

Subcommittee on Oversight and Investigations

Louie Gohmert, Chairman

Hearing Memorandum

July 5, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Oversight and Investigations – x5-7107

Hearing: Oversight hearing titled “*State Perspectives on BLM’s Draft Planning 2.0 Rule*”

The Subcommittee on Oversight and Investigations will hold an oversight hearing to hear testimony on “*State Perspectives on BLM’s Draft Planning 2.0 Rule*” on **Thursday, July 7, 2016, at 10:00am in 1324 Longworth**. The hearing will provide an opportunity for those affected by BLM’s new resource management planning rule to discuss their concerns.

Policy Overview

- The Bureau of Land Management (“BLM”) published its proposed Resource Management Planning rule, part of its Planning 2.0 initiative, on February 25, 2016.¹ The public comment period closed 90 days later, on May 25, 2016, despite numerous requests to extend the deadline, due to the scope and complexity of the rule.
- According to BLM, the goals of the draft rule are to: “(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.”²
- The proposed rule makes a number of changes to the procedures BLM follows to prepare resource management plans (“RMPs”) and affects the ability of state and local governments to participate in the planning process.
- In the past, BLM has prepared most RMPs at the field office level, but this draft rule would dramatically shift planning away from local communities to BLM headquarters, opening the door for special interests in Washington, D.C. to have a greater influence on BLM’s planning process than those who live near and rely on public lands.

¹ Resource Management Planning, 81 Fed. Reg. 9674 (proposed Feb. 25, 2016).

² *Id.*

- Many local and state governments are concerned that the changes in the draft Planning 2.0 rule may diminish local input and make it more difficult for counties, conservation districts, and other local authorities to be meaningfully involved in the land use planning process.

Witnesses Invited

Mr. Jim Ogsbury
Executive Director
Western Governors' Association
Denver, Colorado

Mr. Jeff Fontaine
Executive Director
Nevada Association of Counties
Carson City, Nevada

Mr. Chuck McAfee
Landowner and Community Volunteer
Lewis, Colorado

Mr. Jim Lyons
Deputy Assistant Secretary of Land and Minerals Management
U.S. Department of the Interior
Washington, D.C.

Ms. Kathleen Clarke
Director
Utah Public Lands Policy Coordinating Office
Salt Lake City, Utah

Background/Supporting Information/Issues

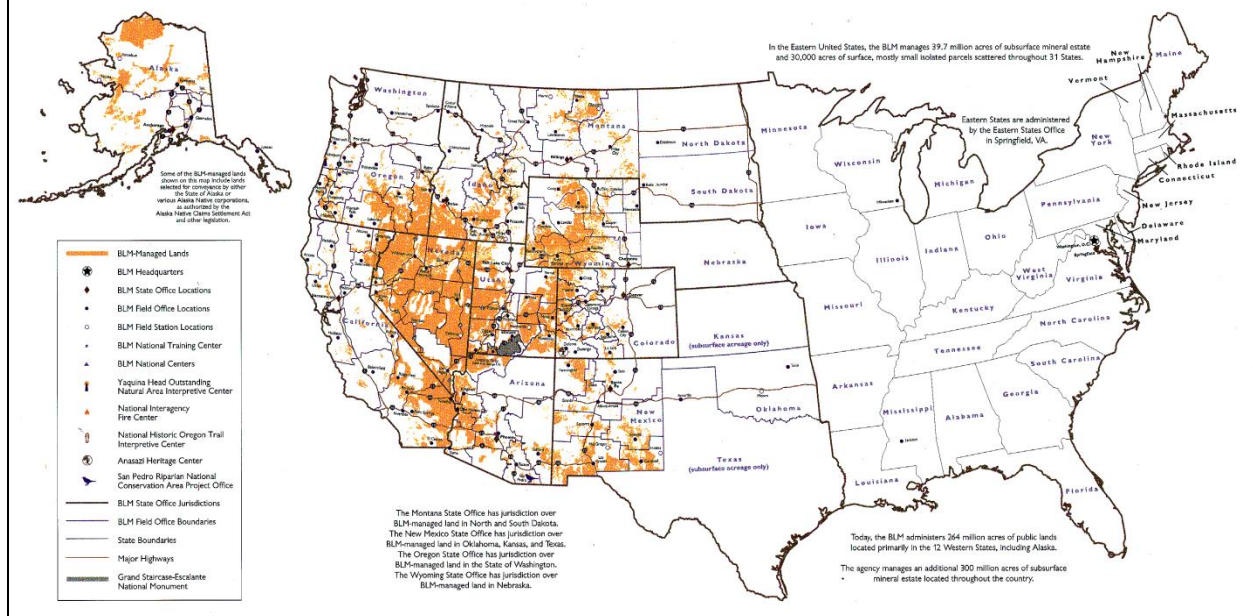
BLM and Public Lands

The Bureau of Land Management (“BLM”) controls about 250 million acres of public land, most of which is located in Western states.³ The Federal Land Policy and Management Act of 1976 (“FLPMA”) governs how BLM manages these public lands.⁴ For the many states and counties throughout the West that have public lands within their boundaries, BLM’s management decisions – and how it conducts land use planning that shapes those decisions – is critically important.

³ Carol Hardy Vincent, Cong. Research Serv., IF10381, Bureau of Land Management: FY2017 Appropriations 1 (2016).

⁴ Federal Land Policy and Management Act of 1976, 43 U.S.C. §§1701-1781.

Public Lands Managed by the Bureau of Land Management (BLM)



BLM State and Field Offices (Source: BLM)

BLM Introduces New Planning Regulations

BLM announced new draft planning regulations on February 11, 2016.⁵ The proposed rule, which is part of BLM’s Planning 2.0 effort, seeks to “enable the BLM to more readily address landscape-scale resource issues” and “respond more effectively to environmental and social changes.”⁶ Specifically, the draft rule reformulates the “procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act (FLPMA).”⁷

Despite receiving numerous requests to extend the comment period so that states, counties, and other interested parties would have adequate time to comment on the proposed rule, BLM extended the comment period by only thirty days. The State of Utah⁸ and the

⁵ Press Release, Bureau of Land Management, Planning 2.0: BLM Takes Major Step Toward Modernizing Planning Process, Increasing Public Involvement (Feb. 11, 2016), http://www.blm.gov/wo/st/en/info/newsroom/2016/february/nr_02_11_2016.html.

⁶ Resource Management Planning, *supra* note 1.

⁷ *Id.*

⁸ Letter from Kathleen Clarke, Director, Utah Public Lands Policy Coordinating Office, to Neil Kornze, Director, Bureau of Land Management, <https://www.regulations.gov/#!documentDetail;D=BLM-2016-0002-0010>.

National Association of Counties⁹ – along with many others – requested an extension of at least 120 days.

Land Use Planning Under FLPMA

FLPMA requires the BLM to manage public lands for “multiple use and sustained yield” and in accordance with resource management plans (“RMP”) authorized under the statute.¹⁰ Although BLM has some discretion in developing RMPs, the Bureau generally must “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 . . . by, among other things, considering the policies of approved State and tribal land resource management programs.”¹¹

Moreover, BLM must “provide for meaningful public involvement of State and local government officials . . . in the development of land use programs, land use regulations, and land use decisions for public lands.”¹² These land use plans must “be consistent with State and local plans to the maximum extent [BLM] finds consistent with Federal law and the purposes of this Act.”¹³ Once a plan is approved, “[a]ll future resource management authorizations and actions” for the area covered by the RMP must conform to that plan.¹⁴

By mandating that BLM coordinate with state and local governments and provide opportunities for their meaningful involvement, as well as by requiring that BLM’s plans be as consistent as possible with state and local land use plans, Congress clearly intended for the states and local governments affected by BLM’s management decisions to play a significant role in developing resource management plans under FLPMA.

Concerns about BLM’s Proposed Regulation

One of the most serious concerns with BLM’s proposed rule is its dramatic shift away from developing RMPs at the local level. Historically, BLM has prepared RMPs at the field-office level, but the draft Planning 2.0 rule would transfer this activity up the BLM management chain. Under the draft rule, the BLM Director would have wide latitude to determine the area covered by an RMP, without any state or local involvement. Given the proposed rule’s emphasis on a “landscape-scale” planning approach, it seems likely that these areas will be larger than the

⁹ Letter from Matthew D. Chase, Executive Director, National Association of Counties, to Neil Kornze, Director, Bureau of Land Management, <http://www.naco.org/sites/default/files/documents/FINAL%20BLM%20Planning%202.0%20%20NACo%20comment%20period%20extension%20request.pdf>.

¹⁰ 43 U.S.C. § 1732(a) (BLM “shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed . . . under section 202 of this Act.”).

¹¹ 43 U.S.C. § 1712(c).

¹² *Id.*

¹³ *Id.*

¹⁴ 43 C.F.R. § 1610.5–3(a) (“All future resource management authorizations and actions, as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department, and subsequent more detailed or specific planning, shall conform to the approved plan.”).

boundaries of a BLM field office's jurisdiction. By creating larger boundaries for RMPs and moving much of the planning activity to Washington, D.C. makes it that much more difficult for state and local governments to coordinate with BLM.

Despite FLPMA's emphasis on coordination with state and local governments, the proposed rule would make it even more difficult to coordinate. Instead of working with the nearest field office, which should have a better rapport with the local community, affected state and local governments would have to coordinate with officials in Washington, D.C. As this rulemaking process continues, BLM must ensure that obtaining local input and expertise is prioritized.