

Testimony of Mr. Pete Obermueller
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House Committee on Natural Resources
Subcommittee on Oversight and Investigations
“Local and State Perspectives on BLM’s Draft Planning 2.0 Rule”
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Chairman Gohmert, Ranking Member Dingell, and members of the Subcommittee on Oversight and Investigations, thank you for the opportunity to testify today on the Bureau of Land Management’s (BLM) Planning 2.0 proposed rule.

My name is Pete Obermueller. As the Executive Director of the Wyoming County Commissioners Association, I represent the Boards of County Commissioners in all 23 of Wyoming’s counties.

In Wyoming, the BLM manages approximately 18 million surface acres, and over 40 million subsurface acres in 22 of the state’s 23 counties. By necessity, elected County Commissioners all across the state are actively engaged in federal resource management plan revisions or amendments in various stages, NEPA analyses, Resource Advisory Committees, informal working groups, regional and national task forces on federal land issues, as well as their own locally derived land use plans and management programs.

In each of Wyoming’s counties and within our Association, we pride ourselves on our constructive efforts to engage with federal partners in meaningful ways that helps produce defensible results. The rights granted to counties under the Federal Land Policy and Management Act (FLPMA) is the statutory avenue for local involvement in federal land use planning. Wyoming’s counties take that duty very seriously, and thank this committee for its oversight on this rule proposal.

The BLM’s stated purpose of Planning 2.0 is to “promote the principles of multiple use and sustained yield on public lands...[and] ensure participation by the public, **State and local governments**, Indian tribes and Federal agencies...” Further, the agency proposes five objectives of coordination. They are:

- 1) Keep apprised of non-BLM plans;
- 2) Assure that the BLM considers those plans that are germane in the development of resource management plans for public lands;
- 3) Assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans;
- 4) 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; and
- 5) Where possible and appropriate, develop resource management plans collaboratively with cooperating agencies.

We support these objectives, caveated though they are, as they closely mirror the BLM's obligations under FLPMA. We applaud the BLM for bringing them to the forefront in this proposed rule as we have long held that coordination with local governments and local land use plans is the single most important effort the federal government can pursue to ensure local buy-in, diffuse tensions in the West, and realize ultimate success of land use plans or project specific environmental analyses.

Wyoming's Commissioners have greatly appreciated the input we have been afforded by the BLM on the development of this rule over the past two years. We have worked hard to develop a good working relationship with the BLM at all levels, and value our partnership with our federal partners. That is why we were hopeful that the BLM would use this opportunity to enhance the local government role and identify new opportunities for intergovernmental cooperation. Unfortunately that is not the outcome of this proposed rule, at least not yet.

Because of our fruitful engagement with the BLM, we take them at their word regarding their intentions to more closely coordinate with local governments under Planning 2.0. However, we remain concerned that the proposed rule as currently written takes steps away from the requirements placed upon the BLM for coordination in FLPMA, diminishes the role of cooperating agencies, and combines a move to centralize decision-making with a diffusion of local interests in ways that could lead to further marginalization of local governments and the communities they represent.

Coordination and the role of Cooperating Agencies

It is important to recognize that while FLPMA provides the agency some implementation latitude, the initial obligation of coordination with counties is not discretionary. Section 202 of FLPMA requires the Secretary to, at a bare minimum, attempt consistency with local land use plans and provide for meaningful involvement of local officials. Section 202(c)(9) of FLPMA reads, in part:

*"To the extent consistent with the laws governing the administration of the public lands, [the BLM shall] 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,... 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.” (43 U.S.C. 1712(c)(9))

Any evaluation of the BLM’s existing or proposed planning rules must begin with its adherence to the directives of its organic act. Here, Congress rightly identified local government as the appropriate conduit for the needs and desires of the public near federal lands in the planning process. Counties fulfill that obligation in many ways, but not in identical ways. In Wyoming we continually stress the importance of being prepared to offer empirical data to back policy suggestions, but that effort can take many forms.

Unfortunately the proposed rule goes beyond what is allowed under FLPMA by removing the current language that resource management plans be consistent with local “policies and programs.” The proposed rule limits the input of counties during the official planning process to only so-called “official land use plans.” Other data, no matter the quality or manner in which it was collected, will only be accepted in the newly conceived “planning assessment” phase. This is in direct contradiction to the plain language of FLPMA that requires an attempt at consistency with local “management programs.”

To be clear, we do not oppose the concept of the planning assessment. Early engagement with stakeholders is important. Rather, by placing data generated by local governments on par with other data submitted by single-focus special interest groups is a diminishment of the added authoritative weight Congress clearly intended local governments to possess. Additionally, it demonstrates a lack of sensitivity to the cultural norms of counties that for various reasons do not have official land use plans, and would be unable to produce one without significant electoral upheaval.

As FLPMA provides the statutory requirement of coordination, it is Council on Environmental Quality (CEQ) regulations promulgated under the National Environmental Policy Act (NEPA) that provides for the specific mechanism for county involvement as a so-called “Cooperating Agency.” When it is working correctly, Counties that participate in planning as a cooperating agency enjoy a level of engagement from the lead federal agency not afforded to the general public. This is as it should be because often Commissioners are the only people involved in the day-to-day planning process with both a broad view of the benefits and impacts of management decisions, and who are directly accountable to the public. At a minimum, any planning rule advanced by the BLM should not substitute narrow special interests for broad policy views.

To that end, we appreciate the proposed rule’s attempt to mirror much of the CEQ Cooperating Agency process used in NEPA analyses. The proposed rule maintains the requirement of federal agencies to invite cooperators to the table and solidifies the points at which cooperators will be consulted. The proposed rule adds an additional level of coordination with cooperating agencies at the “planning assessment” level. All of these are positive steps, but there are a few troubling limitations on cooperating agencies that must be addressed.

First, in defining a cooperating agency, the proposed rule inserts this new caveat:

“Cooperating agencies will participate in the various steps of the BLM’s planning process as feasible and appropriate, given the scope of their expertise and constraints of their resources.”(Proposed Rule at 9725)

Recognition of the limited resources of local governments is appreciated. However, we do not believe it wise for the BLM to appoint itself as the arbiter of what is “feasible and appropriate” for cooperating agency participation. In many instances Wyoming’s counties have gone well beyond expectations to provide not only meaningful comments, but additional resources to ensure that planning is as successful for their communities as possible. Because agencies only sometimes follow the requirement to coordinate, counties in Wyoming are proactive in seeking agency invitations and developing MOU’s with our federal partners. The scope of county participation can and should be determined in the MOU process and jointly agreed upon, not dictated by the BLM.

Second, the proposed rule establishes a new, two-part process for resource management planning that includes “plan components,” or the high level strategic planning of a certain plan area; and “implementation strategies,” or the actual boots-on-the ground efforts to implement the plan components. Cooperating agencies are included during the preparation of both, but excluded if the BLM desires to revise the implementation strategies. This exclusion during potential revisions jeopardizes successful implementation. Time and again we have found in Wyoming that the most successful plans and strategies are ones that have the support of local government. Without it the agency stands alone.

Local decisions vs. centralized authority

The BLM’s proposed rule goes to great length to describe the importance of shifting away from political boundaries and toward landscape scale decision-making. It is certainly the case that some resource management plans encompass landscapes and wildlife habitat that cross county and state lines. Attempting to plan at a larger, regional level is not in itself a bad thing. In fact, doing so could help to rationalize some planning efforts that are difficult to solve in separate, smaller areas.

However, in an effort to facilitate regional planning the BLM proposes to remove Field Managers and State Directors as the official with direct responsibility for drafting and approving resource management plans when those plans cross political boundaries. By substituting “responsible” and “deciding officials” appointed by BLM that may or may not be the regional manager or State Director, the agency runs the risk of setting itself up for failure by imposing a decision-maker on a community with which he has no established relationship and no working knowledge of the custom and culture of the area she now oversees.

It might be tempting to view this concern as seeing boogey-men where none exist. Indeed we are more concerned with how the BLM plans to engage with local governments than who is specifically placed in charge. However, we simply cannot ignore this risk of separation from local officials when it is combined with proposals in the rule to significantly broaden the scope of the BLM’s analysis beyond “local economies” toward enormous and nebulous analysis on “environmental, ecological, and social conditions,” and “regional, national, and international”

dependence upon BLM resources. The BLM has a difficult enough time completing local analysis in a timely fashion without introducing topics that are likely well beyond their expertise and resource availability.

We urge the agency to maintain its efforts to keep land use planning as local as possible, in terms of the people who write and approve the plans, the issues and areas for analysis, and in the process for developing and implementing them.

Establishing a successful and defensible planning process is not an exciting policy topic. It does not carry Hollywood buzz like fracking, or command attention like endangered species. But make no mistake, every single agency action – whether issue-based like fracking or single species conservation, or place-based like Areas of Critical Environmental Concern – is first viewed through this over-arching planning lens. It is here, in the governing planning document where the filters are set for information gathering, where the scales can be tipped toward one interest group or another, and where the BLM establishes for itself guidelines that can either promote sound decision-making or incentivize protests and litigation.

We appreciate that this committee has taken the time to explore this issue that is so fundamental to local participation in land use planning.