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TOWARD PLANNING 2.0: THE NEW LANDSCAPE OF BLM PLANNING

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INTRODUCTION

Yogi Berra has been quoted as saying, “If you don’t know where you’re going, you might not get there.”¹ This sentiment aptly describes the activities of the Bureau of Land Management (BLM or the Bureau) prior to 1976. Congress may have shared this sentiment when it enacted the Federal Land Policy and Management Act of 1976 (FLPMA or the Act),² which required the BLM to manage the vast lands in its charge according to resource management plans (RMP). RMPs act as roadmaps, guiding management decisions for specific geographic areas toward the broad objectives set forth in FLPMA. Historically, RMPs have been developed at a district or field office level. Increasingly, however, BLM has been moving in the direction of landscape-level management and now appears ready to revamp the process by which it develops its RMPs. BLM is calling the initiative to overhaul the resource management planning process “Planning 2.0.” This paper examines the shift toward landscape-level planning and management and discusses some of the more significant ways this change from local planning to regional or national planning and management may affect stakeholders in public lands.

FLPMA’S PLANNING REQUIREMENTS

FLPMA contains a number of substantive and procedural guidelines for the Bureau. Substantively, the Act sets forth broad policy declarations intended to undergird all the Bureau’s actions. Among them is the admonition that land management should be based on the principles of multiple use and sustained yield.³ This is no small task. “Multiple use management,” as characterized by the United States Supreme Court, is “a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, ‘including, but not limited to, recreation, range, timber, minerals,

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1. YOGI BERRA & DAVE KAPLAN, WHEN YOU COME TO A FORK IN THE ROAD, TAKE IT!: INSPIRATION AND WISDOM FROM ONE OF BASEBALL’S GREATEST HEROES 53 (Hyperion, 2002).

2. 43 U.S.C. §§ 1701–87 (2012).

3. 43 U.S.C. § 1732(a) (2012).

watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.”⁴

To effect the lofty goals of multiple use and sustained yield, FLPMA requires BLM to “manage the public lands . . . in accordance with the land use plans developed by [it] under [the Act].”⁵ Accordingly, BLM regulations state that “[a]ll future resource management authorizations and actions . . . shall conform to the approved plan.”⁶ The statutory mandate and corollary regulatory pronouncement make it quite clear that management decisions must be made in accordance with an RMP. How and when BLM creates those plans, and what they must contain, is less clear. FLPMA establishes criteria for development and revision of RMPs,⁷ including requirements relating to the types of information BLM must consider, and who must participate in the planning process. The Act requires that BLM, to the extent possible, coordinate planning efforts with the land use planning and management programs of other federal departments and agencies, along with state, local and tribal governments.⁸ BLM also must allow opportunity for public involvement in the planning process.⁹ Beyond these procedural requirements, BLM enjoys a significant amount of discretion in developing its own regulations for creating RMPs.

The current planning process is cumbersome, slow and expensive. BLM has acknowledged that “planning documents can be outdated by the time they are completed.”¹⁰ Given the challenges BLM faces under its current planning regime, the Bureau recognizes that its “approach to planning needs a radical reevaluation.”¹¹

THINKING BIG

As part of its “radical reevaluation,” BLM has begun assessing the scale at which it develops RMPs. An important component of this assessment has been recognizing that issues confronting land managers often do not correspond with administrative boundaries. Acknowledging this, BLM has determined to “tackle problems and issues at their natural

4. Norton v. S. Utah Wilderness Alliance, 542 U.S. 55, 58, (2004) (quoting 43 U.S.C. § 1702(c)).

5. *Id.*

6. 43 C.F.R. § 1610.5–3(a) (2014); *see also* –Bureau of Land Mgmt., *BLM Planning Handbook*, UNITED STATES DEPT. OF THE INTERIOR 1 (2005), http://www.blm.gov/style/medialib/blm/ak/aktest/planning/planning_general.Par.65225.File.dat/blm_lup_handbook.pdf (“Land use plans and planning decisions are the basics for every on-the-ground action the BLM undertakes.”).

7. 43 U.S.C. § 1712(c) (2012).

8. *Id.*

9. *Id.*

10. Bureau of Land Mgmt., *Winning the Challenges of the Future: A Roadmap for Success in 2016*, DEPT. OF THE INTERIOR, 10 (2011), http://www.blm.gov/style/medialib/blm/wo/Communications_Directorate/public_affairs/socialmedia.Par.99057.File.dat/2016_report_lowres.pdf.

11. *Id.*

scales, looking beyond geopolitical boundaries and working across jurisdictions.”¹² BLM expects this “landscape-level” approach to land management to “identify important ecological values and patterns of environmental change that may not be evident when managing smaller, local land areas.”¹³

Current regulations governing RMP development dictate that the plans be prepared and maintained at the field office level, with guidance from the Director and State Director.¹⁴ Each field office is charged with management of a specific geographic area within a state. The result is a patchwork of RMPs, potentially leading to inconsistent management of the same resource by different field offices. The Colorado Plateau, for example, is a region of similar environmental and resource characteristics that covers large portions of four states and more than a dozen field offices. Under Planning 2.0, the shared characteristics of an entire landscape, such as the Colorado Plateau, would be considered in developing a plan that could be applied uniformly across the region. Thus, Planning 2.0 would extend landscape-level management principles to BLM’s RMP development process.

The landscape-level approach is not new to BLM, nor is it exclusive to Planning 2.0. BLM has already adopted a landscape-level approach in a number of its programs. In 2009 the Department of the Interior (DOI) signaled a department-wide shift toward landscape-level management when then Secretary Ken Salazar issued Secretarial Order 3289A1, which stated that, “[g]iven the broad impacts of climate change, management responses to such impacts must be coordinated on a landscape-level basis.”¹⁵ In 2010, in response to this policy direction, BLM launched its Rapid Ecoregional Assessments (REA) program. In theory, REAs synthesize existing data rather than collect new data to increase understanding of “ecological values, conditions and trends within ecoregions, which are large, connected areas that have similar environmental characteristics.”¹⁶ To date, BLM has undertaken 14 REAs, ranging in size from 11 million to 91 million acres. Eight REAs have been completed at the time of this writing. BLM intends to use REAs, along with input from partner agencies, stakeholders, and tribes, to develop broad-level

12. *Id.* at 7.

13. Bureau of Land Mgmt., *The BLM’s Landscape Approach for Managing Public Lands*, DEPT. OF THE INTERIOR, http://www.blm.gov/wo/st/en/prog/more/Landscape_Approach.html (last visited April 15, 2015) [hereinafter *Landscape*]. It is worth noting that land management across jurisdictions and boundaries is not a new concept to BLM. For example, the Energy Policy and Conservation Act of 2000, later amended by Section 363 of the Energy Policy Act of 2005,¹³ directed BLM and the Forest Service to review oil and gas lease stipulations and coordinate to ensure that they are consistent across administrative boundaries.

14. 43 C.F.R. § 1601.0-4 (2014).

15. DEPT. OF INTERIOR, SECRETARIAL ORDER NO. 3289A1, ADDRESSING THE IMPACTS OF CLIMATE CHANGE ON AMERICA’S WATER, LAND, AND OTHER NATURAL AND CULTURAL RESOURCES (September 14, 2009, as amended February 22, 2010).

16. *Landscape*, *supra* note 13.

management strategies. BLM refers to the application of these broad-level strategies as “ecoregional direction.” Ecoregional direction will help identify focal areas on BLM-managed land and act as a blueprint for coordinating and implementing priorities at the state and field office levels.¹⁷ BLM has been very clear that REAs do not make management decisions. Instead, REAs will only be used to provide science-based tools for managers and stakeholders to consider during the planning process.¹⁸

Continuing the Administration’s push for landscape-level land management, on October 31, 2013, Interior Secretary Sally Jewell issued Secretarial Order No. 3330, establishing a department-wide strategy to mitigate the impacts of infrastructure development projects.¹⁹ Central to this strategy is “the use of a landscape-scale approach to identify and facilitate investment in key conservation priorities in a region.”²⁰ In response to Order No. 3330, DOI’s Energy and Climate Change Task Force issued a report to the Secretary outlining “the key principles and actions necessary to successfully shift from project-by-project management to consistent, landscape-scale, science-based management of the lands and resources for which the Department is responsible.”²¹ Among the key principles identified is the need to incorporate landscape-scale approaches into “all facets of development and conservation planning and mitigation.”²² BLM has put this policy into action by developing its Regional Mitigation framework that will help identify and facilitate mitigation opportunities on a landscape level.²³

Through REAs and the Regional Mitigation framework, BLM appears to be answering the call from the Secretary to expand management to landscape-level thinking. It seems natural, then, for the Bureau to extend this new management paradigm to the RMP development process as well. Several critical questions are left unanswered: what is a “landscape” and who defines it; and will Planning 2.0 move planning decisions out of the BLM Field Office to the BLM Washington Office?

Some answers are suggested by the support for this new “landscape” approach by the conservation community. Groups including The Wilderness Society, the Sierra Club, and the Pew Charitable Trust have

17. Marsha Bracke & Maggie McCaffrey, *Lessons Learned Report: Ecoregional Assessment Process*, 7 (2010) (report submitted to the BLM).

18. *Landscape*, *supra* note 13.

19. DEPT. OF INTERIOR, SECRETARIAL ORDER NO. 3330, IMPROVING MITIGATION POLICIES AND PRACTICES OF THE DEPARTMENT OF THE INTERIOR (October 31, 2013).

20. *Id.*

21. Clement, J.P. et al., *A Strategy for Improving the Mitigation Policies and Practices of the Department of the Interior: A Report to the Secretary of the Interior from the Energy and Climate Change Task Force*, i (2014).

22. *Id.*

23. Bureau of Land Mgmt., Draft MS-1794 - Regional Mitigation, (P), 1-3 (June 13, 2013), http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/im_attachments/2013.Par.57631.File.dat/IM2013-142_att1.pdf.

encouraged adoption of landscape-level planning, anticipating RMPs with a greater emphasis on conservation.²⁴ If landscapes are defined, and RMPs designed, in the BLM Washington Office, far from the local area impacted by those decisions, but close to the national politics of preservation, that could well be the result.

STREAMLINING THE PLANNING PROCESS

In addition to shifting to landscape-level planning, Planning 2.0 hopes to streamline the planning process to make it more nimble and dynamic.²⁵ It is unclear how the shift to landscape-level RMPs will impact the effort to simplify and speed up the RMP process. It is a delicate balance for the Bureau to achieve. Streamlining the planning process and expanding RMPs to cover larger areas should enable BLM to complete RMPs more quickly. However, making the process too simple, or the geographic areas too large, may dilute the effectiveness of the plan for its intended purposes—managing grazing, oil and gas, recreation, and other resources. It may impede FLPMA’s stated goal and BLM’s own cooperative agency regulation by making it more difficult for counties and states to participate in the planning process. Moreover, such broad-scale plans may increase, not only the number, but also the potential success of challenges to RMPs by parties claiming that BLM did not take the requisite “hard look.” Similarly, because the adoption of an RMP is a major federal action significantly affecting the human environment, under the National Environmental Policy Act (NEPA), the preparation of an Environmental Impact Statement (EIS) is required.²⁶ Given the scale of the geographic areas and scope of the issues involved in creating a landscape-level RMP, the scale of these EISs would be staggering. Take, for example, the Desert Renewable Energy Conservation Plan (DRECP), which is a landscape-level plan that covers more than 22 million acres in California. The draft DRECP and its accompanying EIS contain over 8000 pages.²⁷ It is almost certain that the adequacy of EISs of such scope and complexity will be subject to a great deal of scrutiny and potentially significant litigation. As laudable as the effort to streamline the RMP process may be, it is unlikely to have any positive impacts on the real bottlenecks in the process: the lack of a NEPA deadline for completion, inadequate staff to timely complete planning documents and contin-

24. See, e.g., Letter from The Pew Charitable Trust to Joe Stout, Division Chief (October 1, 2014), <http://www.pewtrusts.org/~media/Assets/2014/10/ThePewCharitableTrustsScopingCommentsonBLMsPlanning20initiative1012014.pdf?la=en>.

25. Bureau of Land Mgmt., *Planning 2.0: Improving the Way We Plan Together*, DEPT. OF THE INTERIOR, http://www.blm.gov/wo/st/en/prog/planning/planning_overview/planning_2_0.html (last visited April 15, 2015).

26. See 43 C.F.R. § 1601.0–6 (2014); see also 42 U.S.C. § 4332(2)(C) (2012).

27. Bureau of Land Mgmt., *Desert Renewable Energy Conservation Plan*, DEPT. OF THE INTERIOR., <http://www.blm.gov/ca/st/en/prog/energy/DRECP.html>.

ue the day-to-day work of the BLM, and the seemingly inevitable litigation that accompanies each land use planning decision.

A SEAT AT THE TABLE?

In light of FLPMA's requirement that BLM engage and coordinate with state, local, and tribal managers, Planning 2.0's vision of landscape-level RMPs will make it difficult to plan across jurisdictions, and harmonize disparate management plans of multiple political subdivisions. Again, taking the Colorado Plateau region as an example, it is not hard to imagine the challenge to engage in meaningful consultation with four different states, a number of counties, and multiple tribes. The voice of local authorities will become diluted, arguably in contradiction to FLPMA policy requirements. In a recent letter to Secretary Jewell, the Western Governors' Association (WGA) expressed concerns about Planning 2.0's landscape-level approach in the context of land and resource management within state boundaries.²⁸ In the letter, WGA strongly stated its belief that RMPs should "be developed and amended in coordination with the Governors in whose states BLM land is situated."²⁹ The Governors' restatement of the statutory requirement seems to indicate their collective unease with this new, global approach.

Broadening the geographic scope of RMPs will also change the way stakeholders interact with BLM. Currently, interested parties engage in the RMP process primarily at the field, district, and state office levels. Cooperative relationships are easier to maintain at the local level, rather than at a more distant administrative level. The shift toward landscape-level planning arguably will result in a shift toward centralized, BLM Washington Office planning. The voices of larger national and regional players may well drown out smaller, local voices.

Local BLM land managers and staff may also have less input into the RMPs that affect their day-to-day management of the public lands. If the Field Office is less involved in the planning process it may result in less "ownership" of the plan, and create resentment on the part of local managers who feel that they have a better understanding of the lands and resources in their charge and the communities that depend on the BLM's management decisions for their well-being. Issues of local significance may not be addressed by this new broad, landscape level planning process.

28. Letter from Western Governors' Association to Sally Jewell, Secretary of the Interior (November 14, 2014), *available at* <http://westgov.org/letters-testimony/347-land-management/841-letter-governors-seek-clarification-on-blm-s-new-planning-2-0-initiative>.

29. *Id.*

CONCLUSION

DOI and BLM have made it clear that landscape-level management is the future. All interested parties should be aware of the opportunities and challenges that are likely to accompany this reevaluation of the FLPMA land management planning process. While it is too early to tell where exactly Planning 2.0 will end up, it is not too early for those concerned with public land use to begin preparing to provide their input on the landscape-level planning regulations. In drafting new planning regulations, BLM must be careful to create regulations that comply with the FLPMA mandate to inform federal land use planning through cooperation with states, tribes, and local governments. A planning regime directed from Washington, D.C. would not meet that mandate.