WESTERN ENERGY ALLIANCE

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Via Federal eRulemaking Portal: http://www.regulations.gov

Leah Baker
Branch Chief (Acting), Planning and NEPA
Bureau of Land Management
1849 C Street NW, Room 2134LM
Washington, DC 20240

Re: Resource Management Planning Proposed Rule, RIN 1004-AE39

Dear Ms. Baker,

BLM's proposed update to its resource management planning process as part of the Planning 2.0 initiative contains a number of troublesome provisions. The proposed changes re-define the concept of multiple use, prioritize conservation over sustained yield of natural resources, and limit public involvement. The rule also appears to adopt a zoning approach to resource management, and it imposes new requirements that will further strain BLM staff and cause even longer delays for permitting. BLM should withdraw the proposed rule and re-consider its approach to resource management planning.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fifteen employees.

Legal Precedents

Throughout the proposed rule there are numerous statements to the effect that, although the rule's language effects a change on paper, there is in fact no change in practice from current BLM procedures. If that were actually the case, then there would be no need for the proposed rule. In actual fact, any change in the official regulations will be viewed by the court system as an actual modification of the rules. When courts evaluate a new rule in comparison to an old rule and see modifications, they assume that the change was made for a reason, and thus a new legal precedent may be set.

There is a significant body of law regarding the development of resource management plans (RMP), but the proposed rule is likely to lead to new legal action and new legal precedents. There are two reasons this is troubling: first, it will tie up BLM and stakeholders' resources in unnecessary legal proceedings; and second, it will create uncertainty in the planning process. If new actions are subject to legal challenges that will

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set new precedents, companies and individuals cannot be sure their interactions with BLM will hold up in court. Uncertainty will further dampen enthusiasm for resource extraction on federal lands, an unintended but highly likely consequence of updating the resource management planning rules. Where BLM is not introducing a change in practice, it should not feel the need to update the regulation.

BLM also justifies the need for the proposed rule on the perceived need for landscape-scale management. That goal prompts it to ignore state lines and normal planning jurisdiction boundaries, change the time-honored role of the State Director to defer to the BLM Director, and undermine the role of state governors. There is, however, no need to make these changes, as BLM states in the Preamble that it can adjust to accommodate landscape needs within the current rules. If so, then what is the purpose and need of this proposed rule? BLM is merely creating more uncertainty and misunderstanding under the auspices of a landscape-level planning standard that will cause it to ignore planning area and state boundaries.

Multiple Use and Sustained Yield

The Federal Land Policy and Management Act of 1976 (FLPMA) established the statutory guidelines for BLM's management of federal lands. Under this Act, Congress specified that the lands are to be managed "on the basis of multiple use and sustained yield…" The law further states that BLM lands are to be "managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands…"

Similarly, the Mining and Minerals Policy Act of 1970 (MMPA) encourages development of domestic natural resources. The Act states that "it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in…the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals," and it is therefore "the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this Act."

Congress clearly intended to prioritize resource development on federal lands, but the proposed Planning 2.0 rule de-emphasizes the principle. In §1601.0-2, the rule states that BLM will "promote the principles of multiple use and sustained yield." An approach that "promotes" multiple use is weaker than the statutory language that "mandates" the principle, and the change implies that BLM does not believe it is *required* to provide for multiple-use resource development, contrary to FLPMA. BLM should reaffirm this principle in the final rule by changing "promote…" to "manage for…" multiple use.

The proposed rule also removes the congressional mandate that BLM report to Congress prior to implementation of any RMP which would eliminate "one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more." In accordance with FLPMA, BLM must analyze any withdrawal of land from mineral leasing,

including impacts and cost. A withdrawal is defined as "withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws…"

In order to withdraw tracts of land greater than 5,000 acres from mineral leasing, BLM must provide Congress with a variety of information detailing the impacts, costs, and need so that Congress can properly decide whether to approve the withdrawal. A withdrawal also requires public notice and hearing, and consultation with state and local governments. The proposed rule's language is a clear violation of FLPMA's pre-implementation reporting requirement, and it must be removed from the final rule.

The removal of this reporting requirement, combined with the softened language on multiple use, implies that BLM plans to adopt a management approach similar to zoning ordinances, where certain resource uses are limited to specific acreage within a planning area. The use of "designations" and "resource use determinations" further implies such an approach is the intent of the proposed rule.
The definitions of designation and resource use determination are vague and unclear in the proposed rule, but it appears in both cases that the ultimate outcome will be a determination that one type development cannot occur in the area. A withholding of land for the purpose of limiting activity is a violation of FLPMA absent congressional review, so BLM should clarify the definitions of designation and resource use determination. Case law has upheld the intent of FLPMA as allowing for more than one use on BLM lands, and the intention of treating multiple-use public lands as zones designated for only one activity is antithetical to FLPMA.

A zoning approach is especially troubling for oil and natural gas development because the exact location of all technically recoverable reserves cannot be fully mapped out in a planning document created at one point in time. New reserves on federal lands are continually being discovered or becoming economically viable as new technologies are developed. By closing off large areas to oil and natural gas development because they may not currently be ripe for production at one point in time unjustifiably limits future development of the American people's energy resources. Such an approach constitutes a violation of FLPMA's multiple-use requirement.

Finally, the Alliance is concerned that a full reading of the proposed rule does not provide for true multiple-use principles. Specifically, §1610.8-2 goes into detail on the need to designate Areas of Critical Environmental Concern (ACEC), yet other resources are not similarly spelled out in the rule. We are concerned the specific identification of ACECs in the guiding principles document mirrors the disconcerting closing remark by a BLM official at the March 25th public meeting in Denver on the proposed rule, that Planning 2.0 "is 21st Century conservation," which implies that BLM intends to manage the public lands for conservation, first and foremost, rather than multiple use of all congressionally mandated resources. BLM should make clear in the final rule that multiple use and sustained yield continues to be the raison d'être of any RMP.

Landscape Management

The proposed rule would allow for RMPs that extend beyond traditional BLM boundaries and involve multiple field offices and states in order to provide for landscape-level management. We are extremely concerned about how the boundaries for planning areas will be drawn and the between states and the federal government, as enshrined in the constitution.

It appears that the proposed rule intends to specifically designate planning areas based on the location of one or more resources, similar to the recent plans for Greater Sage-Grouse management. We are concerned this may lead to multiple, overlapping RMPs for areas, which will further encumber planning, permitting, and development times for federal resources. The RMP approach is intended to provide one clear planning document for each planning area based on the unique conditions on the ground in that planning area. Planning areas respect state borders because the interests of states are not something that can be lightly brushed aside in the name of ill-defined landscape-scale principles. Implementing overlapping plans for multiple areas will lead to confusion and contradiction.

BLM has also recently implemented a Master Leasing Plan (MLP) system that further adds duplicative planning approaches to certain areas. If areas may be subject to more than one RMP *and* an MLP, it will be very difficult for states, counties and other communities to weigh in with specific circumstances based on actual conditions on the ground. Overlapping plans will also lead to conflicting requirements and uncertainty for oil and natural gas development. The burden for planning will ultimately fall on the operator, who must decipher the complex, overlapping requirements for developing on its leased acreage, which will further discourage development of federal resources, contrary to the goal of FLPMA.

Furthermore, the Alliance is concerned with the specifics for landscape-level management in this proposal. When multiple states are involved in a planning effort, the BLM Director is tasked with designating the responsible official, and there is no requirement that the responsible official must be a field office or state director. RMPs should be led by the local officials who have on-the-ground experience and interaction with the planning area. Furthermore, state directors should retain the responsibility for designating project managers. If plans cross state borders, there is the additional problem that the manager will not be adequately responsive to the governors, and the interests of one state will be subordinated incorrectly to another.

Finally, BLM and other agencies within the Department of the Interior are currently developing policies relating to mitigation that take a landscape-level approach. It is clear from the early development of these policies, including the Fish and Wildlife Service's draft mitigation policy and the Forest Service's white paper on mitigation, that mitigation will play a critical role in land use determinations going forward, specifically as it relates to oil and natural gas development. It is unclear how the revised planning process will work with

the new mitigation policies being developed, since both are being developed simultaneously, which makes it difficult to evaluate and draw conclusions around any potential effects these changes might have on the oil and natural gas industry. The federal government is rushing to finalize too many of these policies, with many overlapping and conflicting aspects, at the same time without wisely looking at the cumulative impacts, unintended consequences, and conflicting guidance. Implementing such major changes to planning processes should be a deliberative process, and not a haphazard exercise meant to meet political deadlines.

Ultimately, BLM should clarify that landscape-level management is meant only to improve the ability to plan at a broader scale, because species and other natural resources do not respect state borders. However, the planning should not become a further hindrance to energy development as mandated by FLPMA. Local and state officials should lead the planning process, and there should only be one management plan for each planning area, rather than overlapping and duplicative plans.

Cooperating Agencies and Public Involvement

The proposed rule appears to limit the role of state and local agencies in developing RMPs. In the definitions section, it states that cooperating agencies will participate "as feasible and appropriate, given the scope of their expertise…" The final rule should clarify that this limitation based on expertise applies only to federal agencies and not the state, local and tribal government agencies that will be directly impacted by a management plan. State, local and tribal governments join the citizens of a planning area as the primary groups that are impacted by BLM planning decisions, and they should have every right to participate in the planning process as cooperating agencies, regardless of expertise.

While the proposed rule outlines the opportunities for public involvement, it also limits the meaningful involvement by elected officials at the local and state levels compared to current practice. Specifically, it removes the requirement of publication in the federal register on several occasions throughout the planning process, which limits the public's ability to provide input. If the goal is to increase public involvement, this approach seems counterintuitive.

Similarly, Governor's consistency reviews would be limited to comparison with statewide and county land use plans, while ignoring other state and local laws. Not every state and county has a land use plan in place, but that does not mean development is allowed to proceed completely unfettered in those localities. The final rule should in no way be so narrowly limited.

Furthermore, the protest procedures limit challenges to components of the plan "believed to be inconsistent with Federal laws or regulations…" Limiting consistency reviews and protests reduces the public's right to be heard. This should be expanded to include state laws and regulations.

One positive change in the proposed rule is the availability of preliminary alternatives for public review prior to publication of the draft RMP. Allowing for earlier review and comment on the alternatives will allow for a more robust public comment process. However, the draft RMP should not identify more than one preferred alternatives. Identifying a single preferred alternative allows the public to focus its review and comments, while selecting multiple preferred alternatives will be time-consuming and burdensome for the public.

Finally, the proposed rule limits initial public comment periods to 30 days, the response period for a draft RMP amendment to 45 days, and the response period for a draft RMP to 60 days. These planning documents are herculean undertakings that always have significant effects on the public, so these periods should last at least 90 days to allow for substantive public review, and the public comment period should be further extended if multiple preferred alternatives are identified in the draft RMP or RMP amendment.

Western Energy Alliance appreciates that BLM recognizes the importance of public involvement in the planning process, but the de-emphasis on the very communities and states directly affected by plans is not equitable. States and local communities rightly should have a greater say in the lands that they have more intimate knowledge, expertise and affinity with than national groups far removed from the lands.

Monitoring and Implementation Strategies

The proposed rule provides for monitoring of RMPs to evaluate whether revision of the plan or implementation strategies is necessary. Monitoring is a very necessary activity to ensure lands are being protected and that management actions are effective. However, with all the onshore orders, mitigation policies, sage-grouse plans, new rules, and many other new policies that have been piled on in the last few years, BLM resources are severely strained. It also strains credulity to see how BLM can manage all these new, highly complex policies in any effective manner while meeting its current statutory obligations. If anything, all these policies have further served to take BLM personnel out of the field where they can effectively monitor and put them behind a desk trying to make sense of these policies. An increase in monitoring requirements will drain already strained resource levels in local and state BLM offices, which will further exacerbate delays to leases, project-level NEPA, permits to drill and other revenue generating activities. Slowing down oil and natural gas development, the largest revenue generator on BLM lands, simply doesn't make sense if more resources are needed to implement all these new policies. Incorporating goals into an RMP for monitoring and adaptive management without a reasonable way to meet those goals only opens BLM up to potential litigation.

Finally, the implementation strategies section is also troubling, as BLM will be able to significantly adapt resource management in a planning area with limited public notice. These implementation strategies could include management measures such as hours of operation, sound level limits, seasonal operations, density limitations on disturbances, vegetation standards, and other requirements. These examples would all have a

substantial impact on oil and natural gas development operations, so it is vital that they are presented to the public in an appropriate manner. We are also concerned about these new requirements being imposed on valid existing leases, which could significantly alter the value of the property right.

Instead, the implementation strategies are removed from the RMP process, left to be developed at a later time with only 30 days of public notice before they are adopted, and it's unclear whether an affected party will have the right to appeal. RMPs should not be developed in isolation from the implementation strategies. Divorcing the planning from how management decisions will be implemented is antithetical to deliberative policymaking and prudent land use planning. BLM should not hardwire such a flawed bifurcated process, born of current expediency, into land use planning, which should be thoughtful, comprehensive and complete. Leaving major aspects unresolved once a plan is finalized does not give the public the certainty of how its public lands will be managed, and reducing the public's involvement in after-the-fact changes is not good policy. Implementations strategies should be vetted through the same process and at the same times as the rest of the RMP, with the same review, public involvement, protest, and appeal rights of the final action.

High Quality Information

Finally, BLM should clarify what qualifies as "high quality information" that can be used in the planning assessment and development phase. Best available scientific information is a term that should be defined along well established principles enshrined in OMB guidance, executive orders, the Data Quality Act (DQA) and other regulations. BLM should use these well-established definitions to provide more certainty. For example, the DQA requires federal agencies to ensure and maximize the "quality, objectivity, utility, and integrity" of information disseminated. These terms should be incorporated into the proposed rule. Sound analytical methods and the best available data are critical to developing appropriate plans, and the proposed rule should reflect those bedrock principles.

Conclusion

There are a number of troubling provisions in BLM's proposed Planning 2.0 rule for resource management plans. BLM should withdraw the proposed rule and reconsider its approach to planning. Thank you for considering our comments, and please do not hesitate to contact me should you have questions.

Sincerely,

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Vice President of Government & Public Affairs