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Director Neil Kornze (630)
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW
Room 2134LM
Washington, DC 20240

submitted via Federal eRulemaking Portal

Attn: Regulatory Affairs, 1004-AE39
RE: Resource Management Planning, Proposed Rule, 81 Fed. Reg. 9674 (Feb. 25, 2016)

Dear Director Kornze:

The Western States Land Commissioners Association (WSLCA) submits the following comments on the proposed rule entitled Resource Management Planning, 81 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, revise, 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 23 states, which together manage over 440 million acres of land, mineral properties, submerged lands, and water resources. Collectively, WSLCA's membership represents the nation's second largest landowner. Under state constitutional and statutory mandates, WSLCA members manage lands and natural resources to generate income for the benefit of K-12 public education and to support other public purposes provided by state law. WSLCA also consists of affiliate members representing businesses, industries, and organizations that support WSLCA's mission and help to conserve, develop, and maximize the value of the lands and natural resources within the western states. This sound land management stimulates the local economy with expenditures and jobs and results in financial resources that total hundreds of billions of dollars for shareholders & beneficiary institutions.

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

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 off limits 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 mandates are a delegation of a portion of that authority to the Secretary of 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(e)(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), it stops short of citing 202(a)(9) which reads:

> *"(9) 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. 460l–4 et seq. note], and of or for Indian tribes by, among other things, considering the policies 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 consideration is given to those State, local, and tribal plans that are germane in 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,*

> *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 land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans 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 agencies should always be cooperating agencies if 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 effort and that meaningful consultation with state trust managers continues beyond the 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 plans identify lands which should be conserved for environmental purposes, developed for a myriad of multiple uses, or identified for disposal, the BLM should also identify federal/state land exchange priorities. Blocking up in-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 land tenure adjustments with states would reap benefits to both governments. The land exchange process is difficult, expensive, and tedious and many states have given up on land exchanges with the 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 management responses. Moreover, the establishment of the Rapid Ecoregional Assessments (REA) program which is designed to

assess current data to understand "ecological values, conditions and trends within ecoregions, which are large, connected areas that have similar environmental characteristics" has been underway for several years. Currently, the BLM has established or is establishing 14 REAs which are as large as 91 million acres in size. In that same vein, Secretary Jewell issued Secretarial Order No. 3330 following the Presidents Memorandum on mitigation for "use of a landscape-scale approach to identify and facilitate investment in key conservation priorities in a region."

The largest landscape approach to public lands management has just occurred through the implementation of land use plan amendments for Greater sage-grouse (GSG). In the signing of two Records of Decision, the BLM has severely impacted the management of over 165 million acres across 10 western states. This highly controversial landscape approach to the management of public lands for GSG has been opposed by nearly every sector on the public lands. Litigation is underway by several Governors, conservation groups, extractive industries, recreation communities, and local governments. The GSG process was a top down approach, controlled from the Secretary of 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 10 states. If this is the approach the BLM is seeking, landscape planning will result in further controversy on public lands and will consolidate land use decisions in Washington DC rather than at the level of the public lands themselves and within the communities most impacted by their management. Large swaths of landscape planning that encompass multiple states will not streamline the planning process and WSLCA opposes such contemplated action or implementation.

While WSLCA applauds the goal of streamlining the planning process. It is unclear how moving to a landscape approach will allow for the detailed planning on the land that is required to inform local managers for adequate decision making. Under the current RMP process, these are very large documents which in many cases require years to complete yet still lack the details necessary for onsite management decisions which require further NEPA processes to reassess a proposed use of public lands. There exist several examples of RMP processes that consumed more than a decade of effort only to be scrapped by a subsequent Administration. Current RMP documents are voluminous and already difficult for the general public to access in a meaningful way. It is difficult to imagine how landscape planning over millions of acres will improve this scenario when the documents will surely increase in size and complexity in attempting to apply management criteria over vast expanses of public lands.

The Proposed Rule indicates that the decision as to what constitutes a landscape will be made by the Director of the BLM. What is the criteria to be used in this decision? What information must the Director access to formulate these "landscapes"? Public lands taken as a whole are the most diverse landscapes that occur in the nation. Submerged lands, deserts, high mountains, sage brush steppe, wetlands, forests, and many other classifications describe our public lands. Many would view the Colorado Plateau as a "landscape" worthy of a singular management approach. This area covers four different states and includes millions of acres of public lands. State, county, and Tribal boundaries intersect these vast areas—all of which are critical cooperating agencies to the planning process. Spreading a single planning process across these various jurisdictions not only dilutes the input of these cooperating entities but also ignores the realities of political boundaries which have consequences in terms consistency

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's 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 for more intensive, detailed, 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 1610.3-2 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 "no 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 1610.3-2(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 analysis by the BLM. Therefore, we believe that consistency with policies and programs should remain in the regulations.

c. *Section 1610.3-2(b)(1) Consistency requirements*:
The proposed rule states that "within 60 days after receiving a proposed plan or amendment the Governor(s) may submit a written document to the deciding official identifying inconsistencies with officially approved and adopted land use plans of the

State and local governments and provide recommendations to remedy them." The BLM desires no other aspects of the plan be entertained at this point in the process. The shortened time frame for Governor(s) reviews and the narrow focus appears to significantly curtail the local 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 Propose Rule will accomplish this goal. WSLCA proposes enhanced coordination and consultation with cooperating entities, planning closer to the lands impacted, and placing an emphasis on land tenure adjustments through transactions with State trust managers. WSLCA looks forward to working with the Agency to identify strategies and tools to implement that would improve the planning process.

Sincerely,

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