Testimony of

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On behalf of the

**New Mexico Cattle Growers' Association**

Before the

**U.S. House of Representatives Committee on Natural Resources**
**Subcommittee on Oversight & Investigations**

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Regarding

**Local & State Perspectives on BLM Planning Rule 2.0**

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Mr. Chairman, members of the Committee, thank you for the opportunity to speak to you today about this most important issue. My name is Caren Cowan; I am the Executive Director of the New Mexico Cattle Growers' Association (NMCGA) and the New Mexico Wool Growers, Inc. (NMWGI). Additionally, I published the **New Mexico Stockman** magazine and the **Livestock Market Digest** monthly newspaper. The NMCGA has members in all 33 of New Mexico's counties as well 19 other states. The NMWGI is New Mexico's oldest trade organization. The **Stockman** and **Digest** reach over 40 states in the nation ranging from Maine to Hawaii.

The use of Bureau of Land Management (BLM) lands in critical to the ranching communities of New Mexico as well as to NMCGA's members in numerous other states. Given the vast amounts of lands managed by the agency within the Western states, the ability for local governments to participate in federal activities on lands that make up a large majority of many counties is of critical importance.

I was blessed to have known some of the men who crafted the Federal Land Policy & Management Act (FLMPA). The proposed 2.0 planning regulations certainly don't reflect the concerns that lead to the creation of FLMPA, nor does it reflect the letter and intent of the law.

One of the beauties of FLMPA is the ability to make decisions on the ground with the involved publics following the multiple use mandates of the BLM. This proposal will destroy that ability, favoring the command and control, top driven down decisions that are so distasteful with other land management agencies.

Not only is local government participation in planning is a huge concern, but the redefining the term “landscape” to cover vast amounts of land without the recognition of geopolitical boundaries is a not well-veiled attempt at federal control over counties and states.

The proposed planning rule also eliminates the requirement that Areas of Critical Environmental Concern (ACEC) must still be managed for “multiple use” by eliminating a sentence in the existing ACEC definition that states “the identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands.”

By eliminating that sentence, the BLM is granting to itself the ability to eliminate multiple uses from ACECs. Although the BLM describes ACEC designation as the BLM’s attempt to “clearly communicate the BLM’s intention to prioritize these recourses values or uses,” such prioritization will lead to elimination of use.

These are but a few concerns within the 244 page proposal. I could go on for some time, and did in my written comments.

The request we bring you today is that the process of the development of a new planning proposal be slowed downed and backed up to include all of those who utilize BLM lands. This process should include at least one meeting in each state, better yet with in district.

To date there has been one public meeting in 2015 in California and another in Colorado in 2016. The Denver meeting was a “webinar” on a weekday in the middle of the day. That certainly does fit into a timeframe that most working Americans can participate in.

We have requested up a 180 day extension on the comment period, but were granted only a paltry 30 days. We hope that the BLM will reconsider this short extension and provide one that is more meaningful.

Thank you for your time today.

**Specific comments:**

**Background**

February 11, 2016, the Bureau of Land Management ("BLM") introduced new draft planning regulations ("draft Planning 2.0") to "enable the BLM to more readily address landscape-scale issues . . . and to respond more effectively to environmental and social change." The statutory authority for the BLM to adopt these new planning regulations is the ("FLPMA"). FLPMA was adopted in 1976; that Act (1) changed the BLM's mission from the disposal of public land to retention of these lands, (2) required the BLM to prepare land and resource management plans ("RMP") which govern all activities on the BLM-managed lands, and (3) required that BLM lands be managed for "multiple use and sustained yield."

FLPMA itself, as well as the current BLM regulations, mandate the involvement of State and local governments and Indian Tribes (collectively "local governments") in the BLM's decision making process. However, although the BLM claims that the draft Planning 2.0 regulations do not change the BLM's "practice" in developing RMPs, some areas in the draft rules are a significant departure or the language of the agency's previous planning rules and in some cases a significant departure for the agency's interpretation of FLPMA. In my view, these changes are detrimental and severely limit local governments' involvement in the BLM planning process. The BLM's rationale for these changes makes no sense. Words mean something; thus, if there is no change "in practice" as the BLM claims, why is there a change in the language being used to support that practice?

A. General Comments:

1. The draft Planning 2.0 regulations would eliminate 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 [BLM] responsible official has reason to believe would be interested in the resource management plan or plan amendment." In other places, the new regulation replaces the required notification requirements with the requirement for notification to only those local governments the BLM believes would be "concerned with" or "interested in" the federal land use plan.
2. Throughout the draft Planning 2.0 regulations, the BLM proposes to replace the word "shall" and replace it with the word "will." Although

some courts have determined that the word “will” denotes a mandatory action, others have held that the word “will” must be read in context to determine its meaning. On the other hand, I found no court cases that held that the word “shall” can have any other meaning except a mandatory command. If this BLM change denotes “no change in practice,” it is hard to understand why this change is necessary.

3. FLPMA requires management of BLM lands for multiple use and sustained yield. Nowhere in FLPMA does Congress allow the management of BLM lands for “social changes.” However, according to BLM draft Planning 2.0; “Goal 1” is to “improve the BLM’s ability to respond to social and environmental change in a timely manner.”
4. It is not clear how the draft Planning 2.0 rules intersect with the requirements for environmental, economic and “custom and culture” analysis pursuant to the National Environmental Policy Act. For example, the draft Planning 2.0 rules describe BLM’s planning as a two-step process with the first step being for the BLM and public to understand the current “baseline in regards to resource, environmental, ecological, social and economic conditions in the planning area.” NEPA also requires that baseline information be gathered and additionally, that the status quo management be the “no action alternative.” I believe it is critical to ensure that the “status quo” or “no action alternative” accurately reflect the current baseline and not be some departure from analysis that accurately describes exactly the conditions as they exist.
5. The comment period for review of draft land use plans is shortened from 90 days to 60 days and the comment period for review of land use plan amendments is shortened from 90 days to 45 days.

B. Local Government Involvement in BLM Land Management Plan Decisions.

The BLM draft Planning 2.0 regulations represent a significant departure in the way that local governments can become involved in the BLM decision making process. Specifically the draft regulations provide less opportunity for local governments to have meaningful and significant input in violation of FLPMA.

1. Consistency Review With Local Land Use Plans, Policies and Programs

a. The draft Planning 2.0 regulations strictly limits the types of local government plans that the BLM will consider as part of its consistency review. Existing BLM regulations state that:

> The BLM is obligated to take all practical measures to resolve conflicts between federal and local government land use plans. Additionally, the BLM must identify areas where the proposed [BLM] plan is inconsistent with local land use policies, plans or programs and provide reasons why inconsistencies exist and cannot be remedied.

**§1601.0-4 Responsibilities.**

The proposed regulations would shift responsibility for determining the deciding official and planning area from state directors to the BLM director. Westerners are concerned about this shift of responsibility farther away from the level at which plan components will be implemented. It is paramount that decision makers have first-hand knowledge of local resources, their uses, and benefits to communities. Additionally, designation of planning area boundaries from a national perspective to address landscape-scale priorities could lead to plan components that address national concerns while local concerns and impacts are obscured.

**§1601.0-5 Definitions.**

This section would modify, delete, and create new terms. Rather than addressing changes here, each will be addressed under their corresponding section of the proposed rule.

**§1601.0-8 Principles. (Emphasis added)**

The existing rule requires BLM to consider the impacts of RMPs on local economies and uses of adjacent or nearby non-federal lands. The proposed rule would expand the consideration of impacts to include, *"resource, environmental, ecological, social, and economic conditions at appropriate scales."* One could agree with the expanded array of impacts to consider; however, the analysis of impacts of a RMP must focus primarily on local impacts.

Local communities, economies, customs, and culture are most impacted by changes in federal land management. While impacts at the regional or national scale are important, they must not be the focus of an impacts analysis. Westerners are opposed to the proposed language that makes the scale of analysis a subjective determination which could lead to masking of local impacts. Assessing impacts at the local level is necessary, appropriate, and should be required.

**§1610.1-1 Guidance and general requirements. (Emphasis added)**

The description of guidance in the proposed regulation is similar to existing regulation. However, existing regulations at §1610.1(a)(3) require that state level guidance be developed, *"…with necessary and appropriate governmental coordination…"* This is a significant and unjustified change from current regulation. Coordination and consistency with state, local, and tribal plans and policies are paramount to successful planning efforts and required by FLPMA. Policies, analysis requirements, planning procedures, and other instructions have a major effect on the outcome of land management planning. The existing coordination and consistency requirements for guidance should be included in the proposed regulation.

Existing §1610.1(b) would be removed because proposed §1601.0-4 provides the direction for determining future planning areas. As stated above, expansion of planning areas to achieve national objectives could lead to local impacts being ignored. One can understand the need to have flexibility in determining planning areas; however, matters of importance to local communities must not be disregarded.

The proposed §1610.1-1(c) would stipulate that BLM will use high quality information to inform land management planning. The definition of high quality information at proposed §1601.0-5 contains no direction regarding the use of up-to-date information. In situations where the best available scientific information is outdated, its use could lead to misinformed decisions.

**§1610.1-2 Plan components. (Emphasis added)**

The proposed §1610.1-2(a) describes the required goals and objectives that would provide desired outcomes and resource conditions that all other plan components must support. Goals are described as desired outcomes that address resource, environmental, ecological, social, or economic characteristics toward which management should be directed, and objectives are desired resource conditions developed to guide progress toward goals.

All other plan components must be designed to achieve the goals and objectives. This hierarchy creates a situation where all plan components are subordinate to goals. Section 102(a)(7) of FLPMA states, *"goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law."* To comply with FLPMA, the proposed regulation should require that RMPs include multiple use and sustained yield goals.

The existing regulation at §1601.0-5(n)(2) requires that RMPs include, *"Allowable resource uses…and related levels of production or use to be maintained."* This, or similar, language should be carried forward as a required goal in the proposed planning rule. FLPMA, at Section 103(l), defines the principal or major uses of federal land. These uses should have specific requirements as plan components in the proposed rule.

**§1610.1-3 Implementation Strategies. (Emphasis added)**

The proposed rule would make inclusion of implementation strategies in a RMP discretionary. Implementation strategies are described as management measures, monitoring procedures, or other strategies that assist in implementing future actions on federal land. Implementation strategies would not be a plan component, and thus, changes to implementation strategies would not require a plan amendment or formal public involvement and interagency coordination.

BLM's need to be able to update implementation strategies in a timely manner as new information or techniques become available is understandable. However, this should not be done behind closed doors. Public input as well as the coordination and consistency requirements with state, local, and tribal governments should apply to development and update of implementation strategies. Local input is vital to ensuring the most suitable implementation strategies are used. State, local, and tribal governments have expertise germane to the development of implementation strategies and must be involved beyond the proposed 30 day review period prior to implementation.

FLPMA at Section 202(c)(9) requires BLM to, *"…coordinate the land use inventory, planning, and management activities..."* with state and local governments. Implementation strategies are described in the proposed regulation and the preamble as management measures, practices, and actions BLM may take to implement an RMP. The proposed regulations violate FLPMA in stating that implementation strategies are not subject to coordination and consistency requirements with state, local, and tribal governments.

**§1610.2 Public Involvement.**

The proposed rule distinguishes between opportunities for public review and formal comment. Public review, while providing a certain level of transparency, does not constitute meaningful involvement.

Existing regulations require BLM to accept formal comment for proposed planning criteria, draft RMP and environmental impact statement (EIS), and significant changes made to a proposed plan prior to approval. The proposed regulations would only provide opportunity for formal comment for the draft RMP and EIS and any significant changes made to a proposed plan prior to approval. There are many new opportunities for public review, but this places no requirement on the BLM for considering outside input.

The proposed §1610.2-2 would reduce the minimum comment period of 90 days for RMPs and EIS level amendments to 60 and 45 days respectively. EISs are large and complex documents that must be analyzed in detail in order to provide substantive comments. By its very nature, any EIS level analysis represents a major federal action

with significant impacts. Westerners suggest that the minimum 90 day comment period for any EIS level analysis be carried forward in the proposed regulations.

**1610.3-1(d)(1), (2), (3) Coordination with other Federal agencies, State and local governments, and Indian tribes. (Emphasis added)**

In contrast, the draft Planning 2.0 regulations would eliminate any consistency review for local land use "policies, programs and processes" and only consider inconsistencies with "an officially adopted land use plan." This change would require a local government to have a "land use plan," and not just a land use policy or program for consistency review. This type of language will limit many local governments' ability to take advantage of the consistency review requirements if they do not have an "officially approved or adopted land use plan."

Proposed §1610.3-1(a) would prescribe that coordination be accomplished, *"…to the extent consistent with federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations."* Coordination should be conducted in manner consistent with federal law; however, coordination is not subordinate to regulations, purposes, policies, and programs of such laws. In fact, these regulations, purposes, policies, and programs should be developed in coordination with state, local, and tribal governments to meet the intent of FLPMA.

We support the expanded involvement of cooperating agencies under proposed §1610.3-1(b). Our experiences as a cooperating agency in the past have been somewhat disappointing due to the lack of meaningful involvement in the planning process. It is imperative that BLM provide cooperating agencies with ample opportunity to provide input and ensure that input is incorporated into planning efforts.

The preamble requests comment regarding engagement of eligible governmental entities during the proposed assessment step which would be prior to formalizing a cooperating agency agreement. Coordination should be a continual dialogue between BLM and engaged state, local, and tribal governments. BLM should take steps to encourage this dialogue with all governmental entities with interests germane to the development of federal land management plans. If coordination is occurring, involvement prior to a formal cooperating agency agreement should already be taking place.

b. The draft Planning 2.0 regulations eliminates this entire section from the existing regulations:

(d) In developing guidance to Field Manager, in compliance with section 1611 of this title, the State Director shall:

(1) Ensure that it is as consistent as possible with existing officially adopted and approved resource related plans, policies or programs of

other Federal agencies, State agencies, Indian tribes and local governments that may be affected, as prescribed by §1610.3–2 of this title;

(2) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide reasons why the inconsistencies exist and cannot be remedied; and

(3) Notify the other Federal agencies, State agencies, Indian tribes or local governments with whom consistency is not achieved and indicate any appropriate methods, procedures, actions and/or programs which the State Director believes may lead to resolution of such inconsistencies.

§1610.3-1(d).

In other words, local government involvement would be limited to ONLY BLM land use plans and not the guidance provided from the BLM State Director to develop such land use plans.

c. BLM is also proposing to weaken its consistency review requirements by adding that consistency with local land use plan will only be "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."

In contrast, the existing regulations require that:

(a) Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans.

(b) In the absence of officially approved or adopted resource-related plans of other Federal agencies, State and local governments and Indian tribes, guidance and resource management plans shall, to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes. Such consistency will be accomplished so long as the guidance and resource management plans are consistent with the policies, programs and provisions of Federal laws and regulations applicable to public lands, including, but not limited to, Federal and State pollution control laws as implemented by

applicable Federal and State air, water, noise and other pollution standards or implementation plans.

§1610.3-2(a), (b).

In other words, under the existing regulations, so long as a local land use plan, policy or program was consistent with Federal statute, the local land use plan, policy or program would be included in the consistency review analysis by the BLM. Under draft Planning 2.0, the local land use plan is required to be (at least in the opinion of the BLM) consistent with Federal law, and "the purposes, policies and programs of such laws and regulations." Requiring that local land use plans be consistent with BLM policies and programs significantly diminishes the ability of local governments to influence these same BLM policies and programs. For example, FLPMA mandates "multiple use and sustained yield." Describing the policy for how such multiple use is to be achieved is exactly the type of information that can and should be included in a local land use plan. Under the draft Planning 2.0 regulations however, the local government would be prohibited from including a policy to achieve multiple use in a local land use plan that is different from the BLM's policy for achieving multiple use. This draft rule significantly limits the scope of what can be included in a local land use plan.

d. There is also a shift in the burden of showing that an inconsistency exists from the BLM to the local governments. Specifically, under the draft 2.0 Planning regulations, the BLM will only consider inconsistencies with a local land use plan if the BLM is specifically notified, in writing, about a specific inconsistency.

e. The BLM is proposing to change the phrase "assist in resolving, to the extent practical and consistent with Federal law, inconsistencies between Federal and non-Federal government plans." (Emphasis added). The original word used on this section was "practicable" rather than "practical." Although the BLM claims that the change in wording is simply for readability, these two words have different meanings. Practicable is a more narrowly defined term meaning "capable of being put into practice." In contrast, "practical," in this context, means capable of being put to use." To understand the distinction, synonyms of "practicable" are possible, doable, and feasible; a synonym of "practical" is useful or sensible. In terms of the consistency review, the BLM then would propose to change the meaning of the requirements from, the agency must assist in resolving inconsistencies to the extent possible (practicable) to resolving inconsistencies to the extent sensible or useful (practical).

2. Local Governments as Cooperating Agencies

   a. Although the BLM claims it is only trying to be consistent with existing practices and current BLM terminology, the BLM is eliminating the term “cooperating agency” as used in NEPA and replacing it with the term “eligible governmental entity” as described in the Department of the Interior regulations at 43 C.F.R. § 46.225(a). According to the BLM regulations, an “eligible governmental entity” can be considered as a “cooperating agency.” Although it appears that the definition of an “eligible governmental entity” is similar to a “cooperating agency,” I think this change in language is going to cause great confusion and may certainly exclude some local government participation if the local government does not understand that an “eligible governmental entity” is the same as the more familiar “cooperating agency.”

   b. Of greater concern is the BLM’s addition of the term “as feasible and appropriate” given the eligible governmental entities’ “scope of their expertise.” Although BLM states that it intends no change from current practice or policy, this language could certainly be used by the BLM to strictly define a local government’s special expertise or to determine that local government participation is not “feasible or appropriate” if adopted by the draft Planning 2.0 regulations.

   c. Additionally, the BLM authorized officer would no longer be required to notify the BLM State Director if a request for “cooperating agency” is denied. Under the existing regulations, if a BLM authorized officer denies a request for cooperating agency, he shall notify the State Director who shall conduct an independent review to determine if the denial was appropriate. That State Director’s review would be eliminated under the draft planning 2.0 regulations.

3. Coordination

FLPMA requires that the BLM “coordinate” its plans and programs with those of State and local governments, although the statute is silent on how such “coordination” is to occur. Under any definition however, “coordination” implies some measure of input and trying to work together. In contrast, under the draft Planning 2.0 regulations,

"coordination" would only include the BLM providing to local governments "the opportunity for review, advice and suggestions on issues and topics which may affect or influence other agency or governmental programs." Additionally, while currently "coordination" is to occur "consistent with Federal laws," the draft Planning 2.0 regulations would also add that "Coordination" would occur consistent with "the purposes, policies and programs of use [Federal] laws and regulations." The policies under the Federal statutes can change with the President, Secretary of the Interior and BLM Director in control at the time. That may limit the ability of local governments to coordinate in some circumstances.

4. Governor's Consistency Review

The new draft Planning 2.0 rules place more work on the Governor during the "Governor's Consistency Review."

a. The Governor is required to identify inconsistencies between State and local government plans to bring to the attention of the Director of the BLM. The BLM will only consider "identified" inconsistencies between State and local plans and the proposed resource management plan if such inconsistencies are noted by the Governor.

b. BLM will only accept the Governor's recommendation if the BLM Director determines that the Governor's recommendations "provide for a reasonable balance between the national interest and the State's interest."

Proposed §1610.4(a)(2) requires the responsible official to identify relevant national, regional, or local policies, guidance, strategies, or plans to inform the assessment. It is paramount that the deciding official coordinate with state, local, and tribal governments when making the relevance determination for their plans, policies, and programs. BLM is required by FLPMA to keep apprised of and seek consistency with state, local, and tribal plans. Westerners suggest that language from existing §1610.4-4(e), *"Specific requirements and constraints to achieve consistency with policies, plans, and programs…"* of state, local, and tribal governments, be incorporated as a requirement for the assessment. Identification of potential issues at the earliest possible stage of planning should make RMP development more efficient.

Proposed §1610.4(c)(5) list ten separate types of areas of importance to be include in the assessment. Why are these ten types of resources singled out from the inventory of all public lands and their resource and other values required by Section 201 of FLPMA? Under what authority does BLM place a greater degree of importance on the listed resources over other resources on federal land?

This effectively creates new types of administrative special designations. The only administrative special designation authorized by FLPMA is an area of critical environmental concern (ACEC). ACECs must meet relevance and importance criteria in addition to requiring special management attention. The existing and proposed regulations include identification of potential ACECs. Are these areas of importance going to be subject to the requirements for ACEC designation? If not, where does BLM get the authority to create these new special designations?

Proposed §1610.4(c)(5) requires the assessment to consider, *"The various goods and services, including ecological services, that people obtain from the planning area…"* Why are ecological services singled out from the suite of goods and services that people obtain from federal lands? Section 103(l) of FLPMA states, *"The term "principal or major uses" includes and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production."* Through FLPMA, it is clear that Congress intended that BLM planning place priority on the principle or major use. The proposed regulations should specifically require that sustained levels of the principal or major uses be addressed in the assessment and throughout the planning process.

The assessment report provides the foundation from which a RMP is developed. Proposed §1610.4(d) provides that the planning assessment report will be made available for public review. We request that BLM include a formal comment period with the release of the planning assessment report.

**§1610.5 Preparation of a resource management plan.**

Proposed §1610.5-1(a) requires the preparation of a preliminary statement of purpose and need for the RMP. The preamble states that this statement informs the development of all subsequent steps in the preparation of a RMP. Given that this statement of purpose and need provides the foundation for development of a RMP, why is it only available for public review and not formal comment? This central part of the planning process must be subject to formal public comment as well as coordination and consistency requirements with state, local, and tribal governments.

Proposed §1610.5-2 describes how preliminary alternatives and the preliminary rationale for alternatives would be developed and made available for public review. This part includes that BLM may change the preliminary alternatives or rationale based on public suggestions or other information received. If BLM anticipates receiving unsolicited information that merits change to the alternatives, would it not be prudent to have a formal comment period for preliminary alternatives?

The basis for analysis of alternatives is described at proposed §1610.5-3. The estimated effects of alternatives provide justification for alternative selection, a record of decision, and RMP implementation. Procedures, assumptions, and indicators used to

analyze alternatives must be valid, and formal involvement, beyond public review, is essential at this important step.

The preamble for proposed §1610.5-4 requests comment regarding whether BLM should have the option to select one, multiple, or no preferred alternatives in draft RMPs. Implementation of a RMP or amendment can take many years due to a variety of factors including litigation. Consistent access to resources on BLM lands is foundational to many economies. A single preferred alternative provides some measure of what to expect for businesses that rely on access to BLM lands for their operations. We request that BLM continue to select a preferred alternative for RMPs and amendments and provide a robust explanation of the reasoning behind selection of the alternative.

Proposed §1610.5-5 provides for preparation of the proposed RMP, final EIS, and implementation strategies. For reasons stated above, we are opposed to implementation strategies being developed without formal public input and the coordination and consistency requirements with plans, policies, and programs of state, local, and tribal governments.

**§1610.6 Resource management plan approval, implementation and modification.**

Proposed §1610.6-2(a) describes who may protest a RMP and what issues may be protested. Existing regulations at §1610.5-2(a) provide that issues submitted for the record during the planning process may be protested. The proposed §1610.6-2(a) limits protests to issues submitted for the record during preparation of the RMP or plan amendment. As stated in proposed §1610.4, the BLM must complete a planning assessment before initiating the preparation of a RMP. Thus, issues associated with the assessment report are not subject to protest. As stated above, the assessment report is a foundational document for a RMP and should be open to official comment and protest.

Proposed §1610.6-2(a)(3) describes the content requirements for a protest. Protests would have to include a concise statement of why a plan component is inconsistent with federal laws or regulations applicable to federal lands, or the purposes, policies, and programs of such laws and regulations along with how the issue was raised during preparation of the RMP. Existing regulations at §1610.5-2(a)(2)(v) allow for a protest to be based on, *"A concise statement explaining why the…decision is believed to be wrong."* The proposed regulation may result in dismissal of valid protests.

A significant amount of discretion is afforded to the responsible official in developing a RMP or amendment. This discretion applies to high quality information, assumptions, methodologies, interpretations, and procedures used in the analysis to justify decisions. A valid disagreement regarding any of these discretionary planning tools may not directly conflict with federal law but should be considered a valid protest.

The proposed regulations should be revised to ensure that protests of this nature are not dismissed.

Existing regulations for monitoring and evaluation of RMPs at §1610.4-9 include the requirement for BLM to determine, *"…whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes…"* to warrant amendment or revision of a plan. This is an important part of BLM's responsibility to keep apprised of state, local, and tribal land use plans as mandated by Section 202(c)(9) of FLPMA. The proposed §1610.6-4 should include this important component of monitoring and evaluation.

**§1610.8-2 Designation of areas of critical environmental concern.**

ACEC designation is an important part of BLM planning. The special management attention required by designated ACECs can have a significant impact on resource use and management. Under existing and proposed regulations, both the relevance and importance criteria must be met in order for an ACEC to be designated. These criteria are entirely subjective. Existing §1610.7-2 includes, *"…requires qualities of more than local significance…"* with the importance criteria. Proposed §1610.8-2 would remove this requirement. While this is also a subjective term, it does construe that some level of importance beyond the local level is needed to designate an ACEC. The preamble states this is vague and unnecessary, and many examples exist where local significance has been determined to meet the importance criteria. These ACECs did not meet the current regulatory requirements of an ACEC and should not have been designated.

Existing regulations recognize the importance of resource use limitations or special management attention that is required for ACECs. This is the reason for the required Federal Register notice specifically identifying proposed ACECs along with their use restrictions and the 60-day formal comment period. NMDA requests that his formal notice and comment period be retained in the proposed regulations.

In summary, these draft Planning 2.0 regulations detrimentally deprive local governments of the ability to influence BLM land use plans. By placing such significant constraints on local governments, the entire premise behind the "government-to-government" interaction is weakened.