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COMMISSIONER

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Commissioner of Public Lands

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May 18, 2016

Mr. Neil Kornze
Director (630)
Bureau of Land Management
U.S. Department of the Interior
1849 C Street, N.W., Room 2134LM
Washington, DC 20240
Attention: 1004-AE39

RE: New Mexico State Land Office Comments – BLM's Planning 2.0 Initiative

Dear Director Kornze:

This letter is in response to correspondence received by the New Mexico State Land Office (NMSLO) dated April 12, 2016, from Byron Loosle, Acting Deputy State Director, Division of Land and Resources, Bureau of Land Management (New Mexico State Office). Mr. Loosle requested feedback on BLM's proposed rule to improve the resource management planning (RMP) process – as part of the ongoing Planning 2.0 initiative – by April 25, 2016. We recently learned that this deadline has been extended to May 25, 2016. We appreciate the extension of this deadline since we were initially given very little time – only 11 days from the receipt of Mr. Loosle's letter on April 14 – to formally provide comments to BLM on this proposed rule change.

As you know, NMSLO is responsible for administering 9 million acres of surface and 13 million acres of subsurface estate in New Mexico for the beneficiaries of the State Land Trust, which includes schools, universities, hospitals and other important public institutions. NMSLO seeks to optimize revenues while protecting the health of the land for future generations. In this regard, we have serious concerns regarding BLM's proposed planning rule.

First, NMSLO does not believe that BLM has fulfilled its stakeholder outreach and consultation responsibilities under Section 202(f) of the Federal Land Policy and Management Act of 1976 (FLPMA), which directs the Secretary of the Interior to "allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands." To our knowledge, BLM has held only one public meeting regarding this proposed planning rule in Denver, Colorado, even though the rule will impact several other states including New Mexico. Furthermore, our

feedback as a state government partner was solicited by BLM only days before the initial comment deadline. This hardly qualifies as “adequate notice” from our perspective. In order to fully meet its obligations under FLPMA, we believe BLM should hold a public hearing on this matter in New Mexico and further extend its public comment period by 60 days to July 25, 2016.

Second, NMSLO is concerned that Section 1610.3 of the proposed rule, titled “Coordination with Other Federal Agencies, State and Local Governments, and Indian Tribes,” does not accommodate a land management agency like NMSLO, which is constitutionally separate from our state’s Governor. The regulations do provide for a “Governor’s Consistency Review” at the state level, but they do not recognize that NMSLO is separate from the Governor of New Mexico with unique constitutional powers and mandates under the leadership of an elected State Land Commissioner. The Governor’s Consistency Review does not account for, nor has control or jurisdiction over, the actions or responsibilities of NMSLO. Furthermore, New Mexico State Trust Lands administered by NMSLO are checker-boarded across the state and fully intermingled with Federal (BLM & U.S. Forest Service) and private lands. As such, NMSLO is a major stakeholder in the resource management planning process, having lands in all of the potential planning areas. Therefore, NMSLO must be given notice and opportunity to respond to BLM planning decisions, and we suggest a mechanism for reviewing this process in addition to the existing Governor’s Consistency Review process. Furthermore, NMSLO objects to the removal of existing language in Section 1610.3-1(b), which provides for the consideration of input from state agencies like NMSLO during the resource management planning process. The proposed changes will effectively eliminate NMSLO land management projects from receiving any consideration by BLM during the process outlined in Planning 2.0. At the end of the day, FLPMA requires coordination with state officials, which can be broadly argued to include the Governor and the State Land Commissioner, and we are concerned that the centralization of planning decisions will run counter to the intent of Congress to coordinate planning decisions.

Third, NMSLO echoes the concerns with regard to local decision-making that have been raised by the Board of Commissioners of Chaves County, New Mexico, and the Dona Ana Soil and Water Conservation District of New Mexico, in a letter to you on April 12, 2016. As noted in their letter, the proposed rules would “significantly reduce the role of State and local governments in public land use inventory, planning and management” and allow “a person residing hundreds or even thousands of miles from the planning area [to] have essentially the same rights as local governments, whose citizens and economies depend on the use of public lands.” Along the same lines, we have significant concerns with the BLM’s proposed replacement of “Field Manager” with “responsible official” and the replacement of “State Director” with “deciding official” in resource management plans. Since these new officials will be appointed by the BLM Director, Planning 2.0 will shift the decision-making process away from professional land managers based in the states and instead place more authority in the hands of political appointees in Washington, D.C. In general, BLM needs to provide more transparency on the necessary criteria for the “deciding official.” To maintain nimble land management that incorporates the broader context but also understands local concerns, the BLM State Director should retain the role of “deciding official,” since they are fully apprised on state issues. We are concerned that the transfer of BLM decision-making from the State Director level to politically-appointed bureaucrats in Washington, D.C., will likely cause delays in the amount of time that it takes BLM to make decisions on critical land management issues. We highly value the opportunity to liaise directly with BLM’s State Director in Santa

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Fe on issues related to New Mexico, and we strongly object to any changes in the planning process that would impact this current relationship.

Fourth, NMSLO asserts that the proposed consistency requirements for landscape-level resource management plans under the Planning 2.0 initiative will not properly take into account the smaller-scale land use plans that we develop and implement on a frequent basis. Due to variations on the ground, the most efficient land management projects are small scale and require organic, locally-derived processes and treatments. NMSLO land management projects tend to range from just a few acres in size up to 400 acres. On occasion, we will have a large thousand-acre project such as a major herbicide treatment or prescribed burn. The effectiveness of these projects, however, often varies, and there will be large pockets that are not as well-treated due to the scale of the project. For landscape-level planning to be effective, it must allow for and stimulate small, local-scale projects that fit within the larger scheme. The Planning 2.0 requirement that input is limited to formal, large-scale land use plans effectively eliminates all of the projects that we undertake at NMSLO, as well as the expertise that we have in the creation of smaller-scale land treatments, from consideration during the resource management planning process. How will BLM weave our smaller-scale projects into the broader landscape-level plans that are being proposed as part of Planning 2.0?

Fifth, we assert that the proposal to redefine the concept of “multiple use” as part of Planning 2.0 represents a violation of 43 U.S. Code § 1702 of FLPMA, which requires management of lands for multiple uses. “Multiple uses” are defined as “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.” Planning 2.0 attempts to change the “multiple use” concept to include and “improve the BLM’s ability to respond to social and environmental change in a timely manner.” However, Congress did not account for “social changes” in the drafting of FLPMA and Planning 2.0’s language runs counter to Congress’s legislative intent by seeking to redefine the “multiple use” concept.

Sixth, NMSLO is troubled by Planning 2.0’s potential impact to revenue from leases and royalties produced by non-renewable natural resources in New Mexico including oil and natural gas. BLM’s existing backlog of oil and gas drilling permits has been well publicized by the news media, and Planning 2.0 could potentially worsen that backlog, create further project delays and increase regulatory burdens on the oil and natural gas industry. On February 11, 2016, in a document titled “Preliminary Determination: Economic and Threshold Analysis for Planning 2.0 Proposed Rule,” BLM Senior Economist Rebecca Moore listed three industries related to oil and natural gas under the North American Industry Classification System (NAICS) – specifically, Oil and Gas Extraction, Drilling Oil and Gas Wells, and Support Activities for Oil and Gas Operations – as “industries most likely to be directly affected” by the proposed rule. In January 2014, the New Mexico Tax Research Institute released a study titled “Fiscal Impacts of Oil and Natural Gas Production in New Mexico,” which found that 31.5% of New Mexico’s General Fund Revenues were attributed to the oil and natural gas industry for fiscal year 2013 – including significant funding for public schools and higher education. NMSLO stands in opposition to any action by BLM through the Planning 2.0 process that could negatively impact revenue generated from the oil and natural gas industry for public schools, universities, hospitals and other important public institutions in New Mexico.

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In summary, while we commend BLM for seeking to update its land use planning processes with the most current data and technology, we are very concerned about the possible implications of the current Planning 2.0 initiative. The failure to incorporate NMSLO feedback into landscape-level resource management plans going forward and the establishment of “deciding officials” in Washington, D.C., who are out of touch with local issues in New Mexico are cause for significant concern. As a result, we strongly assert that BLM should hold a public hearing on this matter in New Mexico to gather more local feedback and further extend its public comment period on Planning 2.0 by an additional 60 days to July 25, 2016.

Thank you for the opportunity to provide feedback with regard to the Planning 2.0 initiative. We look forward to your response.

Sincerely,



Aubrey Dunn
New Mexico State Land Commissioner

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