

MATTHEW H. MEAD
GOVERNOR



2323 Carey Avenue
CHEYENNE, WY 82002

Office of the Governor

May 25, 2016

Neil Kornze, Director
Bureau of Land Management, Department of the Interior
1849 C Street NW
Room 2134LM
Washington, DC 20240

Re.: 43 CFR Part 1600, Resource Management Planning, Proposed Rules

Dear Director Kornze,

Thank you for the opportunity to provide comments on the Bureau of Land Management's (BLM) proposed revision to its Resource Management Planning regulations (Proposed Rule or Planning 2.0).

I am concerned about BLM's implementation of the Proposed Rule. The preamble to the Proposed Rule implies that the agency will be making decisions based on the ever changing attitudes of people without a long term vision of land management. For example, the goal to "Improve BLM's ability to respond to social and environmental change in a timely manner" moves away from requirements of the Federal Land Management Policy Act (FLPMA). FLPMA directs BLM to manage for multiple use in cooperation with "States and local governments within which the lands are located" (43 U.S.C. §1712(c)(9)). This Proposed Rule would ignore local "policies, programs, and processes" in favor of "social change." BLM's decisions must be made based the local communities most affected by these decisions and not remote and unconnected public opinion.

These regulations will guide BLM's development of resource management plans for decades to come. It is important the BLM provide ample opportunity for state government, local government and public participation when developing resource management plans and amendments. This participation ensures the custom and culture of each area becomes part of BLM's land management practices to the degree possible. It also ensures state and local government plans; programs and policies are considered and incorporated to the maximum degree.

It is necessary to provide for increased efficiencies and improved planning processes. BLM's underlying intent to align more closely with the Federal Land Management Policy Act (FLPMA), improve responsiveness to changing conditions and work more collaboratively with partners is worthwhile. Some of the changes contemplated by the BLM – area assessment early in the planning process, use of high quality information and increased public involvement –

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should help the BLM reach its goals in future planning processes. I question the need for the proposed extensive changes to accomplish this goal. Addressing landscape-scale resource issues, emphasizing the role of science in planning, affirming the role of other governmental entities and enhancing opportunities for public involvement can and have been accomplished under existing regulations. This rulemaking is unnecessary. I request that you withdraw the Proposed Rule. If the BLM does not withdraw the Proposed Rule, items of additional concern and are addressed below.

By law (Federal Land Policy and Management Act, National Environmental Policy Act, etcetera.) rule and regulation, cooperating agencies are afforded the opportunity to participate in the in the planning process. Clarifying the timing of that involvement is necessary throughout the Proposed Rule. State and local governments in Wyoming enjoy a strong cooperating agency relationship with the BLM, which leads to high-quality, defensible, and resilient resource management plans and cooperation in implementation of those plans. These relationships are built through years of cultivation, not through regulations. The BLM must work to remedy any changes in the Proposed Rule that reduce, or appear to reduce, the opportunity for cooperating agency involvement.

In addition to my specific comments concerning Planning 2.0 (Attachment 1), I have attached and incorporate comments from Wyoming state agencies and entities, including the Office of State Lands and Investments, Department of Agriculture, Game and Fish Department, Department of Environmental Quality and the State Engineers Office (Attachments 2 through 6), the Wyoming Association of Conservation Districts (Attachment 7) and the Wyoming County Commissioners Association (Attachment 8). These attachments illustrate the depth of concern over the Proposed Rule, the need for clarification and the need for additional conversations prior to finalizing any changes to BLM's planning regulations.

Additionally, I encourage you to engage Wyoming's state agencies, local governments and citizens in meaningful conversations on the future of BLM's planning regulations prior to finalization of the Proposed Rule. This effort has the potential for negative impacts on the future of public land management and coordination.

Please contact me if you have any questions.

Sincerely,



Matthew H. Mead

Governor

MHM:dh

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Encl. Attachment 1 Governor Mead's Comments Regarding Specific Changes to BLM's Planning Regulations

Attachment 2 Office of State Lands and Investments letter

Attachment 3 Wyoming Department of Agriculture letter

Attachment 4 Wyoming Game and Fish Department letter

Attachment 5 Wyoming Department of Environmental Quality letter

Attachment 6 Wyoming State Engineer's Office letter

Attachment 7 Wyoming Association of Conservation Districts letter

Attachment 8 Wyoming County Commissioners Association letter

cc: The Honorable Michael Enzi, U.S. Senate

The Honorable John Barrasso, U.S. Senate

The Honorable Cynthia Lummis, U.S. House of Representatives

Mary Jo Rugwell, State Director, Wyoming Bureau of Land Management

Attachment 1

Governor Mead's Comments Regarding Specific Changes to BLM's Planning Regulations

§ 1601.0-4 Responsibilities

Proposed Rule:

Add a new sentence to establish responsibility for the BLM Director to determine the deciding official and the planning area for resource management plans and for plan amendments that cross State boundaries. Replace "State directors" with "deciding officials" and replace "Field Managers" with "responsible official."¹

No longer relying on field office boundaries as the default resource management plan boundary and developing resource management plans on a landscape-scale may be beneficial for planning purposes. Consistency in stipulations across field offices is a potential benefit of landscape-scale planning (i.e., linear projects such as pipelines). Greater sage-grouse plan amendments are an example of planning across boundaries and the Greater sage-grouse land and resource management plan amendments are evidence that these efforts can be accomplished under existing regulations.

I am concerned that the discretion to determine "deciding officials" at the BLM Director level may diminish the importance of those designated as "deciding officials" being required to have local knowledge. The various states have different authorities, regulations and statutes that must be accounted for in plans that cross state boundaries. The regulations should also be clarified to require that "deciding officials" will invite local and state governments across boundaries to be cooperating agencies and use local information in planning processes.

§ 1601.0-5 Definitions

Proposed Rule:

Cooperating Agency – The BLM intends to modify this definition for "improved consistency with the DOI NEPA implementing regulations (43 CFR 46.225(a))."² The BLM also proposes to add "Cooperating agencies will participate in the various steps of the BLM's planning process as feasible and appropriate, given the scope of their expertise and constraints on their resources" to the existing regulation.

The alignment of this definition with Department of the Interior (DOI) National Environmental Policy Act (NEPA) implementing regulations is worthwhile. However, the addition to the definition could be interpreted to allow the BLM to preemptively determine if an entity has the expertise and resources to participate in planning processes. The definition should correspond to the DOI NEPA regulations.

I am concerned that the proposed definition could limit cooperating agency involvement in the planning process. The BLM's current regulation provides for cooperating agency involvement in the "planning and NEPA process" and this provision has been removed from the Proposed Rule.

¹ Proposed Rule at 9684

² Proposed Rule at 9685

I ask that the BLM to revise the Proposed Rule to incorporate cooperating agency input into its planning and NEPA processes to the maximum extent possible.

Cooperating agencies, in some instances, may have jurisdiction by law as it relates to resource management in addition to special expertise. I ask that you incorporate these instances into the BLM definition of “cooperating agency.”

Proposed Rule:

High Quality Information – The BLM proposes to add the following definition to the regulations: “High quality information means any representation of knowledge such as facts or data, including best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users.”³

The addition of this definition should not change existing opportunities to use high quality information in planning processes. High quality information aids in developing an accurate picture of existing conditions and informed decision-making. State agencies and other cooperating agencies can provide data and information and this should be clear in the Proposed Rule. Cooperating agencies should also be clearly given the opportunity to review and advise on any information provided to the BLM. Data and information sources are publicly cited and this requirement should be added to the Proposed Rule.

Proposed Rule:

Mitigation – Mitigation means the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.⁴

This definition should be the same as CEQ guidelines (40 CFR §1508.20) which contains a more robust and accurate definition of mitigation.

Proposed Rule:

Officially Approved and Adopted Land Use Plans - 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.⁵ The Proposed Rule also seeks to remove the words “policies, programs, and processes” from the regulation in an attempt to align more closely with section 202(c)(9) of FLPMA⁶.

Removing the words “policies, programs, and processes” from the definition of “officially approved and adopted land use plans” does not meet the intent of FLPMA. This change severely limits the information BLM will consider when reviewing inconsistencies with information provided by state and local governments. It also limits the scope of the Governor’s Consistency

³ Proposed Rule at 9725

⁴ Proposed Rule at 9725

⁵ Proposed Rule at 9726

⁶ Proposed Rule at 9686 and 9703

Review. This definition should be modified to truly align with FLPMA's intent to "coordinate" and consider "the policies of approved State and tribal land resource management programs."⁷

§ 1601.2-1 Public notice

Proposed Rule:

*(c) The BLM will announce opportunities for public involvement by posting a notice on the BLM's Web sites, at all BLM offices within the planning area, and at other public locations, as appropriate.*⁸

I recommend the Proposed Rule include notice to the public in all ways listed and also through the Federal Register to ensure the broadest opportunity to participate in planning processes.

§ 1610.2-2 Public Comment periods

Proposed Rule:

*The BLM intends to shorten public comment periods at multiple points in the planning process.*⁹

I do not recommend shortening public comment periods at any point in the plan development process. Resource management plans are lengthy and complex and are becoming more so. Reviewers require the current comment timeline – and often more – to review documents and provide substantive comments. Shorter comment periods will reduce meaningful input to the public and cooperating agencies.

§ 1610.3-1 Coordination of planning efforts

Proposed Rule:

*b) Cooperating agencies. When preparing a resource management plan, the responsible official will follow applicable regulations regarding the invitation of eligible governmental entities (see 43 CFR 46.225) to participate as cooperating agencies.*¹⁰

The Proposed Rule removes BLM's obligation to invite eligible governmental entities to participate as cooperating agencies and BLM's responsibility to notify entities, in writing, when their request for cooperating agency status is denied. I recommend revising § 1610.3-1(b) to: "Cooperating agencies. When preparing a resource management plan, the responsible official will invite eligible governmental entities (see 43 CFR 46.225) to participate as cooperating agencies." Additionally, I recommend the BLM reinstate responsibilities to provide written notification to those entities denied cooperating agency status.

Again, cooperating agencies, in some instances, may have jurisdiction by law as it relates to resource management in addition to special expertise. I ask that you incorporate this into the responsibilities of the BLM in engaging cooperating agencies.

⁷ 43 U.S. Code §1712(c)(9)

⁸ Proposed Rule at 9727

⁹ Proposed Rule at 9728

¹⁰ Proposed Rule at 9728

§ 1610.3-2 Consistency requirements

Proposed Rule:

(b) Governor's consistency review. Prior to the approval of a proposed resource management plan or plan amendment, the deciding official will submit to the Governor of the State(s) involved, the proposed resource management plan or plan amendment and will identify any relevant known inconsistencies with the officially approved and adopted land use plans of State and local governments.

(1) The Governor(s) may submit a written document to the deciding official within 60 days after receiving the proposed resource management plan or plan amendment that:

(i) Identifies inconsistencies with officially approved and adopted land use plans of State and local governments and provides recommendations to remedy the identified inconsistencies; or
(ii) Waives or reduces the 60-day period.

(2) If the Governor(s) does not respond within the 60-day period, the resource management plan or plan amendment is presumed to be consistent.

(3) If the document submitted by the Governor(s) recommends substantive changes that were not considered during the public involvement process, the BLM will notify the public and request written comments on these changes.

(4) The deciding official will notify the Governor(s) in writing of his or her decision regarding these recommendations and the reasons for this decision.

(i) The Governor(s) may submit a written appeal to the Director within 30 days after receiving the deciding official's decision.

(ii) The Director will consider the Governor(s)' comments in rendering a final decision. The Director will notify the Governor(s) in writing of his or her decision regarding the Governor's appeal. The BLM will notify the public of this decision and make the written decision available to the public.¹¹

Removing "policies, programs, and processes" from §1610.3-2 (b) and §1610.3-2 (b)(1)(i) will reduce important information provided to the BLM for consideration when developing resource management plans or amendments. It is appropriate for a Governor's Consistency Review to address those items related to policies, programs, and processes of state and local governments, especially if items in resource management plans are inconsistent with normal state and local government operations. Also, in §1610.3-2 (b), the word "relevant" should be removed. This word implies discretion for BLM to determine which information to consider.

In §1610.3-2 (b)(4)(i) of the Proposed Rule, BLM's requirement to a higher standard beyond merely considering Governors comments prior to a final decision is removed. I recommend retaining the existing regulations: "The Director shall accept the recommendations of the Governor(s) if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Director shall communicate to the Governor(s) in writing

¹¹ Proposed Rule at 9729

and publish in the FEDERAL REGISTER the reasons for his/her determination to accept or reject such Governor's recommendations.” It is appropriate that the BLM accept the recommendation of the Governor when they provide for a reasonable balance between national and state interests and to make that publicly known. Governors have primary decision-making authority for management of state resources and should have an opportunity to raise any concerns they may have, not only those concerns that result from federal, state or local plan inconsistencies.

The Proposed Rule should ensure that the standard for consistency in the Proposed Rule matches the requirement of FLPMA at § 1712(c)(9); “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 does not permit BLM to limit the consistency requirement merely because the agency thinks consistency would be impractical. The Proposed Rule should be revised to eliminate the phrase “to the maximum extent the BLM finds practical.”

Finally, the BLM should not shorten timeframes for written comments or appeals. Shortening timelines only serves to reduce substantive, thoughtful comments from Governors. The proposed change only creates the potential for tension where none needs to exist.

BLM Land Use Planning Handbook

The Proposed Rule references the revision of BLM’s Land Use Planning Handbook in multiple places. The Handbook provides additional information regarding planning processes and may clarify several of the items in the Proposed Rule. I request an opportunity to review and comment on the forthcoming BLM Land Use Planning Handbook and may have additional comments after review.