



National Association of Conservation Districts

December 6, 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

Director Kornze:

In May 2016, NACD submitted [comments](#) on the Bureau of Land Management's (BLM) proposed Planning 2.0 rule, detailing several areas of concern, including its: non-Federal Lands Policy Management Act (FLPMA) mitigation definition; emphasis on landscape-level planning rather than local project-level planning; exemption of a rule revision from National Environmental Policy Act (NEPA); potential changes to the length of comment periods; vague use of the term "BLM Official" in the planning decision process; shift in focus away from public involvement; vague protest procedures; and changes to consistency requirements. Knowing the agency had 3,353 other comments to review in addition to ours, NACD would like to express its appreciation for the time and effort the BLM put forth in developing the resource management planning rule.

The creation of Planning 2.0 was a massive undertaking by the BLM. The BLM's goal in promulgating the Planning 2.0 rule was to "improve the Bureau's ability to respond to environmental, economic, and social change in a timely manner; make the planning process more collaborative and transparent by strengthening opportunities for other Federal agencies, state and local governments, Indian tribes, and the public to be involved in the development of RMPs earlier and more frequently; and allow for planning at an appropriate scale." In certain areas the [final rule](#) misfires and in others hits its mark.

In its May comments, NACD addressed the BLM's decision to remove the following language from the draft rule: "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 tribes." In its final rule, this language is once again absent. NACD argued then that it should remain, and continues to today. Although this language may exceed the statutory requirements of FLPMA, FLPMA has no definition of mitigation. For this reason, NACD believes that the BLM is comfortable with including the Department of Interior's mitigation definition because of recent presidential and secretarial memorandums. While the final rule removed the word "land-use" from describing officially approved and adopted plans in order to include a wider variety of plans, governments at the state, local, and tribal levels often

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have formally approved policies and programs that may not have been included in their official plans. The agency's decision thus limits state, local, and tribal government involvement in the planning process, even though one of Planning 2.0's goals was to enhance local involvement.

In the final rule, under Subpart 1610.3-2, one of the objectives of coordination for the BLM is to "provide for meaningful public involvement of other Federal agencies, state and local government officials, both elected and appointed, and Indian tribes, in the development of resource management plans, including early notice of final decisions that may have a significant impact on non-federal lands." In a separate section of the rule, however, local governments would be required to request draft notifications or simply hope the BLM considers them interested parties and notifies them without prompting. For many local entities, the final notification may be the only notification they receive regarding plans that could have significant impact on their own or adjacent land.

The final rule does little to address NACD's comments on protest procedures. There is still no clear definition of what "may be" adversely affected' means. The final rule clarified "any person" as "any member of the public" who participated in the preparation of the RMP or PM, but it failed to go any further into clarifying protest participation. As NACD indicated in May, without a clear definition, no improvement can be made to reduce the number of frivolous lawsuits waged against the BLM.

The timing in which the final rule was published also appears to have been a BLM oversight. In the final rule's *Section-by-Section Discussion of Changes to the Existing Planning Rule and Revisions from the Proposed Planning Rule*, the BLM frequently references how the forthcoming revised land-use planning handbook will provide a detailed and comprehensive explanation of BLM's planning methods. With one of BLM's main goals of Planning 2.0 being transparency in the planning process, would it not have been wiser to wait to publish the final rule until after the handbook was published? The handbook's publication has been promised for the end of the year. A published handbook, while only to be used for guidance, would have been able to provide clarity to aspects of the rule's section-by-section discussion.

With regard to the NEPA exemption, while the BLM removed landscape-scale planning from the final rule, the addition of mitigation recommendations as part of the planning still constitute a major federal action – not "entirely procedural in nature" changes. NACD is disappointed in the decision to continue with the publication of the rule prior to a full environmental and economic impact analysis being conducted.

While there were several areas NACD has concerns, there were also several positive steps taken by BLM between the proposed and final rule. For example, several definitions were re-defined; clarity was added to the responsibilities section; a section on implementation strategies was removed; and comment periods were lengthened from draft suggestions.

After receiving numerous concerns critiques that its management focus had shifted, or would shift, away from its multiple use and sustained yield mandate, the BLM added to Subpart 1601.0-1 *Purpose* so that it read:

“The purpose of this part is to establish in regulations a process for the development, approval, maintenance, and amendment of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management (BLM), consistent with the principles of multiple use and sustained yield, unless otherwise specified by law.”

Additionally, the new definitions of “plan amendment,” “plan components,” “plan maintained,” and “deciding officials” were changed. The redefining of “deciding official” resulted in a clarification in Subpart 1601.0-4 *Responsibilities*, which removed the vagueness and declared:

“The Director determines the deciding official and the planning area for the preparation of resource management plans and plan amendments that cross State boundaries. For other resource management plans or plan amendments, the deciding official shall be the BLM State Director, unless otherwise determined by the Director.”

Several existing sage-grouse plans have used this method. It differs from the draft rule which described the “deciding official” as a BLM official delegated approval authority. The BLM’s action fulfilled NACD’s suggestion that BLM include additional language requiring that deciding officials have an intimate knowledge of the area and not be randomly selected for the job.

The BLM also took the appropriate step in eliminating Subpart – 1610.1-3 *Implementation Strategies* from the final rule draft. This subpart sought to develop implementation strategies in conjunction with an RMP, but would not represent planning level management direction, nor be considered components of the RMP. The draft stipulated that BLM’s implementation of future actions would be consistent with planning-level management direction. Management needs to be adaptive, and in this instance, the BLM understood that this proposal ran counter to that goal.

Since the express goal of the BLM’s Planning 2.0 was to increase public involvement, it never made sense as to why the draft comments drastically shortened public comment periods; thankfully however, the final rule corrects this. In the draft, the public comment periods for draft EIS and RMPs were 60 days and draft EIS Amendments 45 days – a loss of 30 and 45 days respectively. The final rule has brought the minimum duration of public comment periods to 100 and 60 days, respectively. By increasing the minimums from the draft, it is clear the BLM understood NACD’s comment that “a sound review and analysis of draft RMPs, EIS, and amendments, require time.” While NACD would have liked to see a more structured extension request and response process, we appreciate BLM’s attention to this issue and understanding of the importance of public comments to the planning process.

A comprehensive, locally led-strategy is the best approach to public-lands management. The National Association of Conservation Districts looks forward to continuing to work with the Bureau of Land Management to preserve our public lands for multiple use and sustained yield.

Sincerely,

A handwritten signature in blue ink that reads "Lee D. McDaniel". The signature is written in a cursive style with a light blue background behind it.

Lee McDaniel
President