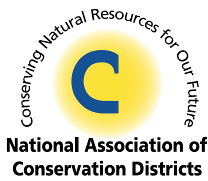

National Association of Conservation Districts

May 23, 2016

The Honorable Director Neil Kornze
Bureau of Land Management
U.S. Department of Interior
1849 C Street NW., Room 2134 LM
Washington, D.C. 20240
Attention: 1004-AE39

Submitted via Federal Rulemaking portal: http://www.regulations.gov

RE: Comments on the Bureau of Land Management's Proposed Resource Management Planning Rule; 81 FR 9673; BLM-2016-0002

Director Kornze:

Public lands are held in trust, to be devoted to the good of all people, recognizing multiple use and sustained yield of renewable and nonrenewable natural resources as basic principles of public land use and management. Each acre of public lands should be treated in accordance with its need for protection under sustained use and managed and developed within its scientifically determined capabilities for use.

The National Association of Conservation Districts (NACD) respectfully submits the below comments on U.S. Department of Interior, Bureau of Land Management's (BLM) proposed rule for amending 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).

Comments:

Mitigation

In 2013, the Secretary of Interior issued a Secretarial Order 3330, "Improving Mitigation Policies and Practices of the Department of Interior" which called for the development of a DOI-wide mitigation strategy, which would use a landscape-scale approach to identify and facilitate investments in key conservation priorities in a region. In November 2015, the President issued a memorandum entitled: "Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment" (80 FR 68743). The memorandum informed agencies that "large-scale plans and analysis should inform the identification of areas where development may be most appropriate, where high natural resource values result in the best locations for protection and restoration, or where natural resource values are irreplaceable."

FLPMA mentions mitigation once, "the management plan shall include mitigation and reclamation standards for activities that disturb the surface to the detriment of scenic and environmental values" and is in reference to the management plan for the Fossil Forest Research Natural Area.

On page 9725, the Proposed Rule seeks to define mitigation as "the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts." Through the Proposed Rule, the BLM is looking to change its interpretation of the FLPMA's special management attention requirement, in order to allow for mitigation measures and standards. This is above Congress' mandate of the BLM. Any inclusion of mitigation policies and practices should go through the formal rulemaking process and not through the BLM's new planning rule. By going through the formal rulemaking process, the BLM would be able to benefit from local involvement from the very beginning.

FLMPA defines multiple use and sustained yield, but not mitigation. As such, the BLM lacks the authority to include mitigation requirements in the Proposed Rule. It appears that the DOI believed this was the easiest way to get their mitigation policies in as a way to avoid the review of the Office of Management and Budget. All references to mitigation should be removed before the final rule is published.

Landscape-Level Planning Rather Than Local Project-Level Planning

> On page 9674, the Proposed Rule states "recent Presidential and Secretarial policies and strategic direction emphasize the value in applying landscape-scale management approaches to address climate change, wildfire, energy development, habitat conservation, restoration, and mitigation of impacts on Federal lands." Further down on the page, the BLM states that one of the goals of the Proposed Rule is to "improve the BLM's ability to address landscape-scale resource issues and to apply landscape-scale management approaches."

NACD suggests further definition and discussion of what is contemplated by "landscape-scale planning" is necessary in this proposed rule and, if such authority exists, for BLM to expand its scope and scale of Resource Management Planning. If the BLM wants to conduct landscape-level planning, FLPMA requires that those actions are consistent with those of state, local, and tribal governments 'policies, programs, and processes' rather than only using officially approved and adopted land use plans. Without doing so, the BLM could easily remove state, local, and tribal input during the resource management planning process, by expanding the landscape-level planning past the state, local, and tribal land use plans. These same local governments, however, may have policies and programs that are relevant to the proposed landscape-scale planning.

> In Section 1601.0-8 – Principles, the Proposed Rule revises the existing language to state "that the BLM will consider the impacts of resource management plans on resource, environmental, ecological, social and economic conditions at appropriate scales, rather than just on 'local economies.'"

BLM argues that the revised language would more accurately describes current practices when considering impacts. Why has the BLM implemented practices that do not currently align with the resource management planning process? The revised language goes against Congress' intent to require BLM to involve local impacts, considerations, policies and plans in its planning process. Local governments are concerned about those issues that affect them and those are usually issues that are not landscape scale.

National Environmental Policy Act

> On page 9724, the Proposed Rule states that the BLM "does not believe this rule would constitute a major federal action significantly affecting the quality of human environment, and has prepared preliminary documentation to this effect, explaining that a detailed statement under NEPA would not be required because the rule is categorically excluded from NEPA review. This rule would be excluded from the requirement to prepare a detailed statement because, as proposed, it would be a regulation entirely procedural in nature."
>
> The BLM has continued to support this belief during each of the Proposed Rule Webinars.

The U.S. Forest Service, Farm Service Agency, and Natural Resources Conservation Service all conduct a NEPA review prior to publishing a planning rule revision or program rule.

The Department of Interior has implemented via CFR 46.10-46.50, its own departmental NEPA regulations for its agencies to follow. Under Section 46.215, NACD believes that there are extraordinary circumstances that prevent the BLM's Proposed Rule from meeting the DOI's categorical exclusion criteria. The Proposed Rule is a major federal action and is therefore required to go through the analysis process. The BLM's proposals dramatically expand the resource management planning process to include landscape-scale planning and mitigation requirements. The Proposed Rule also significantly affects the quality of human environment by the limitation of local government in future RMP discussions. Federal Departments and agencies, should have consistency across their rule writing processes.

It is with Section 46.215 in mind that NACD strongly recommends that the BLM conduct a full environmental analysis prior to issuing a final rule.

Changes in Comment Period Length

> The BLM believes "it is appropriate to reduce the length of public comment periods on draft EIS-level amendments and draft resource management plans because the public would be provided an opportunity to review the preliminary resource management alternatives, rationale for alternatives, and the basis for analysis prior to the publication of the draft EIS-level amendment or draft resource management plan."
>
> The Proposed Rule includes further changes. Proposed section 1610.2-2 (b) changes the comment period for the draft resource management plan amendment and draft EIS from "provides 90-calendar days for response" to "provide at least 45 calendar days for response." Proposed section 1610.2-2 (c) changes the comment period for the draft resource management plan and draft EIS from "provides 90 calendar days for response" to "provide at least 60 calendar days for response."

The BLM should not reduce the number of days in the public comment periods. A sound review and analysis of draft RMPs, EIS, and amendments, require time. As many potential commenters already have full time jobs and other life responsibilities, having the ability to sit down and review is not always an option. If the BLM truly would like to receive quality feedback during the public comment periods, the BLM should remove all language in the Proposed Rule regarding reduction in comment period lengths.

In addition to the reduction in comment period length, the Proposed Rule eliminates the mandatory notification requirements from the BLM to impacted local governments and replace them with a requirement that the BLM only notify those local governments "that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment." This change, while appearing to be a small wording change, has large implications. Rather than automatically being notified regardless of having previously requested or not to be notified, a locally impacted government would need to rely on the thought process of the Responsible Official. If the official believes the impacted local government wouldn't be concerned with or interested in resource management plan or amendment, then the local government would receive no notification. The decision to participate or not should always be up to the local government and BLM should not limit this opportunity by eliminating the mandatory notification requirement. The Proposed Rule language change appears to minimize the level of local involvement in the planning process.

Local Governments as Cooperating Agencies

> On page 9702, the Proposed Rule removes the final three sentences in § 1610.3-1(b), "State Directors and Field Managers will consider any requests of other Federal agencies, state and local governments, and federally recognized Indian tribes for cooperating agency status. Field Managers who deny such requests will inform the State Director of the denial. The State Director will determine if the denial is appropriate."

The BLM argues that the language is no longer needed due to the "new proposed language that responsible officials will follow applicable regulations regarding the initiation of eligible governmental entities." However under the revisions, the State Director's review is eliminated. In doing so, the BLM has removed the independent review of local government's cooperating agency requests and leave the decision solely up to a single BLM official.

Further, troublesome is the Proposed Rule's language on responsible officials' collaboration with cooperating agencies. On page 9728, the Proposed Rule states, "the responsible official will collaborate with cooperating agencies, as feasible and appropriate given their interests, scope of expertise and constraints of their resources." FLPMA does not instruct the BLM to determine the feasibility and appropriateness nor the scope of expertise or resource constraints of a local government. The Proposed Rule could easily be used to prohibit local government involvement in any future land management planning. The Proposed Rule fails to provide any safeguards against a responsible official from rejecting a local government's credible expertise, nor is there any insurance that the responsible official will always be fully aware of a local governments, interest, scope of expertise, and resource constraints.

With projects frequently being done under partnerships, in order to share the financial and technical responsibilities, the potential limitation of local governments as cooperating agencies seems counter intuitive.

Section 1601.04- Responsibilities

> The BLM intends to no longer rely on the field office area as the default resource management plan boundary. The Proposed Rule establishes two new terms, the "Deciding Official" and "Responsible Official." The Deciding Official is defined as "the BLM official who is delegated the authority to approve a resource management plan or plan amendment." The Deciding Official is

chosen by the BLM Director. On Page 9684 the Proposed Rule replaces "State Director" references with "Deciding Official." The Responsible Official is defined as "a BLM official who is delegated the authority to prepare a resource management plan or plan amendment." The Proposed Rule replaces "Field Manager" references with "Responsible Official."

Under the Proposed Rule, the Responsible Official would prepare the resource management plan or plan amendment and related EISs and EAs, and the Deciding Official would approve the resource management plan.

The Proposed Rule creates these two new definitions and provides authority, but does not require that the Deciding Official have any jurisdiction or responsibility for the area. If the BLM chooses to keep this language in the final rule, the BLM should include additional language requiring that the Responsible and Deciding Officials have an intimate knowledge of the area and not a random selection.

The BLM as default should keep the decision local, and then if necessary step out. Until now, the Deciding Official has had to be accountable to the affected population of an action and has been sensitive to that accountability. With this change the "deciding official" may no longer be in the best position to determine who, and what resources, are affected. This is contrary to the intent of both FLPMA and NEPA. NEPA's opening statement at 43 U.S.C. 4331 states (a): "…in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." These mandates are the hallmark of local governments. This proposal as currently written has the potential to damage the relationship between local governments, local constituencies, and the federal government.

Section 1610.2 - Public Involvement

Under the FLMPA Section 202 (c)(9), the BLM is required "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 (PL 88-578; 78 Stat.897) as amended, and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs."

FLMPA also directs the Secretary 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 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 public lands." The 2005 amendments (70 FR 14561) reinforced the role of local and tribal government involvement in the developing, amending, and revising the BLM's resource management plans.

The Proposed Rule's revision shifts the BLM's focus from local and tribal governments to individuals and public interest groups. Under any revision, state, local, and tribal governmental involvement in the

development, amendment, and revision of BLM's resource management plans should be increased, not decreased, as indicated under the Proposed Rule. Congress wrote FLMPA with the intent and spirit of having local governments act as the agents of the public interest. In Section 1712, Congress mandated as part of the federal land use planning process that federal land managers:

> "…coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of … local governments within which the lands are located…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…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."

If the BLM had worked more with state, local, and tribal governments in the drafting of this Proposed Rule, there might not have been as much need to conduct last minute outreach after the Proposed Rule was published in the Federal Register.

Local governments are a great resource for the BLM. They have a familiarity with and commitment to the area under consideration that cannot be matched. The elected officials are people who work in the area, live in the area, and are not in the area on a detail only. The purpose of the BLM's final planning rule should be the maximization of local involvement, including interfacing with local governments upfront.

Section 1610.6-2 Protest Procedures

> As stated on page 9714, under the current model, the BLM generally considers the "planning process" to mean the preparation of a resource management plan or plan amendment.
>
> The Proposed Rule seeks to replace the words "planning process" with "the preparation of the resource management plan or plan amendment." The Proposed Rule also seeks to clarify that a person who participated in the preparation of the resource management plan or plan amendment and has an interest which "may be adversely affected" by the approval of a proposed resource management plan or plan amendment may protest such approval.

These changes fail to account for rural communities who cannot afford or do not have the capacity to participate in the planning process. The Proposed Rule does nothing to include such rural communities and their elected officials in the planning and protest process.

> On Page 9715, the Proposed Rule's paragraph (a)(3)(ii) will require a statement of how the protestor participated in the planning assessment or the preparation of the resource management plan. The BLM believes that this change places the burden on the protestor to demonstrate their

eligibility for submitting a protest. The statement of issue or issues being protested will be included in proposed paragraph (a)(2)(iii).

While the BLM makes this proposal in order to make it easier to determine eligibility to protest and more efficiently respond to all protests, the BLM should also take this opportunity to firmly define "any person who has an interest which 'may be' adversely affected by the approval of a proposed RMP or plan amendment. There is still no clear definition of what constitutes a valid protest issue. The lack of definition does nothing to reduce the number of frivolous protests that the BLM will receive. In the final rule, the BLM should strengthen the protest process to dampen the recent trend to "sue and settle". If unwilling, the BLM should ask Congress to enact legislation that would require plaintiffs in legal actions over resource management decisions to bear the costs of litigation and all other costs caused by an inordinate delay in implementing agency-approved management plans.

Section 1610.3-2 Consistency Requirements

The Proposed Rule seeks to amend the consistency requirements. The current regulation states that "in the absence of officially approved and adopted plans, resource management plans should be consistent with 'policies and programs' of other federal agencies, state and local governments, and Indian tribes. The BLM believes that such 'policies and programs' should be reflected in the land use plans." On page 9703, the Proposed Rule removes the use of 'policies and programs' when deciding resource management plans.

Officially approved and adopted land use plans are defined as "land use plans prepared and approved by other federal agencies, state and local governments, and Indian tribes pursuant to and in accordance with authorization provided by Federal, state, or local constitutions, legislation, or charters which have the force and effect of state law."

The removal of 'policies and programs' limits the benefits that state, local, and tribal governments can provide to the BLM during the planning process. State, local, and tribal governments, often have formally approved 'policies and programs' that may not have been included in their land use plans. Their exclusion from the land use plans, does not make the policies and programs any less relevant or potentially beneficial to the BLM's land use management planning. The Proposed Rule's revision limits the role of state, local, and tribal governments in the BLM's land use management planning process.

If the Proposed Rule is a result of recent Presidential and Secretarial memoranda and orders, why then does the BLM see fit to remove the inclusion of policies and programs from state, local, and tribal governments? If the BLM wants to maintain meaningful input from state, local, and tribal governments, this proposed change should be removed from the final rule and continue to recognize state, local, and tribal policies and programs.

Currently the BLM must identify areas where the proposed BLM management plan is inconsistent with local land use policies, plans or programs, and provide reasons why any inconsistencies exist and cannot be remedied. Local government officials are elected by their local populations, and have been chosen to represent their communities in dealings with federal agencies. Congress recognized this relationship when they included in FLPMA the coordination concept and requirement. Under the Proposed Rule, on page 9703, the BLM will limit local government involvement by checking consistency with local land use plans

only “to the maximum extent the BLM finds practical and consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes policies and programs of such laws and regulations.” This revision removes the check and balance of local governments, by requiring local land use plans be consistent with BLM policies and programs. While FLMPA requires multiple use and sustained yield, under the revision, local governments are barred from providing any policies for achieving multiple use in a land use plan deemed by the BLM to be inconsistent with BLM’s policy for achieving multiple use.

Conclusion

A comprehensive, locally-led strategy is the best approach to public-lands management. Conservation districts are established under state laws with the mission of coordinating assistance from all available sources in an effort to develop locally-driven solutions to natural resource concerns. The Proposed Rule as currently written drastically limits the involvement of state, local, and tribal governments and their experts in the BLM’s resource management planning process. If the BLM’s harmful proposed policies and practices become final, all of the recent hard work done through voluntary, locally-led conservation practices and stakeholder collaboration could be for naught and successes like the New England Cottontail and Lesser Prairie-Chicken be things of the past. Congress understood the importance of local governments and reflected their importance in FLMPA. The Proposed Rule should bring the focus of the planning process back to the local level. Before releasing a final rule, the BLM should review their existing laws as mandated by the FLPMA and support the need for their proposed policies and practices to go through the formal rulemaking process.

The National Association of Conservation Districts, thanks the Bureau of Land Management for the opportunity to submit the above comments and looks forward to continuing to work with the BLM on future rangeland management planning. We respectfully ask that the BLM review our comments and addresses the areas of concern prior to publishing a final revised policy.

Sincerely,

Lee McDaniel

President

National Headquarters
509 Capitol Court, NE, Washington, DC 20002
Phone: (202) 547-6223 Fax: (202) 547-6450
www.nacdnet.org