



October 31, 2014

Via email: blm_wo_plan2@blm.gov

Bureau of Land Management
1849 C Street, NW
Room 5665
Washington, DC 20240

RE: Western Energy Alliance Scoping Comments on BLM Planning 2.0

To Whom it May Concern:

Western Energy Alliance submits the following scoping comments on the Bureau of Land Management's (BLM) Planning 2.0 process. The Alliance supports the broad objective of improving the land use planning process. However, at this stage the details remain nebulous, and we wish to identify several potential concerns with the process.

We welcome the opportunity to provide comments to the Planning 2.0 effort in the initial stages before it has coalesced into a specific proposal. BLM states that its 2011 strategic plan, *Winning the Challenges of the Future: A Roadmap for Success in 2016*, challenged the agency to adopt a more proactive, adaptive, and collaborative approach to planning, engaging the public and partners earlier and more often. The agency also plans to utilize a landscape approach to planning. Two open houses, held in Denver, Colorado and Sacramento, California went into further but still general detail about the goals for Planning 2.0.

Western Energy Alliance represents over 480 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independent producers, the majority of which are small businesses with an average of fifteen employees.

Create a More Dynamic and Efficient Planning Process

BLM has identified three components for this goal: integration of adaptive management into plans, earlier public and stakeholder collaboration, and an improved amendment process.

Western Energy Alliance generally supports the goal of expanded adaptive management in Resource Management Plans (RMP). For instance, lands identified as open to oil and natural gas leasing often carry restrictive stipulations like Timing Limitations, Controlled Surface Use, and No Surface Occupancy. However, given site-specific circumstances of a proposed project or the design of the project itself, developments could potentially move forward under less restrictive stipulations while still fully meeting impact mitigation goals. This would also be in line with the requirements of the Energy Policy Act of 2005, which

mandates that stipulations be only as restrictive as necessary to protect the resource for which they were applied.¹ Further, land and resource management should be based on the best available data and analysis, and as RMPs age the analysis they are based on may not fit that description. Adaptive management, explicitly built into RMPs, could allow for greater administrative flexibility to account for changing circumstances or better, more up-to-date data.

That being said, one of the Alliance's greatest concerns is the potential for ever more layers of National Environmental Policy Act (NEPA) analysis. These analyses are time consuming and expensive, and while adaptive management certainly has its benefits, if it necessitates supplemental NEPA at every phase of a proposed oil and natural gas project then the goal of a more efficient planning process is sacrificed.

The Alliance is also supportive of public and stakeholder outreach. For instance, issues for land use plans are currently scoped, but between that scoping period and the draft there is no opportunity for review. It is unknown whether comments proffered during a scoping period will be integrated or interpreted correctly, and at the point a draft plan is introduced the parameters for comment are greatly reduced. An opportunity to review draft alternatives prior to analysis would prove useful in determining whether the range of alternatives includes a serious effort to incorporate issues raised during scoping, and whether the range of alternatives considered appropriately facilitates the multiple-use concept.

Our organization also serves as a conduit for our many members to provide feedback on land use planning, so a concerted effort by BLM to identify and reach out to non-governmental organizations, including trade and other business groups, in the early stages of the planning process should prove useful in identifying issues and rectifying disagreements on the front end rather than later in the process.

We must emphasize, however, that while expanded public outreach is a valid goal, land use planning should not be decided by majority rule. Decisions must still be made based on quality data and proper analysis. BLM states on page 3 of *Winning the Challenges of the Future* that changing demographics in the West may result in differing expectations for public land management. While possibly accurate, this does not mean that the traditional definition of multiple-use needs to be sacrificed. Activities like energy development and agriculture may entail processes unfamiliar to many in the public, yet the products each industry creates, energy and food, are basic essentials for the nation as a whole, and so these uses must continue to play an important role in future public lands planning.

At this time, more precise details regarding an improved amendment process are not available, rendering it difficult to provide useful feedback. We would like to discuss this goal in greater detail with BLM.

¹ 42 U.S.C. § 15922 (b)(3)(C)

Planning Across Landscapes and at Multiple Scales

BLM apparently seeks to coordinate planning across larger landscapes with similar environmental characteristics, which may or may not correspond with field office boundaries. This would seemingly be done by conducting Rapid Ecoregional Assessments (REA) to identify the basic characteristics, boundaries, and condition of a landscape and to use that information, in consultation with others, to prioritize land uses, implement those priorities at the field level, and monitor management practices for effectiveness and potential adaptive management.

BLM ostensibly envisions a process of identifying landscape goals, integrating the objectives in each field office's RMP, and then continuing through a normal RMP process, but with the added regional mitigation requirement. However, the newly envisioned structure remains unclear, and it is uncertain whether traditional RMPs will remain part of the process, underscoring the need for further dialogue in the near term. Such a scenario may result in the benefit of avoiding disjointed and incoherent management and restrictions across neighboring field office boundaries, but Western Energy Alliance has reservations about this proposed direction.

First, we emphasize that Congress explicitly charged BLM with managing a federal fluid minerals program in a supportive and efficient manner. Minerals development is a "principal or major use" of public lands per the Federal Land Policy and Management Act.² Specific programs like oil and natural gas development must not be disbanded, delayed and obstructed in favor of vague landscape goals.

Second, will BLM identify priority areas for minerals leasing and development, and limit leasing and development only to these areas? Identifying areas of high resource potential is advisable, but Western Energy Alliance would oppose any attempt to limit minerals development to so-called priority areas. History has shown that, with technological advances, areas previously thought to have poor potential for oil and natural gas development are now some of the nation's most productive. It would be shortsighted to try to predict which areas hold the highest mineral potential and restrict development just to them. Rather, the current system of companies identifying unleased lands, nominating them for leasing, and conducting exploratory work on those leases enables continued progress in finding the next play that benefits the American economy and energy security.

Third, with planning proposed at multiple scales, we are concerned that there will be even layers of redundant NEPA analysis. Will the steps identifying landscape goals and integrating field office objectives be subject to costly and lengthy NEPA, further delaying potential oil and natural gas projects?

BLM has stated that it desires less prescriptive RMPs, and that certain decisions might be deferred to post-plan analysis. Does this include oil and natural gas leasing? Does it include

² 43 U.S.C. § 1702 (l)

the various stipulations that would be required to develop a lease? Western Energy Alliance certainly doesn't endorse overly rigid management plans, but plans that are too vague simply lend themselves to repetitive analysis at every step of a proposed project.

Fourth, the incorporation of regional mitigation also raises some concerns. The Department of the Interior states that the regional, or landscape approach to mitigation, "dictates that it is not sufficient to look narrowly at impacts at the scale of a project; it is necessary to account for impacts to resource values throughout the relevant range of the resource that is being impacted."³ This language leaves open the possibility of mitigation requirements of a ratio far in excess of the actual footprint of an oil and natural gas project. Western Energy Alliance in fact raised concerns on regional mitigation in a letter to Interior Secretary Sally Jewell dated June 3, 2014 (attached), and asked for the opportunity to provide comment on new regional mitigation policies under development. To date we have received no indication that the department intends to accept public comment on this policy, which has far-reaching implications for public lands. That foundational policy should not be used as the basis for the 2.0 process without undergoing proper public analysis and comment.

Fifth, we are concerned that the landscape scale planning concept appears to include non-federal lands. Page 6 of *Winning the Challenges of the Future* states that the issues that affect public lands "transcend administrative boundaries and artificial lines." Over the course of the public forums in Denver and Sacramento, the question of whether landscape scale planning might include non-federal lands elicited a positive response, with the recent RMP amendment and revision process for the Greater Sage-Grouse used as an example of how this might look.

However, we point out that BLM's attempts to incorporate non-federal lands for sage-grouse management, such as quantifying disturbed acreage on private lands, met with strong opposition from a variety of stakeholders and local and state governments. The sage-grouse therefore is not a compelling example of successful landscape scale management including non-federal lands.

Western Energy Alliance fully supports BLM's efforts to consult with state and local government and non-governmental entities, but meeting landscape level goals must remain a voluntary process, and BLM should not infringe on non-federal jurisdictions, nor should activities on non-federal lands result in tighter restrictions on federal public lands. Voluntary collaboration to achieve land management goals has a proven history of effectiveness, whereas attempts to leverage authority or activities seen as infringing on non-federal jurisdictions typically meet resistance and are counterproductive.

Lastly, we are concerned about the federalism implications. Field office boundaries are created to respect state boundaries for a reason. Our entire federalist system of

³ [A Strategy for Improving the Mitigation Policies and Practices of the Department of the Interior: A Report to the Secretary of the Interior from the Energy and Climate Change Task Force](#), April 2014, pg. 9.

government is founded on a balance between the federal government and the states. For this reason, state governors are key partners with BLM, from states acting as cooperating agencies from the beginning of the planning process through to the final planning documents, with governors' consistency reviews as a crucial concluding phase. Landscape-level planning efforts must respect state borders and state jurisdiction. Actions that could erode that balance, such as requirement to mitigate the impacts from one state within the borders of another state, should be guarded against.

More Consultation Needed

Western Energy Alliance has attempted to provide detailed and useful feedback on Planning 2.0, but the level of detail at this time does not allow for sufficient analysis to provide comprehensive comments. Planning 2.0 consists primarily of very general, high level goals. While two informational forums did take place, the conversation was very general, and we feel it would be beneficial to include further targeted discussions with established stakeholders to understand the initiative, potential concerns, and suggested actions in more detail.

BLM plans to introduce a proposed rule in the spring of 2015 and draft handbook in the summer of 2015, with final versions the following spring and summer. Public land use planning is vitally important to the oil and natural gas industry as well as a number of other commercial and recreational interests. Given the limited outreach conducted and the limited opportunity for comment thus far, we strongly feel that the process is too rushed for an issue of such high importance. We appreciate BLM's consideration of our written comments, but we emphasize that they are, due to the lack of concrete details on Planning 2.0, of limited use for crafting a proposed rule. Western Energy Alliance therefore welcomes further, more in depth discussions before Planning 2.0 progresses to a proposed rule.

We appreciate the opportunity to comment at this time, and should you have any questions, please do not hesitate to contact me.

Sincerely,



Kathleen M. Sgamma
Vice President of Government and Public Affairs

Cc: Neil Kornze, Director, Bureau of Land Management

Enclosures



June 3, 2014

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street
Washington, D.C. 20240

Dear Secretary Jewell:

Western Energy Alliance is currently reviewing *A Strategy for Improving the Mitigation Policies and Practices*, which was prepared by the Department of the Interior's Energy and Climate Change Task Force. We are very concerned about how the policies outlined in the strategy will be applied to future oil and natural gas activities on public lands in the West in conjunction with existing requirements under the National Environmental Policy Act (NEPA). Oil and natural gas companies that operate on public lands already comply with multiple layers of NEPA analysis and face additional layers with every new policy and guidance document that is released by the Department.

We understand that agencies under the Department are currently developing several near-term policy deliverables that support the strategy and will be finalized later in the year. Because these policies have such broad implications and go beyond mere policy statements and into the realm of regulatory requirements, we believe there should be formal comment periods to gather input from the public. If the Department chooses not to engage in formal public comments, we believe industry should be granted a full seat at the table, as has been offered to other stakeholders. Because companies that operate on public lands in the West will be directly affected by these policies, they deserve an opportunity to participate in the actual development of the policies or at the very least provide feedback to the Department before the policies are finalized.

According to the document, the agencies will work together to advance the strategy in collaboration with other federal, state, and tribal agencies and non-governmental organizations, *including industry*. To our knowledge, other than limited discussions with a hand-picked, non-representative selection of companies, the Department has not engaged a broad cross section of the oil and natural gas industry. Without such engagement, industry will only be able to react to the policies after they have been finalized, which is far less constructive.

The oil and natural gas is composed of thousands of small, medium and large companies. Western Energy Alliance represents many medium and small independent companies that have on average 15 employees. Small businesses in particular rely on trade associations like Western Energy Alliance to represent their interests vis-à-vis the federal government, since they cannot possibly track the hundreds of regulatory and policy actions that affect their businesses with their small staffs and limited resources. For that reason, it is

important that the Department allow trade associations and self-selecting companies into that collaboration, and not just a few companies with which the Department happens to choose to contact.

Western Energy Alliance and our member companies are interested in providing feedback on the following near-term policy deliverables:

- Mitigation Framework for Greater Sage-Grouse Conservation (Projected Completion: Q4 2014)
- Guidance for Mitigation in NEPA Analysis (Projected Completion: Q3 2014)
- Bureau of Land Management (BLM) Regional Mitigation Policy (Projected Completion: Q3 2014)
- Revisions to U.S. Fish & Wildlife Service (FWS) Mitigation Policy (Projected Completion: Q4 2014)
- FWS Policy on Mitigation for Candidate Species (Projected Completion: Q2 2014).

We welcome the opportunity to meet with you, your staff, and officials from BLM and FWS to discuss how the industry may be able to participate in the development of these policies. Thank you.

Sincerely,



Kathleen M. Sgamma
Vice President of Government & Public Affairs

cc: Dan Ashe, Director, U.S. Fish & Wildlife Service
Neil Kornze, Director, Bureau of Land Management