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Before the Senate Energy and Natural Resources Committee on

How the federal land use planning process under FLPMA influences permitting and project development on public lands.

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Chairman Lee, Ranking Member Heinrich and Members of the Committee, thank you for the opportunity to provide testimony on the federal land use planning process under the Federal Land Policy and Management Act of 1976 (FLPMA). I consider land use planning to be one of the most fundamental processes in the management of public lands because it creates a framework that integrates action and decision making across broad landscapes using the best available information about that same landscape. Equally important, by congressional design, federal land use planning includes both "a systematic interdisciplinary approach" and is required to meet detailed expectations regarding coordination with other federal agencies, State and local governments, and "tribal land resource management programs".

The land use planning function has been applied, over and over again, for decades, across the 245 million acres of public lands the Bureau of Land Management (BLM) manages. Those local in-state processes have produced results for the American people. The BLM has sustained high levels of outputs from public lands and generated billions in federal revenue annually since 1976, with the most recent annual revenue figures show $9.6 billion from commercial uses (FY2023). Annual revenues are generated from uses on BLM lands, such as energy development, rights of way, recreation, timber and grazing. Most important, each land use plan has arrived at a locally and specifically defined balance that integrates outputs related to all the values included in the congressional definition of "multiple use" including the conservation values like recreation opportunities, watershed protection, wildlife and fish habitat, and the natural scenic, scientific, and historical values of the planning area. "What does the Resource Management Plan say?" has become the first stop when any application for land use reaches a field office and the answer to that question guides any analysis and decision making that follows.

Importantly, land use planning invites robust participation, creating a multi-year public record around all the issues and land uses in each planning area. When a final planning decision is reached, the public record for the plan underlies and supports all the final planning outcomes and decisions. That same record supports efficient decision making, since the BLM, the public, and those proposing land uses can all access that information and rely on what the plan has already covered. In my experience, it is not much of an exaggeration to suggest that land use planning for public lands is a public voice and deliberation exercise, at the local community level, about lands local citizens know well. In practice, land use planning has become better understood, access to relevant information has improved, and people engage at much higher levels than they once did. Participation has also broadened to include people and groups with different viewpoints and interests. Energy sector and outdoor recreation businesses are engaged. Ranchers, hunters, anglers, and hikers are engaged. And Tribal, local, and state officials have participated far more. I would suggest it is because they can, and because they care about public lands and how they are managed.

My career with the Bureau of Land Management lasted more than 40 years. The first land use plan I personally participated in was as a recreation planner in Price Utah under the very first format following the passage of FLPMA. As you would expect, over 40 years, I participated in countless episodes of land use planning in its many formats, as well as in permitting and project development. My experience also includes roles in the largest scale, most complex, modern resource management planning, such as efforts for the Interior Columbia Basin, the Northwest Forest Plan, Sage Grouse planning, Arizona's Restoration Design Energy Project, and California's Desert Renewable Energy and Conservation Plan.

Detailed examples provide a sample of my range of experience across different resource programs. In Price, I worked on coal leasing and tar sands development. In Lakeview Oregon, I worked on integrating wildlife and cultural objectives into allotment management plans in the Warner Wetlands. I worked on salmon habitat issues in Prineville Oregon following Senator Mark Hatfield's Salmon Summit efforts in 1990s. As a Field Manager in Palm Springs, I worked with Riverside and San Diego counties on federal planning contributions to multiple Habitat Conservation Plans (HCP) under the Endangered Species Act. As Oregon/Washington Associate State Director, I worked on integrating underlying data systems supporting analysis under the Northwest Forest Plan. And in Washington, DC, I served as Deputy Assistant Director for Resources and Planning where I had national responsibilities for planning, as well as natural and cultural resources programs. Since retirement, I have remained active on BLM issues, including those related to land use planning.

So, my background includes experience in planning, permitting, project proposals, and policy at all levels of BLM, and includes decades in BLM decision-making roles. What I think I offer the Committee is my take, based on experience, of lessons learned since the early years after FLPMA planning was established. I can also offer understanding of how BLM operates from the field office level to the Washington Office. I have worked across diverse BLM office settings, and in four different states.

Planning in the Bureau of Land Management

The number of resource management plans (RMPs) is about 170. The Committee has posed questions that I believe almost certainly have different answers for each land use planning area and its community setting. To assess whether the current planning framework allows for efficient permitting and balanced management of federal lands, data concerning each specific planning process would be necessary. But the general condition of land use plans central to multiple use management is known. In its FY2024 budget justification, the Bureau of Land Management estimated that "approximately 134 of the BLM's existing 169 RMPs are outdated, and an additional four RMPs need to be developed for newly designated National Monuments. The BLM estimates an average cost of $3.5 million per plan to complete RMPs."

Without up-to-date land use plans, there will continue to be problems with authorizations that depend on land use plans for their foundation. Without adequate, current information about current conditions and how they relate to the local balance among multiple uses and values, each authorization process starts without adequate foundation. Throughout my career, allocating nationally available planning capacity has always been an exercise in triage. It is easy to roughly scale the issue of plan update backlogs. If an administration wanted to update all outdated plans over a four-year period, at $3.5 million per plan, they would need to invest roughly $117.25 million annually. That kind of funding for multiple use planning has not been available. In fact, an examination of appropriations versus agency

requests between FY2022 and FY2025 equates to the resources to update roughly 25 Resource Management Plans. So, planning capacity is an accumulating problem that is getting bigger every year. Beyond adding capacity and doing the work, there is no broadly applicable solution. Every planning area and planning process is different with different issues and alternatives. Well run planning processes engage early and often with the public, and apply what is learned to define clearly-described alternatives that are responsive to the identified issues the public wants to see addressed. This process, called public scoping, takes time and local planning-area leg work in order to frame, for each individual plan, what is then analyzed "us(ing) a systematic interdisciplinary approach" that "observe(s) the principles of multiple use and sustained yield." (FLPMA, Sec. 202 (c)(1) and (2)). The focus, complexity and content of the necessary interdisciplinary analysis is different in every setting and depends to some degree on the geographic scope of the plan.

The federal land use planning process under FLPMA does far more than just influence permitting and project development on public lands. It is central to public land management overall, and for some land uses an RMP decision is required as foundation. By law, RMPs determine a balance among resource values, under principles of multiple use and sustained yield, through a local participative process. Some land uses, such as development under the Mineral Leasing Act, identification of utility and transportation corridors, making lands available for sale, and the area's framework for livestock grazing, are directly dependent on land use plan outcomes. Withdrawals of lands are an exception where the land use plan cannot make final decisions, requiring a separate process with authority reserved to the secretarial level. But in general, the land use planning process determines which lands are available for various land uses and balances all uses with other competing uses and values.

By definition, the scope of planning for management of public land uses is broad, covering "a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, but not limited to recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historical values". (FLPMA Sec. 103 (c)). Some more detailed project management can be included in RMPs. For example, the BLM typically outlines specific stipulations and conditions of approval that must be applied to mineral leasing development to protect other resource values and prevent "unnecessary or undue degradation" of public lands. An example might be a "no surface occupancy" requirement, but there are many variations on permitting stipulations.

Case Studies

Two large planning processes, both with a nexus to energy infrastructure projects, should help illustrate the BLM planning in action. When I was Arizona State Director, we worked on a statewide plan amendment called the Restoration Design Energy Project (RDEP) that sought to align generation project proposals with transmission infrastructure, while taking advantage of low ecological value disturbed sites like hardrock mine sites scheduled for reclamation. The approach was statewide but tightly focused on responding to solar and wind energy proposals and updating the affected eight Arizona BLM land use plans. The final decision adopted the "Collaborative-Based Renewable Energy Development Areas" alternative which designated 192,100 acres as available for utility-scale solar and wind energy development and added the 2560-acre Agua Caliente Solar Energy Zone (SEZ: an area streamlined for permit processing; Brenda and Gillespie SEZs were already designated). Initiated in 2010, RDEP was completed in January of 2013. To complete the land use planning project, it took state office coordination plus the work of BLM specialists in every field office across the state, doing the on-the-

ground leg work and each contributing their knowledge of, and expertise about, the field office area and community they knew well.

I would highlight one other part of the RDEP process that was essential to its success. Early notice was sent to 51 Tribal organizations and 29 other officials, like Tribal Historic Preservation Officers, to provide information and ask for input. Every response received provided valuable input. Ethnographic reports were prepared documenting tribal issues, concerns, and important sacred and traditional properties. Tribal members also participated in public meetings in 2008 and 2011. As state director, I personally met with elected tribal leaders at the Inter-Tribal Council of Arizona in Phoenix to both present information and discuss the RDEP. Again, the on-the-ground work of people in Arizona was essential to building a land use plan decision.

As California state director, I helped lead the development of the Desert Renewable Energy and Conservation Plan (DRECP). The project was initiated with a signed agreement by Governor Schwarzenegger and Secretary Salazar to develop a long-term energy infrastructure plan for the California Desert that also delivered a solid conservation design for the California Desert Conservation Area. The agreement called for a coordinated planning process covering 22 million acres of federal and non-federal lands. I represented BLM on the interagency Renewable Energy Action Team (REAT), a team of four state and federal executives, that steered the planning process. Both the Habitat Conservation Planning experiences in southern California that I mentioned above, and the immediate prior work on Arizona RDEP, served as foundation for the most complex land use planning challenge the BLM has ever tackled and completed. The seven-year effort included representation or interfaces with multiple state and federal agencies, 7 counties, 5 military bases, 3 national parks, and 40 tribes.

Early in the process (scoping), planners could rely on input from a governor-appointed 50-member group called the DRECP Stakeholder Advisory Committee. The Committee included appointed renewable energy developers, environmental conservation group representatives, local community and economic development association representatives, recreational interest representatives and public-at-large representatives. The DRECP involved all kinds of teams, committees, stakeholder forum meetings, and many reviews, as well as open on-going sharing of current data and maps, and the results were remarkable (https://drecp.databasin.org/maps/). In March 2015, with public participation, the REAT executives agreed to separate the DRECP into two phases: 1) the BLM land use plan and 2) the state and local plan updates. All the partner agencies continued to assist in completing the BLM plan on a faster timetable. That was accomplished with the Record of Decision in September 2016.

Over those seven years, literally thousands of people worked on various issues. Some teams provided technical inputs, such as Department of Defense mission compatibility reviews, Independent Science Reviews, and engineering reviews for infrastructure design delivering 20,000 megawatts of renewable energy generation and transmission. Perhaps most impressive, the clear objectives for the DRECP were sustained across multiple governors and multiple secretaries of the Interior. Now, for nearly a decade, the plan has proven to be a reliable foundation for generation and transmission projects - with a noteworthy absence of litigation. Measures developed in the DRECP continue to be adopted by others as best practices for renewable energy development.

Throughout the DRECP process, the BLM made a deliberate effort to engage with the California Desert Tribes. In a 4-year series of meetings and information exchanges, the Tribal Leadership Forum, worked through a series of concerns, proposals, maps and alternatives. As in Arizona, desert Tribes provided substantive feedback which impacted the preferred alternative decision. I personally attended each

Forum meeting to listen, and the Secretary of Interior participated in the final Tribal Leadership Forum. The results were imperfect as a representation of all 40 Tribes, but they produced substantive contributions to a better plan and marked improvements in tribal engagement and consultation.

I am sure every land use planning process, and not just federal ones, can create challenges for project sponsors. In my experience, most project sponsors would like as unconstrained a planning outcome as possible. But that is not always in the public interest. For example, during the DRECP process, there were wind development areas that industry wanted but the DOD military mission compatibility review found created serious problems. In the end, the proposed wind development areas were not included as Development Focus Areas because carrying forward a conflict of that nature was unnecessary when the plan was already making available sufficient acreage to accomplish the targeted 20,000 megawatts of generation and transmission.

I am also sure every land use planning process, and not just federal ones, creates challenges for local communities. These challenges are highly dependent on, specific to, and variable with, the setting of the plan. Despite BLM's best efforts, some communities struggle with having the resources and staff to participate, as did some of Tribes in the DRECP. Other communities have well-developed planning departments that stay very engaged. Communities also tend to have very different priorities, although the plan's impact on the local outdoor recreation setting is universal. Communities that are very centered on ranching or oil and gas services can be in proximity to communities that have embraced "farm-to-table" or outdoor recreation-based strategies. And regional differences in characteristics like solar and wind potential and oil and gas potential can conjure very different ideas of what an "energy project" is. For this reason, an effective public scoping process with robust local community participation is essential to arrive at clarity around the community interests the plan should address.

BLM generally prepares and updates RMPs on a roughly 20-year frequency. But as mentioned above, actual updates are very dependent on adequate funding, agency capacity to do the work, and the tradeoffs among pressing needs and problems. Another complicating consideration is that all plan amendments are not equal. Some are minor corrections or adjustments that are more easily completed (usually as part of a National Environmental Policy Act analysis like an Environmental Impact Statement). For example, the California Desert Plan was amended 147 times between 1980 and its consolidated re-publication in 1999. There were also several major renewable energy projects processed as plan amendments while the DRECP was being prepared. So, no plan needs to be entirely frozen in time while a new RMP is in preparation.

Going Forward

To reiterate, RMPs do shape access to, and balance among, multiple uses. In my view, state, local and project sponsor perspectives are inherently very individual to each planning effort, and not similar across all public land states. There is much to celebrate, both nationally and locally, regarding land use planning. There have been great leaps of progress since those early Management Framework Plans in the 1970s and early 80s. The quality of the public information, including maps, around issues the public has identified has risen to high levels. Public participation has grown, both in volume and in quality. One key to producing a high-quality land use plan today is to promote public and Tribal participation early, and then to maintain regular contact. Land use planning has served as a mechanism for working toward consensus on very difficult and complex public land management issues. But no one who has

participated and seen RMP preparation up close would suggest land use planning is easy for participants on any side of the issues. It wasn't congressionally designed to be easy. It was designed to:

> "(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law (the Endangered Species Act and the National Historic Preservation Act are good examples) (FLPMA Sec. 103(c)(1))
>
> (2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic and other sciences….." (FLPMA Sec. 103(c)(2))

To do that across a planning area, a good mix of local on-the-ground expertise is required. It is hard work, and it is important to get it right. It is necessary to have the staffing and funding to gather, compile and analyze information responsive to the issues identified when scoping a plan with the public. Access to the range of specialist expertise throughout the planning process is what produces a credible "systematic interdisciplinary approach" across the broad range of values included in FLPMA's Sec 103 (c) definition of multiple use. In the end, plan decisions must also meet FLPMA standards "prevent(ing) permanent impairment or unnecessary or undue degradation of public lands." The underlying quality of the information must be sufficiently current and good enough quality "so as to reflect changes in conditions and to identify new and emerging resource and other values." (FLPMA Section 201 (a))

Given the appropriations and backlog issues referenced above, planning capacity has always been a significant issue for the BLM. But capacity problems are not limited to the land use planning function. Multiple use on public lands is, by far, the lowest funded federal land management platform. Depending on the study and assumptions, the estimates of investment in public lands range between $0.28 and $7 per acre, with both parks and refuges being multiple times higher. A 2022 Conservation Economics Institute study identified a cumulative and growing deficit in BLM funding per recreation visit. So, the planning capacity problem is part of a larger set of agency capacity deficits. (see Conservation Funding Crisis, at https://www.conservationecon.org/public-lands)

There may be further opportunities to extend capacity through innovative partnerships. The DRECP is a good illustration. The technical analysis on transmission alignment in the DRECP would not have been possible without the leadership of the California Energy Commission. The Defense installation mission consistency reviews would not have been possible without the commitment and work of a Department of Defense team. Some of the improvements in the DRECP alternatives would not have happened without the assistance of the Tribal Leadership Forum. The scientists engaged in the independent Science Review Teams (https://drecp.databasin.org/search/#query=Independent%20Science%20Reviews&scope=gateway) donated their time. And multiple county planning staffs poured time into detailed DRECP reviews throughout the process. Innovation through partnerships is possible.

The use of the Congressional Review Act (CRA) to nullify resource management plans has introduced new questions surrounding the reliability of land use planning processes and authorizations based on land use plans. I believe the CRA resolutions will have profound impacts on the overall land use planning function, create substantial uncertainty and conflict around authorized land uses that rely on land use plan decisions, and create specific problems in the planning areas directly affected. While I am unsure of the extent, using a political process to vacate plans with years of local process will undermine public confidence in the planning process. And, given language in the CRA statute that requires rules to be submitted to Congress and the Comptroller General in order to take effect, it is unclear which, or

whether all, resource management plans finalized after the CRA became law could be considered invalid, because none were submitted. The range of land uses and management functions potentially affected is broad including energy development, transmission rights of way, recreation, grazing permits and leases, wildlife conservation projects, or logging. Three impacts, each with attendant management costs, are predictable:

1. Increased litigation risk for authorizations that are controversial, authorizations that now have questionable planning foundations, and authorizations that would not have been allowed under the vacated plan(s).

2. A cautious, risk-averse approach to land use authorization processes, particularly levels of necessary analysis, where the underlying land use plan is no longer reliable or is inconsistent with the factual record created for the plan that was vacated.

3. The CRA's prohibition of a rule that is "substantially the same" appears to be inconsistent with FLPMA and NEPA requirements for land use plans. It is unclear how those conflicts will be resolved.

Until adaptations addressing these impacts are designed, a cautious approach to reforms avoids further harm to the planning process and its role supporting multiple use and sustained yield.

Summary

Land management planning is the basis for all of BLM's work and it impacts all multiple uses, including energy development, grazing, hunting and fishing, outdoor recreation and more. The clearest step Congress can take to improve the federal land use planning process under FLPMA and to make permitting and project development on public lands more efficient, is to support improved capacity, both in staffing and funding. There is no substitute for doing the on-the-ground, local-community-level work. Every planning area and planning process is different with different issues and alternatives. A solid Resource Management Plan incorporates and addresses those differences.

There is also no substitute for local in-state participation, with the public, with local and state officials, and with Tribes. In both case studies above, Tribes contributed unique knowledge and ideas that affected the quality of the plan. The public has also become sophisticated and informed to a degree that they will be suspicious of any process that does not respect the issues they raise, or one that appears to circumvent the FLPMA "balancing" discussion with their local planning are information as its foundation. The best approach is, by far, to invest in participation as an integral part of the process. Basically, just do the on-the-ground interdisciplinary and participation work it takes to get up-to-date land use plans. All land uses benefit from that clarity.

Prioritizing which plans will be updated will be necessary for the foreseeable future. But the case studies above illustrate that investing in large scale planning efforts can produce significant and long-term benefits. The DRECP has guided energy infrastructure development for nearly a decade and project developments consistent with the plan have not been litigated. The RDEP project updated plans statewide and was efficiently completed because it was clearly and tightly focused. And both projects proved to be platforms for innovation.

The path forward can do much to build on the work done in the last half-century of land use planning. But there are also formidable problems I have tried to outline. I appreciate the opportunity to offer my perspectives on how the federal land use planning process under FLPMA influences permitting and project development on public lands. All the views expressed above are my own and do not necessarily reflect the views of the Bureau of Land Management, BLM retirees more broadly, or any organization I have done work for since retirement.