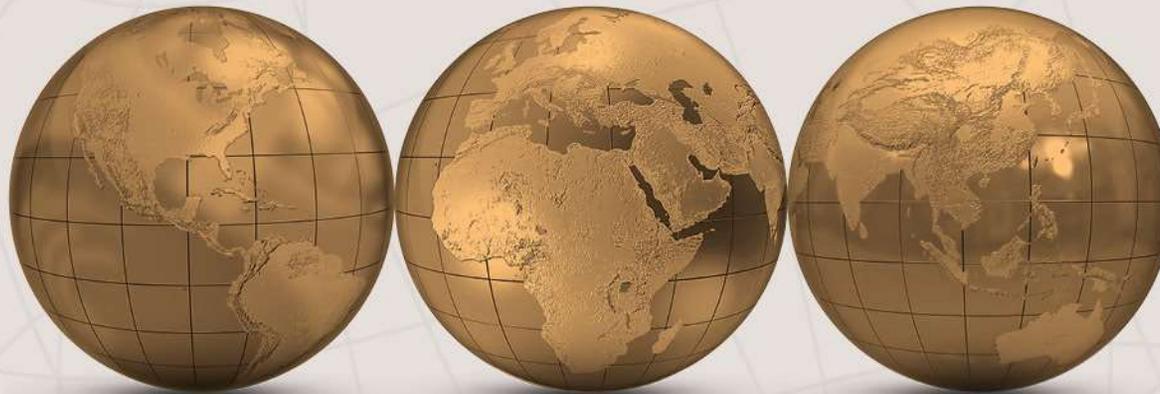


PROVING OUR
METTLE



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

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Western States Land Commissioners Association



- **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

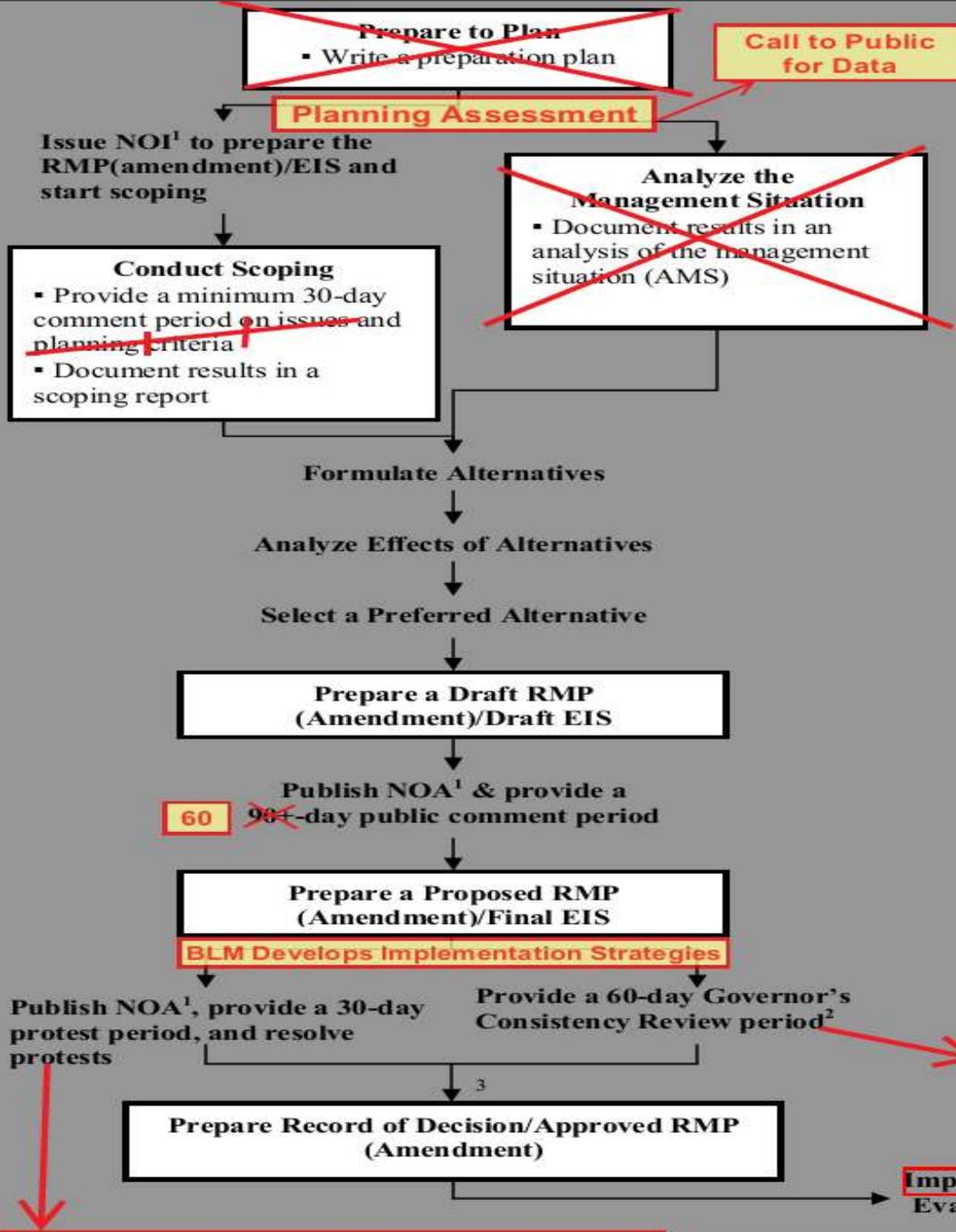
- www.blm.gov: ***BLM Planning 2.0 will shift planning to Landscape-Scale approaches to resource management with a "net benefit goal, or at a minimum, a no net loss goal."***
- Developed as a result of DOI Secretary Jewell's Order No. 3330 – "*Improving Mitigation Policies and Practices of the Department 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 some 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.*
- *BLM plans to issue a final rule around September, according to the White House's latest regulatory agenda.*

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.
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.
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*
 - 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.
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.
IMPACT: Will politicize decision making.

IMPACTS – Proposed Planning Rule



- Will allow “*Citizen Science*” in decision making; call to the public for information
 - IMPACT: No peer review; reliance on faulty information.**

- *Planning Assessment* (PA) will replace Planning Criteria (PC) and Analysis of the Management Situation (AMS).
 - **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 add 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.

IMPACT: No mention of grazing areas, mineral development zones or timber production areas.

- Plan *Protest Criteria* is narrowed.

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.
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.
IMPACT: Loss of local input and control.

Actions



- **State of Arizona Resource Advisory Council – Senate Bill 1292 created the Arizona Resource Advisory Council (RAC) in April 2014.**
 - 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 in Arizona, except for rangeland resources.
 - Response to lack of input and action on part of BLM Arizona RAC.



Governmental Agencies - Letters of Concern re FLMPA, NEPA, Local, State, and Tribal Input

■ 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 Agencies - Letters of Concern re FLMPA, NEPA, Local, State, and Tribal Input

■ 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 Agencies - Letters of Concern re FLMPA, NEPA, Local, State, and Tribal Input



■ North Dakota

McKenzie County

■ New Mexico

Border Soil and Water Conservation District
Carlsbad Soil and Water Conservation District
Chaves 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.
Hidalgo County
New Mexico Association of Counties

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
Chaves Soil & Water Conservation District
Hidalgo County



Governmental Agencies - Letters of Concern re FLMPA, NEPA, Local, State, and Tribal Input

■ 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		Campbell County	
Saratoga-Encampment-Rawlins Conservation District			
Wyoming Department of Environmental Quality	Wyoming Game & Fish Department		
Wyoming Legislature's Select Federal Natural Resource Management Committee			
Shoshone Conservation District			

■ Oregon

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



Summary: Impact to State Land Subsurface Rights

Thank you.