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# United States Senate

COMMITTEE ON  
ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

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May 24, 2016

Neil Kornze, Director  
Bureau of Land Management  
U.S. Department of Interior  
1849 C Street NW, Room 5665  
Washington, D.C. 20240

RE: Bureau of Land Management's proposed Resource Management Planning Rule

Dear Director Kornze:

I write to express my concerns regarding the Bureau of Land Management's (BLM's) proposed Resource Management Planning Rule (proposed rule).<sup>1</sup> Although I appreciate that the BLM extended the public comment period by an additional 30 days, a 90 day comment period is inadequate for a rule of this importance and complexity. I strongly recommend against finalizing this rule. Instead, the BLM should reengage with the states to develop a rule that ensures Resource Management Plans (RMPs) are developed and amended in coordination with states and provides clarity about how stakeholders who are impacted by BLM decisions will participate in the RMP process.

The BLM manages 247.3 million acres of public land and administers about 700 million acres of federal subsurface mineral estate throughout the western United States including over 70 million acres of land in the State of Alaska. The Federal Land and Policy Management Act (FLPMA) established a multiple-use, sustained-yield mandate for the BLM that supports a variety of uses and programs. I am concerned that the proposed rule strays from this mandate. The proposed rule selectively borrows declared policies from FLPMA to establish revised objectives of resource management planning while at the same time omitting others. For example, the proposed rule omits inclusion of the implementation of the Mining and Minerals Policy Act of 1970 when it cites the Nation's need for domestic sources of minerals.

Currently, BLM is generally obligated to establish management plans that are consistent with State, local and tribal management practices, and Governors have 60 days to identify inconsistencies to the BLM. The proposed rule would limit BLM's consistency requirements strictly to state *plans* that have been formally *adopted and approved*. Due to BLM's failure to fulfill Alaska's entitlement requirements, it is a factual impossibility that the State could have adopted and approved plans for lands it has yet to receive. Additionally, the proposed rule both shortens the review period and shifts the burden of awareness of inconsistency solely to the

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<sup>1</sup> BLM-2016-0002-0044

State, local, and tribal entities. FLPMA requires consistency with simply “approved” non-Federal Government plans. The existing regulation requires consistency with approved or adopted State, local, and tribal plans, and in the absence of official plans, Federal guidance and resource plans shall be consistent with State, local and tribal approved and adopted resource policies and programs. The stricter standard for consistency requirements in the proposed rule is neither legally sound nor principally fair to apply in Alaska.

The Alaska National Interest Lands Conservation Act (ANILCA) represents a “...proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition...”<sup>2</sup> This balance is critically important to Alaskans. I am concerned that this proposed rule’s process for identifying and designating Areas of Critical Environmental Concern (ACECs) threatens the balance in ANILCA, and effectively eliminates the public’s role in ACEC designation. The public must be able to formally comment on ACEC designations as they can have sweeping impacts on the management of an area and must be properly scrutinized.

The elimination of traditional administrative boundaries is unwarranted and disconcerting. This erosion suggests that BLM officials from outside of Alaska may be charged with land management actions affecting Alaskan public lands regardless of the officials’ familiarity with Alaskan geography, traditional uses and local needs, and, importantly, ANILCA. Furthermore, eliminating the existing chain of command established by the State Director and Field Manager in exchange for designated and responsible officials may prove challenging for Alaskans to engage with appropriate agency decision-makers.

Procedurally, I am concerned about BLM’s National Environmental Policy Act (NEPA) obligations. “Major federal actions” are subject to review under NEPA, and include but are not limited to: new or revised agency rules, regulations, plans, policies, or procedures.<sup>3</sup> BLM’s failure to conduct an environmental review in furtherance of the major federal action of this specific proposed rule plainly violates NEPA. Given the extensive human and economic impacts this rule would cause, an Environmental Impact Statement is required.

The proposed rule conflates the purpose and necessity of public review and formal public comment. The proposed rule provides early “public review,” which is ordinarily a salutary approach. However, it effectively shortens the later formal review period. The agency proposal to shorten the comment timeline is untenable. Early review does not relieve the need for thorough formal comment, which requires rigor and time to pore over large and complex documents. Additionally, the subsistence lifestyle of many Alaskans already challenges their ability to provide timely public comment under existing regulations. Lastly, Alaskans may confuse feedback provided during the public review for comments provided during the formal rulemaking process thereby failing, unknowingly, to preserve their right to later protest.

Many Alaskans agree that the land use management process needs improvement. However, the proposed rule fails adequately to address necessary prospective positive changes. Instead, it abdicates responsibility of the agency to keep apprised of local land management

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<sup>2</sup> 96 *Pub. L.* 487, Sec. 101(d), Dec. 2, 1980.

<sup>3</sup> 40 C.F.R. 1508.18(a)

programs. Also, it absolves the State Director from decision-making authority; eliminates the public's existing chain of command; and potentially empowers individuals located in BLM offices outside Alaska to affect the management of Alaskan lands despite being ill-equipped to protect and preserve federally-mandated rights of all Alaskans. On balance, as currently proposed, the rule is likely to significantly disadvantage Alaskans. Consequently, the rule should not be finalized. Instead, the BLM should engage with Alaska and the other states to revise the rule to ensure it properly addresses the needs of the people directly impacted.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa Murkowski". The signature is fluid and cursive, with a large initial "L" and a long, sweeping underline.

Lisa Murkowski  
United States Senator