ~ Resource Management Plan

¹ BLM must publish a notice in the *Federal Register*.
² States can negotiate a shorter review period with the Governor.
³ If changes are significant, issue a notice of significant change and provide a 30-day comment period.

PROTEST GROUNDS ARE NARROWED



Western Governor's Association

Planning 2.0 spawns 'More Confusion than Clarity'

Phil Taylor, E&E reporter

Published: Thursday, May 26, 2016; Excerpt.

- *A Bureau of Land Management proposal to update how it revises land-use plans in the West **would erode the influence of governors and place new burdens on local governments, according to the Western Governors' Association.***
- *The bipartisan WGA said BLM's draft rule would **"create more confusion than clarity," which could have been avoided through meaningful consultation with Western governors.***
- ***"Western Governors do not believe the Proposal presents positive changes in preparation, revision or amendment of land use plans,"** the governors wrote in their [comments](#) on the rule to BLM yesterday.*
- *The Denver-based organization **representing governors from 19 states and U.S.-flag islands is the latest entity to raise concerns over the BLM proposal, known as "Planning 2.0."***
- ***WGA said BLM failed to consult with governors prior to publishing the rule. Provisions in the rule would shorten public comment timelines, eliminate notifications in the Federal Register and restrict the scope of gubernatorial "consistency reviews" that ensure BLM plans don't conflict with local plans, WGA said.***
- *The reduced timelines for public comment **"will increase burdens on states, local governments and the public."** Language in the rule would restrict the types of state land or wildlife plans that could be considered in consistency reviews, which would be **"especially problematic for states engaged in management of threatened or endangered species with vast ranges spanning multiple BLM planning areas,"** WGA said.*



IMPACTS – Proposed Planning Rule

- New Plan Component = *Resource Use Determinations*
 - will identify areas of mineral estate to be ‘excluded or restricted’ to achieve goals and objectives of the Plan.

Federal Register § 1610.1–2, p. 19

IMPACT: As mineral estate is excluded or restricted adjacent to State lands, lessens value or lost opportunity for mineral development.

- Plan Objectives will now identify *Mitigation Standards*
 - can include ‘no surface occupancy’ or ‘controlled surface use’ on BLM lands. *Federal Register § 1610.1–2 (a)(2), p. 18*

IMPACT: Creates access challenges to subsurface mineral rights on State lands, State Mineral Leases and exploration targets on State/non-BLM lands.



IMPACTS – Proposed Planning Rule

- Plan Components will be changed to *Implementation Strategies*. *Federal Register § 1610.1–3*
 - 4 of 8 prior RMP content requirements will be developed solely by BLM.
 - Will be developed AFTER publication of the draft plan and NEPA documentation.
 - Implementation Strategies will not be subject to protest. *Federal Register § 1610.1–3(c)*

IMPACT: No private or State input.

- Planning boundaries will be changed from site/District specific boundaries to *“Eco-Regions”*
 - Washington BLM Office will determine planning boundaries. *Federal Register § 1601.0–4, p. 12*

IMPACT: Will politicize decision making.



IMPACTS – Proposed Planning Rule

- Will allow "*Citizen Science*" in decision making; call to the public for information. *Federal Register § 1610.1-1(c), p. 17*
 - IMPACT: No peer review; reliance on faulty information.**

- *Planning Assessment* (PA) will replace Planning Criteria (PC) and Analysis of the Management Situation (AMS).
 - Federal Register § 1601.0–5, p. 15 and Table 1: Comparison of Public Involvement in Existing Vs. Proposed Regulations*
 - **IMPACT: PC and AMS were prime Coordination opportunities, now replaced with Planning Assessment.**
 - **IMPACT: Elevates public participation over BLM duty of meaningful Coordination.**
 - **IMPACT: Removes select Coordination provisions and/or adds caveats for Coordination.**



IMPACTS – Proposed Planning Rule

- Planning Designations to be defined later in BLM Handbook.
 - Includes: research natural areas, special recreation management areas, backcountry conservation areas, wildlife corridor areas, and solar energy zones. *Federal Register § 1610.1-2(b)(1), p. 19*
IMPACT: No mention of mineral development zones.

- Plan *Protest Criteria* is narrowed. *Federal Register § 1610.6-2 (a)(3)(iii)*
IMPACT: Can only protest as to why a “plan criteria” is inconsistent with federal law or regulation.



IMPACTS – Proposed Planning Rule

- Plans can be changed by BLM with 30-day advance notice to the public.
 - no plan amendment required. *Federal Register § 1610.6-5*
IMPACT: No stakeholder input to changes.

- Removes "*of more than local significance*" from regulations; BLM asserts it is "unnecessary".
 - this phrase has distinct meaning and relevance. *Federal Register § 1610.8-2 (a)(2)*
IMPACT: Loss of local and State input and control.



Actions

- **Arizona RAC – Senate Bill 1292 created the Arizona Resource Advisory Council (RAC).**
 - Added Article 20 (Arizona Resource Advisory Council) to Title 37, chapter 2 of the Arizona Revised Statutes.
 - Advisory body concerning the planning and management of public lands (excluding rangeland) in Arizona.
 - Response to lack of input and action on part of BLM Arizona RAC.



Governmental Opposition to New Rule Making

■ Alaska

Citizens' Advisory Commission on Federal Affairs, Office of Alaska Governor Bill Walker
Doyan Tribe
Governor of Alaska
U.S. Fish & Wildlife Service, Alaska Region 7

■ Arizona

Apache County	Navajo County	Arizona Association of Conservation Districts
Hualapai Tribe	Mohave County	Arizona Game and Fish Department
City of Sierra Vista	Cochise County	Gila County
Colorado River Indian Tribes	Graham County	Hereford Natural Resources Conservation District
Intertribal Association of Arizona		Pima Natural Resources Conservation District
Maricopa County Flood Control District		Big Sandy Resource Conservation District
Winkelman Natural Resources Conservation District		
Wilcox-San Simon Natural Resource Conservation District		

■ California

Kern County	City of Ridgecrest	Imperial County
San Bernardino County	Modoc County	Rural County Representatives of California
Inyo County		



Governmental Opposition to New Rule Making

■ Colorado

Butte County
Gunnison County
Moffat County
San Miguel County

Douglas Creek Conser. Dist.
Rio Blanco County
Mesa County
White River Conservation Dist.

Garfield County
Ouray County
Routt County
Delores County

■ Idaho

Custer County
Governor of Idaho

Idaho Association of Counties

Owyhee County

■ Montana

North Blaine Co. Cooperative State Grazing Dist.
Phillips Conservation District

Powell County
Valley County

Phillips County

■ Nevada

City of Henderson
Esmeralda County
Mineral County
Nevada Legislative Committee on Public Lands

City of Las Vegas
Eureka County
Moapa Valley Water District

Clark County
Governor of Nevada
Nevada Assoc. of Counties

Elko County
Lincoln County
Storey County
Nye County



Governmental Opposition to New Rule Making

- North Dakota

 - McKensie Tribe

- New Mexico

 - Border Soil and Water Conservation District
 - Carlsbad Soil and Water Conservation Distract
 - Chavez County
 - Deming Soil and Water Conservation District
 - Eddy County
 - Governor of New Mexico
 - Hidalgo Soil and Water Conservation District
 - Luna County
 - New Mexico Association of Counties
 - New Mexico Department of Agriculture
 - Otero Soil and Water Conservation District
 - Roosevelt County
 - Sierra County
 - San Francisco Soil and Water Conservation Dist.
 - Santa Fe-Pojoaque Water and Conservation Dist.
 - Caballo Soil and Water Conservation District
 - Catron County
 - Coronado Soil and Water Conservation District
 - Dona Ana Soil and Water Conservation District
 - Elephant Butte Irrigation District
 - Harding County
 - Lincoln County
 - McKinley County
 - New Mexico Commissioner of Public Lands
 - Otero County
 - Rio Arriba County
 - Roosevelt Soil and Water Conservation District
 - Sierra Soil and Water Conservation District
 - Santa Clara Pueblo
 - Southwest Quay Soil and Water Conservation District



Governmental Opposition to New Rule Making

■ Utah

Baker County	Beaver County	Box Elder County	Carbon County
Duchesne County	Iron County	Juab County	Kane County
Piute County	San Juan County	Sanpete County	Savier County
Uintah County	Governor of Utah	Washington County	Wayne County

■ Wyoming

Big Horn County	Fremont County	Governor of Wyoming	Park County
Sublette County	Sweetwater County	Wyoming Association of Conservation Districts	
Wyoming Coalition of Local Governments		Wyoming County Commissioners	
Wyoming Office of State Lands & Investments		Wyoming State Engineer	
Wyoming State Grazing Board			
Saratoga-Encampment-Rawlins Conservation District			
Wyoming Department of Environmental Quality			
Wyoming Legislature's Select Federal Natural Resource Management Committee			
Shoshone Conservation District			

■ Oregon

Association of O&C Counties	Curry County	Douglas County
Harney County	Jefferson County	Grant County

Western States Land Commissioners Association

PROVING OUR
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Bret Goddard
President, WSLCA
Kathy J Oop
Executive Director, WSLCA



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Oklahoma City, OK 73102

May 20, 2016

Director Neil Konze (B50)
Bureau of Land Management
U.S. Department of the Interior
1848 C Street NW
Room 2134EM
Washington, DC 20240

Attn: Regulatory Affairs, 1500-AE39
Resource Management Planning, Proposed Rule, 51 Fed. Reg. 9674 (Feb. 25, 2016)

submitted via Federal eRulemaking Portal

Dear Director Konze:
The Western States Land Commissioners Association (WSLCA) submits the following comments on the proposed rule entitled Resource Management Planning, 51 Fed. Reg. 9674 (Feb. 25, 2016) (the "Proposed Rule") issued by the Bureau of Land Management (BLM). The Proposed Rule would amend existing regulations that establish the procedures used to prepare, review, or amend land use plans pursuant to the Federal Land Policy and Management Act (FLPMA). While WSLCA and its members support the goal of streamlining and moving toward adaptive management of public lands, we have several concerns that we believe will negatively impact our Members' ability to manage state trust assets in accordance with our constitutional mandate.

I. INTRODUCTION

WSLCA is led by the land commissioners of 33 states, which together manage over 140 million acres of land, mineral properties, submerged lands, and water resources. Collectively, WSLCA membership represents the nation's second largest landowner. Under state constitutional and statutory mandates, WSLCA members and state governments representing purposes provided by state law. WSLCA also consists of affiliate members representing businesses, industries, and organizations that support WSLCA's mission and the western states. This sound land management stimulates the local economy with real estate and job and results in financial resources that total hundreds of billions of dollars for shareholders & beneficiaries investors.

Upon enactment, original land grants to states were purposefully scattered across undeveloped areas to provide the land base and income opportunities for states to fund public services.

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BLM 2.0 Proposed Rule Comments from WSLCA

ecological values, conditions and trends within ecoregions. The BLM has been successful in establishing 14 ecoregions which are large, connected areas that have clear environmental characteristics. Currently, the BLM has been successful in establishing 14 ecoregions which are large, connected areas that have clear environmental characteristics. Currently, the BLM has been successful in establishing 14 ecoregions which are large, connected areas that have clear environmental characteristics. Currently, the BLM has been successful in establishing 14 ecoregions which are large, connected areas that have clear environmental characteristics.

The largest landscape approach to public land management has just occurred through the implementation of land use plan amendments for Greater Sage-Grouse (GSG). In the spring of two Records of Decision, the BLM has heavily impacted the landscape approach to the management of public lands for GSG has been approved by nearly every sector of the public lands. Litigation in court has delayed the implementation of the GSG plan which is the result of the Secretary of the Interior's office and the U.S. Fish and Wildlife Director which sought a specific result in the management of all land use plans across the public lands. The BLM is seeking landscape planning will result in further constraints on public lands and will constitute land use decisions that are not in the best interests of public lands themselves and within the communities multiple values will not be preserved. Public lands and WSLCA oppose such centralized decision or implementation.

While WSLCA supports the goal of streamlining the planning process, it is unclear how moving a landscape approach to public land management will be used in this decision. What is unclear is how the BLM will use the landscape approach to public land management. What is unclear is how the BLM will use the landscape approach to public land management. What is unclear is how the BLM will use the landscape approach to public land management.

The Proposed Rule indicates that the decision is to what constitutes a landscape. What is unclear is how the BLM will use the landscape approach to public land management. What is unclear is how the BLM will use the landscape approach to public land management. What is unclear is how the BLM will use the landscape approach to public land management.

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education, state health care functions, and other state responsibilities as these states were settled and developed. Thus, the checkerboard nature of state trust land ownership inextricably intertwines trust assets with federal public lands. Therefore, the land use planning activities of the BLM greatly impacts a state's ability to generate income from their trust assets. State trust land management experience demonstrates that generation of income from isolated state parcels when surrounded by BLM lands that are of little to most economic uses is very difficult—negating the grant and its purpose to the states. Therefore, as BLM amends its rules for planning, the impacts on state trust assets must be a priority consideration.

II. PLANNING AUTHORITY

Article IV of the U.S. Constitution gives Congress the exclusive jurisdiction over the public lands through the property clause. FLPMA and its amendments are a delegation of authority to the Secretary of the Interior who is required to manage the public lands pursuant to the Congressional mandates included in the FLPMA. Indeed, Congress created a check on the delegated authority as spelled out in Section 202(a)(2) of the Act which requires Congressional consent of "Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more."

At the heart of BLM's planning authority is of course the Agency's primary mandate which requires the agency to manage the public lands pursuant to the principles of multiple use and sustained yield. Thus, all resource management plans must comply with this underlying Congressional mandate. In addition to the multiple use, sustained yield mandate, the BLM is also required to coordinate planning and management activities with state and local governments. While the proposed rule cites much of Section 202(a) of the Act which requires Congressional consent of "Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more..."

"(3) 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. 460-4 et seq. note); and of or for Indian tribes by, among other things, consulting the plans of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans, assure that coordination is given to those State, local, and tribal plans that are germane to 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,

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reviews, public involvement, and political support or opposition from diverse groups. It is hard to imagine meaningful consultation across multiple state, county, and Tribal jurisdictions—without such consultation the process is in direct conflict with provisions of FLPMA.

By necessity in terms of BLM employees and financial resources, a large scale landscape planning process will require more involvement from State BLM offices and the Washington office. This pushes the planning process and decision making further from the land and closer to Washington DC. In other words, Planning 2.0 is a giant step toward centralized planning which Congress rejected in 1976 when they delegated their authority over public lands. Centralized planning could only be supported by those groups who have an interest in reducing the number of venues to influence in pursuing their objectives. Experience demonstrates that decisions made closer to the land are more reflective of the public will and of those who utilize those lands. Although political boundaries often do not coincide with ecoregional divisions, the fact is that these political boundaries are a reality that cannot be ignored in a public process and indeed provide more meaningful and accurate management decisions and analysis during a planning process. Landscape planning should be accomplished through coordination between existing planning area documents as opposed to a larger more complex single document that certainly will fail to address many important concerns and will dilute input from the public and cooperating entities.

V. SPECIFIC CITATIONS OF CONCERN

- a. Section 2510.2-2 Consistency requirements: The BLM is seeking to change the word "shall" to "will" for improved readability. The word "shall" is common in Federal regulations, and it indicates a directive that an agency must comply with. Changing this to the word "will" dilutes the meaning, and does not appear to add value given the BLM intends "to change in practice." Retention of the word "shall" here and elsewhere in the Proposed Rule would retain consistency and intent under current law.
- b. Section 2510.2-2(b) Consistency Requirements: The BLM proposes to remove existing requirements for resource management plans to be consistent with "policies and programs" of Federal agencies, State and local governments, and Indian tribes. While policies and programs should be reflected in the land use plans, that may not be the case. It is common for policies and programs to not be specifically mentioned in land use plans. Also, this would appear to ignore active planning processes of a local jurisdiction. Under existing regulations, so long as a local land use plan, policy or program was consistent with Federal statute, the local land use plan, policy or program would be included in the consistency review by the BLM. Therefore, we believe that consistency with policies and programs should remain in the regulations.
- c. Section 2510.2-2(a)(2) Consistency requirements: The proposed rule states that "within 60 days after receiving a proposed plan or amendment the Government(s) will submit a written document to the deciding official identifying inconsistencies with officially approved and adopted land use plans of 9

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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. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of Federal land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such States, and with respect to such other land use matters as may be referred to them by him, and with respect to the maximum extent he finds consistent with Federal law and the purposes of this Act.

The Proposed Rule fails to emphasize the important mandate of consideration, coordination, and consistency with State, local, and Tribal land use plans. State trust assets bear the greatest impact from public land management decisions and the proposed rule should emphasize the importance of coordinating with our Member states to insure federal planning decisions are consistent with state plans. Any economic analysis carried out as part of a planning process must naturally assess impacts on state trust assets. For example, designation of an Area of Critical Environmental Concern which contains state trust assets may well render those trust assets worthless depending on the highest and best use of the state lands. Additionally, state trust land management plans should be coordinated with state trust assets are included within the planning area. The final rule should insure that the BLM coordinates with state trust managers at the earliest stages of the proposed planning process.

III. LAND TENURE ADJUSTMENTS

State trust land managers have attempted to rationalize the land tenure pattern within public lands for decades, yet vast areas of the west still contain checkerboard patterns of state trust lands and minerals. While public land management decisions and the proposed rule should be considered for environmental purposes, developed for a myriad of multiple uses, which should be held state trust assets benefits federal land management and of course benefits the state trust asset administration. Land use planning should prioritize those areas where the state trust adjustments with states would reap benefits to both governments. Blocking up in-state trust assets is difficult, expensive, and tedious and many states have given up on land tenure BLM. Providing guidance within land management plans would provide clarity to states, and assist in allocation of funding for these important transactions.

IV. LANDSCAPE PLANNING

Landscape planning to insure consistent management across ecoregions is a policy that has been implemented under the current Administration beginning with Secretary Salazar in 2009 with landscape approaches to climate change and managers responses. Moreover, the establishment of the Rapid Ecoregional Assessments (REA) program which is designed to

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State and local governments and provide recommendations to remedy them." The BLM desires to consider other aspects of the plan be implemented at this point in the process. The shortened time for Government review and the narrow focus appears to significantly curtail the real voice and working on collaborative solutions to local resource and economic issues.

VI. CONCLUSION

The WSLCA appreciates the opportunity to comment on the Proposed Rule. We applaud any efforts to streamline the BLM land use planning process. We do not believe the Proposed Rule will accomplish this goal. WSLCA proposes further coordination and consultation on how to better adjust the planning process, planning clear to the State trust assets, and looks forward to working with the Agency to identify strategies and tools to implement that would improve the planning process.

Sincerely,

Bret Goddard, President
Western States Land Commissioners Association
www.wslca.org
907.249.8243



Non-Governmental Opposition re Oil & Gas

- American Petroleum Institute and Independent Petroleum Association of America
 - Independent Petroleum Assoc. of New Mexico
 - Petroleum Assoc. of Wyoming
 - Utah Petroleum Association
-
- Anadarko Petroleum Corporation
 - ConocoPhillips
 - Concho Resources
 - Devon Energy
 - Enefit Energy
 - EOG Resources



Thoughts/Questions

- Are there enough federal lands left in the west to accomplish “Landscape Scale Mitigation”?
 - If no, how much more will be withdrawn?
 - If no, how will State lands be treated?
 - If no, how will it impact private lands?
 - How will one-size fit 6 states?
- What are the consequences of “Citizen-Science” (non-peer science)?
- Is it BLM’s role to accomplish Social Change?
- Why is local “Decision Making” being moved to Washington?



Thank you.

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