

**Testimony of James D. Ogsbury, Executive Director
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**Before the
United States House of Representatives
Committee on Natural Resources
Subcommittee on Oversight and Investigations**

**Oversight Hearing on the Bureau of Land Management's Planning 2.0 Initiative
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Good afternoon, Mister Chairman, Ranking Member Dingell, and members of the Subcommittee. My name is James D. Ogsbury. I serve as Executive Director of the Western Governors' Association. WGA is an independent, non-partisan organization representing the Governors of 19 western states and three U.S.-flag islands. I am honored to be here to share perspectives of Western Governors regarding the U.S. Bureau of Land Management's (BLM) recently released proposal, *Resource Management Planning* – or, Planning 2.0.

In Planning 2.0, BLM proposes a number of changes in how it develops and implements resource management plans (RMP). The stated purposes of these changes are to clarify existing language, address landscape-scale management issues, and more effectively involve governmental and stakeholder partners.

Upon review of the proposal, Western Governors have concluded that what the agency has proposed will have quite opposite effects from what it intended: confusion rather than clarity, less transparency rather than more. This proposal, if instituted, will significantly reduce the opportunity for Governors, state regulators, local governments and the public to engage in what needs to be a collaborative land management planning process for huge swaths of the American West.

State Consultation

Western Governors have very clear expectations regarding how federal agencies should interact with them when developing regulatory programs impacting states. To quote WGA Policy Resolution [2014-09](#), *Respecting State Authority and Expertise*, "Western Governors support early, meaningful and substantial state involvement in the development, prioritization and implementation of federal environmental statutes, policies, rules, programs, reviews, budget proposals, budget processes and strategic planning." The rationale behind this position is a logical one: states have statutorily- and Constitutionally-recognized authority to manage lands and resources within state borders.

Governors expect federal land management agencies to respect states as sovereign and full partners. As the chief executive officers of their states, Governors also expect to play the principal role in determining the best-situated state governmental entity with which an agency should consult on any given issue.

Governors have been very explicit in delineating what, in their opinion, qualifies as “early, meaningful and substantial” consultation:

- **Predicate Involvement:** agencies taking into account state data and expertise to use as a basis for federal regulatory action;
- **Pre-publication / Federal Agency Decision-making:** pre-rulemaking consultation with Governors *and* state regulators, including substantive consultation with states during development of regulations – and prior to launch of formal rulemakings;
- **Post-publication / Pre-finalization:** Governors *and* state regulators should have the ability to engage with agencies on an ongoing basis to seek refinements to proposed regulations – again, prior to rule finalization; and
- **Rule / Policy Implementation:** agencies should defer to states to formulate implementation and compliance plans where statutorily-recognized delegated programs exist.

The process BLM engaged in with states during development of Planning 2.0 falls short of the Governors’ definition of consultation. In September of 2014, BLM representatives briefed the WGA’s Staff Advisory Council on preliminary efforts related to Planning 2.0. That briefing focused on matters such as an explanation of BLM’s interest in landscape-scale planning and the agency’s general timeline and project leadership for the initiative. BLM representatives were not able to respond to substantive questions from Governors’ representatives during that briefing.

BLM later noted in its proposal that it had consulted with WGA during rule development. Western Governors view this preliminary briefing – and a subsequent exchange of correspondence between WGA leadership and Interior Secretary Sally Jewell – as short of the consultation contemplated in WGA Policy Resolution 2014-09. Secretary Jewell did state “[a]s new information becomes available on the [2.0] Initiative, BLM will provide updated briefings to state and local representatives through... the WGA... and other venues as appropriate.” These updated briefings did not take place.

Central to the Western Governors’ position is that agency/state consultation should be substantive and should take place on an early – *and ongoing* – basis. The two preliminary communications from BLM and DOI failed to achieve this standard.

Governors' Consistency Reviews

BLM's Planning 2.0 proposal includes a number of provisions that weaken the value and impact of Governors' Consistency Reviews in the RMP development process:

- It states that RMPs must be consistent with officially approved or adopted land use plans of other agencies, state governments, local governments, and tribal governments only "to the maximum extent practical..." Yet, the Federal Land Policy and Management Act of 1976 (FLPMA)'s Section 1712(c)(9) states, "Land use plans of the Secretary under this section *shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act.*" FLPMA clearly does not permit BLM to limit the consistency requirement merely because the agency thinks consistency would be impractical.
- The time allotted for Governors to conduct their Consistency Reviews is limited to 60 days. The clock alone would forestall states from exercising their statutory right to provide meaningful review of RMPs. Western states have extensive experience working with federal RMPs. These lengthy documents contain extremely nuanced resource-specific – and often site-specific – information. Federal RMPs guide federal planning decisions for their designated area for up to several decades. Western Governors argue vigorously that development of foundational documents such as federal RMPs should include significant input from Governors and state regulators. That simply cannot occur under the structure suggested by the Planning 2.0 proposal.
- Not only does BLM propose to severely limit the time allotted, it also seeks to limit the scope of Governors' Consistency Reviews. The rule would narrow the scope of Governors' reviews by removing the words "policies, programs, and processes" from the definition of officially approved and adopted land use plans.

Governors would no longer be afforded an opportunity to raise concerns based on inconsistencies between BLM RMPs and the very "state policies, programs, and process" that guide state planning efforts and decision-making but are not part of officially approved and adopted state land use plans. This would clearly limit Governors' participation in RMP review and is especially problematic for states engaged in shared management of threatened and endangered species with vast ranges that span multiple planning areas and multiple states. This change could preclude BLM's consideration of various kinds of state-endorsed plans – for instance State Wildlife Action Plans and multi-state agreements. Multi-state agreements have been used for decades to conserve resources like threatened or endangered species. These plans exhibit effective and ongoing cross-jurisdictional planning between states – planning that has taken place on a landscape-level basis. Preclusion of such plans by BLM would undermine its goal of planning on a landscape scale and would threaten existing state conservation efforts.

Governors have primary decision-making authority for management of state resources, and have enacted effective plans to manage and conserve western resources. They therefore must be afforded an opportunity to raise *any* concerns that arise, not just those concerns that arise from inconsistencies between BLM and state plans.

- The proposed rule states BLM may consider whether to adjust the timeline or appeal process for a Governor's Consistency Review. To endow an agency with the flexibility to simply change the process — particularly the mechanism for states to appeal BLM's decision regarding a Governor's Consistency Review — would operate to the clear disadvantage of states.

Planning Assessment

BLM proposes to establish a new step in the RMP development process: the planning assessment. This assessment would occur during the scoping process, before BLM begins work on an RMP. The goal is to, "combine and revise existing steps for inventory data and information collection and the analysis of the management situation."

This portion of the rule needs to clarify: the process for states to be substantially and meaningfully involved in development of a planning assessment; BLM's obligation to use state data and information; how state data and information will be gathered; and how — and when — information supporting assessments will be made available to the public.

Proposed Changes to Public Involvement Processes

Early, meaningful and substantive engagement of Governors and their designated state regulators is crucial to the RMP development process. Western Governors also believe that any open and collaborative federal regulatory process *must* involve adequate opportunity for engagement of the public. BLM's proposal falls short in this regard. The agency proposes to shorten two key procedural aspects of RMP development:

- BLM proposes to shorten comment periods for draft RMPs — and the draft environmental impact statements which must accompany RMP development — by a full one-third, from 90 days to 60 days; and
- BLM proposes a 45-day minimum comment period — a full 50 percent reduction from the current 90-day minimum — for EIS-level amendments.

Reductions in public comment timelines will greatly limit input of stakeholders, many of whom are likely to be directly affected by RMPs for an extended period of time. Additionally, significant changes can take place between the time that RMPs and environmental compliance documents are drafted. BLM should retain the existing minimum public comment period timeframes so that states, local governments and other stakeholders will have adequate time to

fully analyze proposed changes and provide meaningful feedback on foundational, long-term land management decisions.

BLM has based its proposed reduced public comment timelines on a premise that doing so will reduce the overall decision-making timeline. Western Governors, however, are concerned that reducing the opportunity for stakeholder input early in the planning process will ultimately result in increases to the overall planning and RMP implementation timeframes as stakeholder concerns are raised later in the process. Potential litigation stemming from these stakeholder concerns could further extend planning and implementation timelines.

Changes to Water Management Aspects of RMPs

BLM's proposed rule indicates the agency may also add provisions to its RMPs that could result in greater agency involvement in water management, a concerning potentiality for western states. As stated in WGA Policy Resolution [2015-08](#), *Water Resource Management in the West*, "Western Governors believe federal partners must continue to recognize states' primary authority to develop, use, control and distribute surface and ground water within state boundaries."

Additionally, BLM's proposal indicates the agency may add provisions to RMPs that could provide for greater involvement in areas affecting traditional state authority. These areas include:

- Managing wetlands to buffer the effects of weather fluctuations by storing floodwaters and maintaining surface water flow during dry periods;
- Identifying and responding to the degree of "local dependence on potable water from groundwater recharge in the planning area;"
- Estimating the sustained levels of potable water from groundwater recharge based on the current and projected rainfall averages for an area; and
- Considering the long-term needs of future generations for renewable and non-renewable resources including watersheds.

It is vital that nothing in BLM's proposed rule be construed as affecting states' primacy over allocation and administration of water resources in state borders. BLM's Planning 2.0 must exhibit agency recognition and deference to states' legal rights to allocate, develop, use, control, and distribute the states' waters.

Potential implications for water management and quality, and project development and maintenance, that should be considered by the agency include:

- Siting for new water infrastructure on public lands;
- Operation and maintenance of existing water infrastructure located on public lands;
- Intrusions on states' exclusive authority on water administration and development; and
- Impacts on existing watershed plans under Section 319 of the Clean Water Act.

Transparency

Any process that reduces BLM's responsibility to actively engage with stakeholders represents a retreat from openness and transparency. Yet that is what BLM suggests in Planning 2.0. Currently BLM publishes RMP documents exclusively in the *Federal Register*. The Planning 2.0 proposal, however, would permit the agency to forego formal publication of many RMP-related documents. Those documents could instead be posted to the BLM website and at BLM offices within an RMP planning area. This change would significantly impair the ability of affected stakeholders, local governments and states to monitor, understand and participate in the RMP development and amendment processes.

The public should be afforded a clear and consistent opportunity to review and comment on proposed new or revised federal RMPs. This is particularly true given that management plans have a direct and substantial impact on existing multiple use rights such as grazing permits, road rights-of-way, conventional and renewable energy development permits, and rights-of-way for electricity transmission and distribution infrastructure.

Summary

In summary, BLM's Planning 2.0 proposal, as drafted, presents serious challenges and contains significant shortcomings. This is unfortunate, not only for states, but also for local governments and stakeholders. In WGA's estimation, much of the opposition to this proposal would have been mitigated had BLM engaged in "early, meaningful and substantial" consultation with Governors in the formative stages of the rule's development.

Chairman Gohmert and Ranking Member Dingell, thank you for the opportunity to testify today and to provide the Subcommittee with the viewpoints of the Western Governors I serve. I hope my testimony has been helpful to the Subcommittee. I welcome any questions you or your colleagues may have.