

The following links and/or pages are additional support
for agenda Item 11

SAMPLE ARGUMENTS & CONSIDERATIONS FOR FUEL REVENUE INDEXING

The sample arguments and considerations were prepared by the Nevada Association of Counties to assist its members, who are required to place on the ballot at the General Election on November 8, 2016 a question which asks the voters in the County whether to authorize annual increases to taxes on certain motor vehicle fuels. NACO has not taken a position to support or oppose AB191.

Sample Arguments in Support

- Inflation in the cost of street and highway construction has eroded the purchasing power of motor vehicle fuel taxes. The gas tax has lost 38 percent of its value since Congress last increased it in 1993. Passage would merely index the current rates to inflation, so that the purchasing power of our gas taxes remain static and county roads can be maintained
- The purpose of indexing is simply to recover the purchasing power lost by inflation; if there is no inflation then there is no increase in the tax rate. Other familiar forms of taxation, like income, sales, and property taxes, also rise naturally over time, because they're assessed as a percentage of a dollar figure that goes up as incomes rise and goods and property become more expensive.
- The indexed revenue from these county and federal fuel taxes will be under local control. This means that our county or regional transportation commission will get to decide where they are spent, not the feds or state.
- 100% of all indexed taxes (county, state and federal) will be spent in our county and not sent elsewhere.
- Counties currently do not receive a share of the diesel tax despite the fact that 32% of all heavy truck traffic in Nevada is on local roads. Passage would finally direct a portion of the taxes on diesel to the county where the fuel was purchased.
- Article IX, Section 5 of the *Nevada Constitution* requires that the proceeds from the imposition of any excise tax on gasoline or other motor vehicle fuel shall, except costs of administration, be used exclusively for the construction, maintenance, and repair of the public highways of this State.
- There is very little chance that a long term plan for increasing funding or revenues to repair county roads will be enacted in the near future. Voting yes on indexing the fuel tax to inflation is the quickest way to help address the short-term budget shortfall for fixing our streets and highways.

Sample Arguments in Opposition

- Each of the automatic increases represents a separate tax hike — a form of taxation without representation, because the Legislature won't vote each time. If the Legislature wants to increase taxes, they should have to vote for it.
- Inflation never reverses itself and this tax burden will only increase over time with the size of the shortfall.
- Nevadans currently pay over 50 cents per gallon fuel tax. Volatile fuel prices have already driven up the cost of food, medicine, clothing, utilities, etc, and an automatic fuel tax index will add significantly to the burden of high energy costs.
- Eliminating inflationary government regulations and red tape would free up more revenue for use on our streets and highways.
- The gas tax isn't an adequate long-term response to the state's transportation needs, and the state needs a longer-term plan to shift to a new model. When the gas tax went into law, gas purchased was a rough proxy for miles driven, so that people who used the roads more paid more for their upkeep. But fuel efficiency has been rising. Electric cars, which pay no gas tax at all, are quickly becoming a reality. Over the long term, states and the federal government must update the transportation funding system to restore a linkage between what drivers pay and the wear and tear they put on roads. Question xx is not the right long term solution to this problem.
- Options are available other than this tax plan.

Other Considerations

- Does your county have enough money to operate, maintain, renew, and expand your existing road system to the standards that the community desires?
- Does the county have a list of projects and/or backlog of maintenance needs on which the revenue derived from indexing would be spent? Deferring routine maintenance on streets and highways often results in higher costs for major repairs.
- Is the county road department efficient, can they cut costs to stretch existing revenues?
- Are there other benefits the community would see with increased road funding? (Jobs, improved safety, lower cost for operating and maintaining your vehicle, improved quality of life, improved economic competitiveness)
- Funding roadways is not only a Nevada issue, it is a national issue. States across the country are having the same tough conversations that Nevada is having and likewise recognizing the limited options.
- The financial impact of fuel revenue indexing on motorists will depend on: how many miles they drive, the fuel efficiency of their vehicle and the increase in the fuel tax. For example, a motorist who drives 10,000 miles per year and averages 25 miles per gallon would see an increase in their fuel cost of \$120 per year (based on a per gallon increase of 3 cents).

AB 191 REVENUE MATRIX

Prepared by the Nevada Association of Counties 5/17/16

MOTOR VEHICLE FUEL TAX	CURRENT RATE (Amount/Gallon)	DISTRIBUTION OF CURRENT REVENUE	DISTRIBUTION OF INDEXING REVENUE	AUTHORIZED USES OF INDEXING REVENUE	WHO DECIDES USES OF INDEXING REVENUE
County Mandatory	\$0.0635 Total				
	\$0.0125	Apportioned to Counties based on population and locally maintained road miles	Apportioned to Counties based on population and locally maintained road miles	Bond service, road construction, repair and maintenance but not for administration	County Commission in coordination and cooperation with NDOT
	\$0.0235	Apportioned to Counties based on population and locally maintained road miles	Apportioned to Counties based on population and locally maintained road miles	Bond service, road construction, repair and maintenance but not for administration	Counties, but if there are incorporated cities the county and cities split the tax based on area, population, road miles and vehicle miles travelled.
	\$0.0175	County where fuel is purchased	County where fuel is purchased (County of origin)	Bond service (counties), road construction, repair and maintenance but not for administration	Apportioned between the County, town boards and cities according to property valuation
	\$0.01	County where fuel is purchased by retailers	County where fuel is purchased	Repair and restore existing roads and streets	Apportioned between the County and cities according to population
County Optional	\$0.09*	County where fuel is purchased	County where fuel is purchased	Street and highway maintenance and construction projects in County of origin	County Commission or Regional Transportation Commission in coordination and cooperation with NDOT
State Gasoline	\$0.18455	State Highway Trust Fund	State Highway Trust Fund	Street and highway maintenance and construction projects in County of origin	NDOT in coordination and cooperation with the County Commission or RTC
State Diesel	\$0.2775	State Highway Trust Fund	State Highway Trust Fund	Street and highway maintenance and construction projects in County of origin	NDOT in coordination and cooperation with the County Commission or RTC
Federal Gasoline	\$0.184	Federal Highway Trust Fund	County where fuel is purchased	Street and highway maintenance and construction projects in County of origin	County Commission or Regional Transportation Commission in coordination and cooperation with NDOT
Federal Diesel	\$0.244	Federal Highway Trust Fund	County where fuel is purchased	Street and highway maintenance and construction projects in County of origin	County Commission or Regional Transportation Commission in coordination and cooperation with NDOT
Federal Propane (LPG)	\$0.183	Federal Highway Trust Fund	County where fuel is purchased	Street and highway maintenance and construction projects in County of origin	County Commission or Regional Transportation Commission in coordination and cooperation with NDOT
Federal Methane (CNG)	\$0.183	Federal Highway Trust Fund	County where fuel is purchased	Street and highway maintenance and construction projects in County of origin	County Commission or Regional Transportation Commission in coordination and cooperation with NDOT

* Indexing is based on this amount for all rural counties

This matrix does not include all of the state special fuels, but indexing of those taxes goes to the highway trust fund and are treated the same as indexing of the state fuel tax.



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MEMORANDUM

May 17, 2016

To: Jeff Fontaine, Nevada Association of Counties
From: Sondra Rosenberg, NDOT Assistant Director, Planning
Subject: Fuel Revenue Indexing (FRI/ AB191) Sample Projects

The ballot measure for AB 191, if passed, would generate revenue for roadway projects in the Counties in which the measure passes. In order to assist with understanding the impact, the Nevada Department of Transportation (NDOT) has generated a list of project types and example projects for each county, based on the needs we have heard from counties during our annual consultation process, including workshops and commission presentations.

The Fuel Revenue Indexing (FRI) money that would be generated can generally be spend on roadway projects in the county in which the revenue is generated. It includes a portion that would go to the County and a portion that would go to the state highway trust fund, to be used by NDOT in that county. NDOT is committed to working with the Counties to develop projects for existing and new revenue sources. It is not our intent to “tell” the counties what projects we will do, but rather work with the Counties on their priorities for transportation.

Based on information we have received from the Counties as well as from our District staff, NDOT anticipates the revenue to be spent on the following project types:

- Roadway Preservation and Maintenance to improve and maintain the condition of roadways
- Corridor Safety Improvements, such as shoulder widening/slope flattening and passing lanes
- Intersection Safety and Access Improvements, such as adding turn lanes, improving configurations, and providing adequate and safe pedestrian features
- Capacity and access for current and future development. If this funding source is approved and continues, it may provide a resource to develop additional capacity, such as roadway widening and in some cases, frontage roads or alternate routes.

The following are example projects, based on needs we have heard from each county. This list is not intended as a commitment of specific projects and does not include all identified needs or eligible projects, but serves as an example to allow the Counties to begin prioritizing and coordinating on needed projects that could be developed or accelerated with additional revenue.

Carson City DMV estimated 10 year revenue: \$69.7 million (\$43.7 County, \$26 State)

Bicycle and pedestrian improvements, such as bike lanes, sidewalk improvements, pedestrian signalization, Americans with Disabilities Act (ADA) Accommodations, and intersection safety improvements.

Intersection lighting, such as at College Parkway/ Northgate Lane, Lompa Lane/Nye Lane, King Street & Division Street

Churchill County DMV estimated 10 year revenue: \$23 million (\$13.6 County, \$9.4 State)

Roadway improvements to accommodate development, such as the Western Nevada Rail Park and Nevada Iron

Safety Projects, such as passing lanes and slope flattening on US 95

Intersection improvements, such as Sheckler Road at US 95, US 50 at Shecker Cutoff

Bicycle and Pedestrian improvements such as Maine Street to Wade Lane and Sherman to Rio Vista

Douglas County DMV estimated 10 year revenue: \$43.7 million (\$27 County, \$16.7 State)

ADA and pedestrian improvements, such as along US 395

Intersection improvements, such as US 395/Muller, SR 88 at Centerville and Waterloo

Safety improvements along US 50, including turn pockets, wider shoulders, possible bike lanes

Complete Streets improvements in downtown areas

Long term – widen and/or access control on US 395, possible truck route alternate to US 395 to bypass Minden/Gardnerville

Elko County DMV estimated 10 year revenue: \$131.5 million (\$71.3 County,\$60.2 State)

Intersection Improvements, such as Palace Parkway/Spring Creek, and along Boyd Kennedy

Safety improvements, such as passing lanes on US 93

Pedestrian improvements, such as sidewalks and crossings along SR 535 and SR 225

Improve capacity and structures for freight and large vehicles.

Provide capacity and access for future development

Esmeralda County DMV estimated 10 year revenue: \$517,000 (\$314,000 County, \$203,000 State)

Safety improvements such as passing lanes along US 95 and centerline rumble strips along SR 264

Intersection improvements, such as at US 95 at SR 265 and SR 266

Eureka County DMV estimated 10 year revenue: \$4.5 million (\$2.7 County, \$1.8 State)

Pedestrian improvements, such crosswalks, lighting, and flashers

Safety Improvements such as shoulder widening on SR 766, 306, and Pine Valley

Intersection improvements, such as US 50/SR 278, and turn lanes at JD Ranch Road and Saddler Brown

Humboldt County DMV estimated 10 year revenue: \$58.6 million (\$31.8 County, \$26.8 State)

Bridge improvements

Safety improvements, such as slope flattening and passing lanes on US 95

Intersection Improvements, such as US 95/Jungo Road/Museum Lane and Highland/Hansen/Water Canyon, and US 95/Winnemucca Blvd

Pedestrian and bicycle connectivity, such as along Winnemucca Blvd, Grass Valley Road, and Railroad Street

Long Term – evaluate possible alternate routes/bypass

Lander County DMV estimated 10 year revenue: \$14.5 million (\$8.2 County, \$6.3 State)

Safety Improvements on SR 305, including pedestrian crossings, wildlife visibility, and potential speed study/modification

Intersection improvements at locations such as SR 305/Lamaire Way, S. Humboldt Street at Courthouse

Improvements at crosswalks

Long term – evaluate possible alternate routes/bypass

Lincoln County DMV estimated 10 year revenue: \$6.9 million (\$4.1 County, \$2.8 State)

Preservation work on US 93

Safety improvements such as shoulder widening and passing lanes on US 93

Intersection improvements, such as improving access to Pahranaagat Lake and the Waste Disposal Plant

Lyon County DMV estimated 10 year revenue: \$124.4 million (\$66.5 County, \$57.9 State)

Interchange improvements at I-80 interchanges in Fernley

Access control and Intersection improvements along US 95 and US 50

Possible widening or passing lanes along US 95 and US 95A

Long term – possible frontage road along US 50 in Mound House

Mineral County DMV estimated 10 year revenue: \$6.4 million (\$3.7 County, \$2.7 State)

Access and intersection improvements for development

ADA and pedestrian improvements, such as sidewalks and crosswalks

Access improvements, such as turn pocket and intersection improvements

Complete Streets, bike and pedestrian improvements along US 95 in Hawthorn

Safety/capacity improvements, such as passing lanes on US 95 from Mina to Shurz

Long term – I-11 development

Nye County DMV estimated 10 year revenue: \$53.4 million (\$32.3 County, \$21.1 State)

Pahrump bypass (long range)

Intersection improvements, such as SR 160/Bell Vista Ave, SR 160/Oxbow Ave and Wilson,

Widening of SR 160 from Calvada to Homestead

Pershing County DMV estimated 10 year revenue: \$22.5 million (\$11.8 County, \$10.7 State)

Intersection improvements, such as at the new Courthouse, and 8th at Dartmouth and Elmhurst

Interchange improvements on I-80

Bridge repair

Storey County DMV estimated 10 year revenue: \$9.3 million (\$4.9 County, \$4.4 State)

Interchange Improvements, such as I-80 at USA Parkway

Intersection improvements, such as US 50/SR 341, SR 439/Electric Avenue

Safety improvements, such as ruble strips on US 50 and SR 341

White Pine County DMV estimated 10 year revenue: \$18.6 million (\$11 County, \$7.6 State)

Safety improvements, such as passing lanes and turn lanes on SR 318, US 93 and US 6/US 50

Intersection improvements, such as SR 93/SR 318,

Pedestrian improvements, such as crosswalks with flashers along US 6/US 560

Long Term – possible Cummins Lake road realignment



COUNTY INDEX TAX REVENUE PROJECTIONS - FY17 - FY26
DIESEL

COUNTY NAME	FY15	FY17		FY18		FY19		FY20		FY21		FY22		FY23		FY24		FY25		FY26	
	BASE GALLONS	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**
CARSON CITY	4,128,283	4,169,566	\$ 125,086.97	4,211,261	\$ 252,675.69	4,253,374	\$ 382,803.67	4,295,908	\$ 515,508.94	4,338,867	\$ 650,830.04	4,382,256	\$ 788,806.01	4,426,078	\$ 929,476.41	4,470,339	\$ 1,072,881.34	4,515,042	\$ 1,219,061.43	4,560,193	\$ 1,368,057.82
CHURCHILL	4,062,177	4,102,799	\$ 123,083.96	4,143,827	\$ 248,629.61	4,185,265	\$ 376,673.85	4,227,118	\$ 507,254.12	4,269,389	\$ 640,408.33	4,312,083	\$ 776,174.89	4,355,204	\$ 914,592.75	4,398,756	\$ 1,055,701.34	4,442,743	\$ 1,199,540.65	4,487,171	\$ 1,346,151.18
DOUGLAS	16,220,648	16,382,854	\$ 491,485.63	16,546,683	\$ 992,800.98	16,712,150	\$ 1,504,093.49	16,879,271	\$ 2,025,512.56	17,048,064	\$ 2,557,209.61	17,218,545	\$ 3,099,338.05	17,390,730	\$ 3,652,053.33	17,564,637	\$ 4,215,512.99	17,740,284	\$ 4,789,876.63	17,917,687	\$ 5,375,306.00
ELKO	40,282,588	40,685,414	\$ 1,220,562.42	41,092,268	\$ 2,465,536.08	41,503,191	\$ 3,735,287.16	41,918,223	\$ 5,030,186.71	42,337,405	\$ 6,350,610.72	42,760,779	\$ 7,696,940.20	43,188,387	\$ 9,069,561.20	43,620,271	\$ 10,468,864.93	44,056,473	\$ 11,895,247.78	44,497,038	\$ 13,349,111.39
ESMERALDA	3,595,729	3,631,686	\$ 108,950.59	3,668,003	\$ 220,080.19	3,704,683	\$ 333,421.49	3,741,730	\$ 449,007.60	3,779,147	\$ 566,872.10	3,816,939	\$ 687,048.98	3,855,108	\$ 809,572.72	3,893,659	\$ 934,478.22	3,932,596	\$ 1,061,800.88	3,971,922	\$ 1,191,576.54
EUREKA	706,354	713,418	\$ 21,402.53	720,552	\$ 43,233.10	727,757	\$ 65,498.15	735,035	\$ 88,204.18	742,385	\$ 111,357.77	749,809	\$ 134,965.62	757,307	\$ 159,034.49	764,880	\$ 183,571.24	772,529	\$ 208,582.82	780,254	\$ 234,076.28
HUMBOLDT	17,644,702	17,821,149	\$ 534,634.47	17,999,361	\$ 1,079,961.63	18,179,354	\$ 1,636,141.87	18,361,148	\$ 2,203,337.72	18,544,759	\$ 2,781,713.87	18,730,207	\$ 3,371,437.21	18,917,509	\$ 3,972,676.85	19,106,684	\$ 4,585,604.13	19,297,751	\$ 5,210,392.69	19,490,728	\$ 5,847,218.47
LANDER	4,953,911	5,003,450	\$ 150,103.50	5,053,485	\$ 303,209.08	5,104,019	\$ 459,361.75	5,155,060	\$ 618,607.16	5,206,610	\$ 780,991.54	5,258,676	\$ 946,561.74	5,311,263	\$ 1,115,365.25	5,364,376	\$ 1,287,450.18	5,418,020	\$ 1,462,865.27	5,472,200	\$ 1,641,659.91
LINCOLN	1,457,803	1,472,381	\$ 44,171.43	1,487,105	\$ 89,226.29	1,501,976	\$ 135,177.83	1,516,996	\$ 182,039.48	1,532,166	\$ 229,824.84	1,547,487	\$ 278,547.71	1,562,962	\$ 328,222.05	1,578,592	\$ 378,862.02	1,594,378	\$ 430,481.97	1,610,321	\$ 483,096.43
LYON	40,302,908	40,705,937	\$ 1,221,178.11	41,112,996	\$ 2,466,779.79	41,524,126	\$ 3,737,171.38	41,939,368	\$ 5,032,724.12	42,358,761	\$ 6,353,814.20	42,782,349	\$ 7,700,822.81	43,210,172	\$ 9,074,136.22	43,642,274	\$ 10,474,145.80	44,078,697	\$ 11,901,248.17	44,519,484	\$ 13,355,845.17
MINERAL	5,124,874	5,176,123	\$ 155,283.68	5,227,884	\$ 313,673.04	5,280,163	\$ 475,214.65	5,332,964	\$ 639,955.73	5,386,294	\$ 807,944.11	5,440,157	\$ 979,228.26	5,494,559	\$ 1,153,857.30	5,549,504	\$ 1,331,881.00	5,604,999	\$ 1,513,349.79	5,661,049	\$ 1,698,314.76
NYE	6,598,892	6,664,881	\$ 199,946.43	6,731,530	\$ 403,891.78	6,798,845	\$ 611,896.05	6,866,833	\$ 824,020.02	6,935,502	\$ 1,040,325.27	7,004,857	\$ 1,260,874.23	7,074,905	\$ 1,485,730.13	7,145,654	\$ 1,714,957.07	7,217,111	\$ 1,948,619.97	7,289,282	\$ 2,186,784.63
PERSHING	8,688,912	8,775,801	\$ 263,274.03	8,863,559	\$ 531,813.55	8,952,195	\$ 805,697.53	9,041,717	\$ 1,085,006.00	9,132,134	\$ 1,369,820.08	9,223,455	\$ 1,660,221.93	9,315,690	\$ 1,956,294.84	9,408,847	\$ 2,258,123.19	9,502,935	\$ 2,565,792.47	9,597,964	\$ 2,879,389.33
STOREY	4,070,699	4,111,406	\$ 123,342.18	4,152,520	\$ 249,151.20	4,194,045	\$ 377,464.07	4,235,986	\$ 508,318.28	4,278,346	\$ 641,751.83	4,321,129	\$ 777,803.22	4,364,340	\$ 916,511.46	4,407,984	\$ 1,057,916.09	4,452,064	\$ 1,202,057.16	4,496,584	\$ 1,348,975.25
WHITE PINE	7,359,645	7,433,241	\$ 222,997.24	7,507,574	\$ 450,454.43	7,582,650	\$ 682,438.46	7,658,476	\$ 919,017.13	7,735,061	\$ 1,160,259.13	7,812,411	\$ 1,406,234.06	7,890,536	\$ 1,657,012.47	7,969,441	\$ 1,912,665.83	8,049,135	\$ 2,173,266.54	8,129,627	\$ 2,438,888.01
TOTALS	165,198,125	166,850,106	\$ 5,005,503.19	168,518,607	\$10,111,116.44	170,203,793	\$ 15,318,341.40	171,905,831	\$ 20,628,699.76	173,624,890	\$ 26,043,733.44	175,361,139	\$ 31,565,004.94	177,114,750	\$ 37,194,097.48	178,885,897	\$ 42,932,615.38	180,674,756	\$ 48,782,184.22	182,481,504	\$ 54,744,451.19

*Projected growth of 1% per year

**Projected increase of \$0.03 per year based on FY16 PPI indexing factor of 5.25%

Clark and Washoe Counties are excluded from this spreadsheet since they have already enacted indexing.

Totals	County Portion	State Portion
7,305,188.32	3,418,097.62	3,887,090.71
7,188,210.69	3,363,363.78	3,824,846.91
28,703,189.28	13,430,222.26	15,272,967.02
71,281,908.59	33,352,805.03	37,929,103.56
6,362,809.31	2,977,158.48	3,385,650.83
1,249,926.18	584,840.46	665,085.72
31,223,118.91	14,609,297.34	16,613,821.57
8,766,175.38	4,101,693.46	4,664,481.92
2,579,650.05	1,207,018.26	1,372,631.79
71,317,865.78	33,369,629.40	37,948,236.38
9,068,702.34	4,243,245.82	4,825,456.51
11,677,045.58	5,463,689.63	6,213,355.96
15,375,432.95	7,194,165.08	8,181,267.87
7,203,290.76	3,370,419.75	3,832,871.01
13,023,233.32	6,093,570.87	6,929,662.45
292,325,747.44	136,779,217.23	155,546,530.21



COUNTY INDEX TAX REVENUE PROJECTIONS - FY17 - FY26
GASOLINE/GASOHOL

COUNTY NAME	FY15	FY17		FY18		FY19		FY20		FY21		FY22		FY23		FY24		FY25		FY26		Totals
	BASE GALLONS	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	PROJECTED GALLONS*	PROJECTED TAX**	
CARSON CITY	35,253,634	35,606,170	\$ 1,068,185.11	35,962,232	\$ 2,157,733.92	36,321,854	\$ 3,268,966.89	36,685,073	\$ 4,402,208.75	37,051,924	\$ 5,557,788.55	37,422,443	\$ 6,736,039.72	37,796,667	\$ 7,937,300.13	38,174,634	\$ 9,161,912.15	38,556,380	\$ 10,410,222.68	38,941,944	\$ 11,682,583.24	\$ 62,382,941.14
CHURCHILL	8,891,375	8,980,289	\$ 269,408.66	9,070,092	\$ 544,205.50	9,160,793	\$ 824,471.33	9,252,400	\$ 1,110,288.06	9,344,924	\$ 1,401,738.67	9,438,374	\$ 1,698,907.27	9,532,757	\$ 2,001,879.07	9,628,085	\$ 2,310,740.41	9,724,366	\$ 2,625,578.79	9,821,610	\$ 2,946,482.87	\$ 15,733,700.63
DOUGLAS	20,736,883	20,944,252	\$ 628,327.55	21,153,694	\$ 1,269,221.66	21,365,231	\$ 1,922,870.82	21,578,884	\$ 2,589,466.03	21,794,672	\$ 3,269,200.87	22,012,619	\$ 3,962,271.45	22,232,745	\$ 4,668,876.52	22,455,073	\$ 5,389,217.47	22,679,624	\$ 6,123,498.36	22,906,420	\$ 6,871,925.93	\$ 36,694,876.67
ELKO	30,897,923	31,206,902	\$ 936,207.07	31,518,971	\$ 1,891,138.28	31,834,161	\$ 2,865,074.49	32,152,503	\$ 3,858,300.31	32,474,028	\$ 4,871,104.14	32,798,768	\$ 5,903,778.22	33,126,756	\$ 6,956,618.67	33,458,023	\$ 8,029,925.55	33,792,603	\$ 9,124,002.90	34,130,529	\$ 10,239,158.81	\$ 54,675,308.42
ESMERALDA	228,179	230,461	\$ 6,913.82	232,765	\$ 13,965.92	235,093	\$ 21,158.37	237,444	\$ 28,493.28	239,818	\$ 35,972.76	242,217	\$ 43,598.99	244,639	\$ 51,374.14	247,085	\$ 59,300.44	249,556	\$ 67,380.12	252,052	\$ 75,615.47	\$ 403,773.33
EUREKA	1,767,574	1,785,250	\$ 53,557.49	1,803,102	\$ 108,186.13	1,821,133	\$ 163,901.99	1,839,345	\$ 220,721.35	1,857,738	\$ 278,660.71	1,876,315	\$ 337,736.78	1,895,079	\$ 397,966.50	1,914,029	\$ 459,367.05	1,933,170	\$ 521,955.81	1,952,501	\$ 585,750.40	\$ 3,127,804.21
HUMBOLDT	13,960,639	14,100,245	\$ 423,007.36	14,241,248	\$ 854,474.87	14,383,660	\$ 1,294,529.43	14,527,497	\$ 1,743,299.63	14,672,772	\$ 2,200,915.78	14,819,500	\$ 2,667,509.93	14,967,695	\$ 3,143,215.87	15,117,372	\$ 3,628,169.17	15,268,545	\$ 4,122,507.22	15,421,231	\$ 4,626,369.22	\$ 24,703,998.49
LANDER	4,543,149	4,588,580	\$ 137,657.41	4,634,466	\$ 278,067.98	4,680,811	\$ 421,272.99	4,727,619	\$ 567,314.29	4,774,895	\$ 716,234.29	4,822,644	\$ 868,075.96	4,870,871	\$ 1,022,882.84	4,919,579	\$ 1,180,699.05	4,968,775	\$ 1,341,569.29	5,018,463	\$ 1,505,538.87	\$ 8,039,312.96
LINCOLN	2,651,541	2,678,056	\$ 80,341.69	2,704,837	\$ 162,290.22	2,731,885	\$ 245,869.68	2,759,204	\$ 331,104.50	2,786,796	\$ 418,019.44	2,814,664	\$ 506,639.56	2,842,811	\$ 596,990.28	2,871,239	\$ 689,097.35	2,899,951	\$ 782,986.86	2,928,951	\$ 878,685.26	\$ 4,692,024.83
LYON	26,226,492	26,488,757	\$ 794,662.71	26,753,644	\$ 1,605,218.67	27,021,181	\$ 2,431,906.28	27,291,393	\$ 3,274,967.13	27,564,307	\$ 4,134,646.00	27,839,950	\$ 5,011,190.95	28,118,349	\$ 5,904,853.34	28,399,533	\$ 6,815,887.85	28,683,528	\$ 7,744,552.57	28,970,363	\$ 8,691,109.00	\$ 46,408,994.51
MINERAL	2,257,148	2,279,719	\$ 68,391.58	2,302,517	\$ 138,151.00	2,325,542	\$ 209,298.77	2,348,797	\$ 281,855.67	2,372,285	\$ 355,842.78	2,396,008	\$ 431,281.46	2,419,968	\$ 508,193.31	2,444,168	\$ 586,600.28	2,468,610	\$ 666,524.57	2,493,296	\$ 747,988.69	\$ 3,994,128.12
NYE	23,096,763	23,327,731	\$ 699,831.92	23,561,008	\$ 1,413,660.48	23,796,618	\$ 2,141,695.62	24,034,584	\$ 2,884,150.10	24,274,930	\$ 3,641,239.51	24,517,679	\$ 4,413,182.28	24,762,856	\$ 5,200,199.79	25,010,485	\$ 6,002,516.33	25,260,590	\$ 6,820,359.18	25,513,195	\$ 7,653,958.63	\$ 40,870,793.83
PERSHING	3,959,721	3,999,318	\$ 119,979.55	4,039,311	\$ 242,358.68	4,079,705	\$ 367,173.41	4,120,502	\$ 494,460.19	4,161,707	\$ 624,255.98	4,203,324	\$ 756,598.25	4,245,357	\$ 891,524.94	4,287,810	\$ 1,029,074.50	4,330,689	\$ 1,169,285.91	4,373,995	\$ 1,312,198.63	\$ 7,006,910.04
STOREY	1,641,007	1,657,417	\$ 49,722.51	1,673,991	\$ 100,439.47	1,690,731	\$ 152,165.80	1,707,638	\$ 204,916.62	1,724,715	\$ 258,707.23	1,741,962	\$ 313,553.16	1,759,382	\$ 369,470.14	1,776,975	\$ 426,474.10	1,794,745	\$ 484,581.20	1,812,693	\$ 543,807.79	\$ 2,903,838.03
WHITE PINE	7,320,929	7,394,138	\$ 221,824.15	7,468,080	\$ 448,084.78	7,542,760	\$ 678,848.44	7,618,188	\$ 914,182.57	7,694,370	\$ 1,154,155.49	7,771,314	\$ 1,398,836.46	7,849,027	\$ 1,648,295.63	7,927,517	\$ 1,902,604.09	8,006,792	\$ 2,161,833.90	8,086,860	\$ 2,426,058.05	\$ 12,954,723.56
TOTALS	183,432,957	185,267,287	\$ 5,558,018.60	187,119,959	\$11,227,197.57	188,991,159	\$ 17,009,204.31	190,881,071	\$ 22,905,728.47	192,789,881	\$ 28,918,482.20	194,717,780	\$ 35,049,200.43	196,664,958	\$ 41,299,641.17	198,631,608	\$ 47,671,585.80	200,617,924	\$ 54,166,839.37	202,624,103	\$ 60,787,230.85	\$ 324,593,128.77

*Projected growth of 1% per year
 **Projected increase of \$0.03 per year based on FY16 PPI indexing factor of 5.25%

This is a cumulative tax so subsequent increases are added to prior years indexed taxes

Clark and Washoe Counties are excluded from this spreadsheet as they have already enacted Indexing.

County Portion	State Portion
\$ 40,330,571.45	\$ 22,052,369.69
\$ 10,171,837.45	\$ 5,561,863.17
\$ 23,723,237.77	\$ 12,971,638.90
\$ 35,347,586.90	\$ 19,327,721.53
\$ 261,039.46	\$ 142,733.87
\$ 2,022,125.42	\$ 1,105,678.79
\$ 15,971,135.02	\$ 8,732,863.47
\$ 5,197,415.83	\$ 2,841,897.13
\$ 3,033,394.05	\$ 1,658,630.78
\$ 30,003,414.95	\$ 16,405,579.56
\$ 2,582,203.83	\$ 1,411,924.29
\$ 26,422,968.21	\$ 14,447,825.62
\$ 4,529,967.34	\$ 2,476,942.70
\$ 1,877,331.29	\$ 1,026,506.74
\$ 8,375,228.78	\$ 4,579,494.78
\$ 209,849,457.75	\$ 114,743,671.02

The following links and/or pages are additional support
for agenda Item 14

43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR by revising part 1600 to read as follows:

PART 1600—PLANNING, PROGRAMMING, BUDGETING

Subpart 1601—Planning

Sec.

- 1601.0-1 Purpose.
- 1601.0-2 Objective.
- 1601.0-3 Authority.
- 1601.0-4 Responsibilities.
- 1601.0-5 Definitions.
- 1601.0-6 Environmental impact statement policy.
- 1601.0-7 Scope.
- 1601.0-8 Principles.

Subpart 1610—Resource Management Planning

- 1610.1 Resource management planning framework.
- 1610.1-1 Guidance and general requirements.
 - 2 Plan components. Public involvement
- 1610.2-1 Public notice.
 - 2 Public comment periods.
- 1610.2-3 Availability of the resource management plan. Coordination with other Federal agencies, State and local governments, and Indian tribes.
 - 1 Coordination of planning efforts.
- 1610.3-2 Consistency requirements. Planning assessment. Preparation of a resource management plan.
- 1610.5-1 Identification of planning issues.
- 1610.5-2 Formulation of resource management alternatives.
- 1610.5-3 Estimation of effects of alternatives.
- 1610.5-4 Preparation of the draft resource management plan and selection of preferred alternatives and preparation of implementation strategies.
 - 5 Selection of the proposed resource management plan and preparation of implementation strategies. Resource management plan approval, implementation and modification.
- 1610.6-1 Resource management plan approval and implementation.
- 1610.6-2 Protest procedures.
- 1610.6-3 Conformity and implementation.
- 1610.6-4 Monitoring and evaluation.
- 1610.6-5 Maintenance.
- 1610.6-6 Amendment.

- 7 Revision. Management decision review by Congress. Designation of areas.
- 1610.8-1 Designation of areas unsuitable for surface mining.
- 2 Designation of areas of critical environmental concern. Transition period.

Authority: 43 U.S.C. 1711-1712

Subpart 1601—Planning

§ 1601.0-1 Purpose.

The purpose of this subpart is to establish in regulations a process for the development, approval, maintenance, and amendment of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management (BLM).

§ 1601.0-2 Objective.

The objective of resource management planning by the BLM is to promote the principles of multiple use and sustained yield on public lands unless otherwise provided by law, ensure participation by the public, State and local governments, Indian tribes and Federal agencies in the development of resource management plans, and ensure that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; that will provide for outdoor recreation and human occupancy and use, and which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands.

§ 1601.0-3 Authority.

These regulations are issued under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711-1712); the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901); section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 1601.0-4 Responsibilities.

- (a) The Secretary and the Director will provide national level policy and procedure guidance for planning. The Director, after consulting with State

Directors with jurisdiction over the potential planning area, determines the deciding official and the planning area for the preparation of each resource management plans that cross State boundaries. The Director also determines the deciding official and the planning area for plan amendments that cross State boundaries.

- (b) Deciding officials provide quality control and supervisory review, including approval, for the preparation and amendment of resource management plans and related environmental impact statements or environmental assessments. The deciding official determines the planning area for plan amendments. ~~that do not cross State boundaries. The deciding official must be one of the State Directors with jurisdiction over the planning area for plan amendments that cross State boundaries. The State Director shall by default be the deciding official for plan amendments within that State that do not cross State boundaries.~~
- (c) Responsible officials prepare resource management plans and plan amendments and related environmental impact statements or environmental assessments.

§ 1601.0-5 Definitions.

As used in this part, the term: *Areas of Critical Environmental Concern* or *ACEC* means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards.

Conformity or conformance means that a resource management action will be clearly consistent with the plan components of the approved resource management plan.

*Consistent*¹ means that resource management plans and plan amendments will adhere to the terms, conditions, and decisions of land use and resource related planning and management programs, or in their absence, with policies and programs, subject to the qualifications of other Federal agencies, State agencies, Indian tribes and local governments that may be affected, subject to § 1610.3 of this title.

Cooperating agency means an eligible governmental entity (see 43 CFR 46.225(a)) that has entered into an agreement with the BLM to participate in the development of an environmental impact statement or environmental assessment as a cooperating agency under the National Environmental Policy Act and

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in the planning processes described in § 1610.3-1 of this part. The BLM and the cooperating agency will work together under the terms of the agreement. Cooperating agencies will participate in the various steps of the BLM's planning process as feasible and appropriate, given the scope of their expertise and constraints of their resources.

Deciding official means the BLM official who is delegated the authority to approve a resource management plan or plan amendment. **The deciding official must be one of the State Directors with jurisdiction over the planning area for plan amendments that cross State boundaries. The State Director shall by default be the deciding official for plan amendments within that State that do not cross State boundaries.**

High quality information means any representation of knowledge, such as facts or data, **that are applicable to the planning area, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users. For the purposes of this regulation, "high quality information" will include, but is not limited to, information, data and facts generated by local and state government.**

Implementation strategies means strategies that assist in implementing future actions consistent with the plan components of the approved resource management plan. An implementation strategy is not a plan component.

Indian tribe means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Local government means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulatory authority.

*Minor change*² means a technical, editorial, or nonsubstantial factual correction that does not result in any change in the scope of resource uses or restrictions, or change terms, conditions, or decisions of the approved plan.

Mitigation (see 40 CFR §1508.20) includes:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (4) Reducing or eliminating the impact over time by preservation and maintenance

operations during the life of the action;

- (5) **Compensating for the impact by replacing or providing substitute resources or environments. ~~the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.~~**

Multiple use means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the lands for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; 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; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

Land use and resource related planning and management programs **Officially approved and adopted land use plans means plans, policies, programs, controls and processes prepared and approved pursuant to and in accordance with authorization provided by Federal, State or local authorities.³ ~~land use plans prepared and approved by other Federal agencies, State and local governments, and Indian tribes pursuant to and in accordance with authorization provided by Federal, State, or local constitutions, legislation, or charters which have the force and effect of State law.~~**

Plan amendment means an amendment to an approved resource management plan or management framework plan (see § 1610.6-6).

Plan components means the elements of a resource management with which future management actions will be consistent.

Plan maintenance means minor change(s) to an approved resource management plan to correct typographical or mapping errors or to reflect minor changes in mapping or data (see § 1610.6-5).

Plan revision means a revision of an approved resource management plan that

affects the entire resource management plan or major portions of the resource management plan (see § 1610.6-7). Preparation or development of a resource management plan includes plan revisions.

Planning area means the geographic area for the preparation or amendment of a resource management plan.

Planning assessment means an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area. A planning assessment is developed to inform the preparation and, as appropriate, the implementation of a resource management plan.

Planning issue means disputes, controversies, or opportunities related to resource management.

Public means affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups, and officials of State, local, and Indian tribal governments.

Public lands means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the BLM. Public lands do not include lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

Resource management plan means a land use plan as described under section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), including plan revisions. Approval of a resource management plan is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.

Responsible official means a BLM employee who is delegated the authority to prepare a resource management plan or plan amendment.

Sustained yield means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

§ 1601.0-6 Environmental impact statement policy.

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed resource management plan will be accomplished as part of the resource management planning process and, wherever possible, the proposed resource management plan will be published in a

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single document with the related environmental impact statement.

§ 1601.0-7 Scope.

- (a) These regulations apply to all public lands.
- (b) These regulations also govern the preparation of resource management plans when the only public land interest is the mineral estate.

§ 1601.0-8 Principles.

The development, approval, maintenance, amendment, and revision of resource management plans will provide for public involvement and will be consistent with the principles described in section 202 of FLPMA. Additionally, the BLM will consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at appropriate scales. The BLM also will consider the impacts of resource management plans on, and the uses of, adjacent or nearby Federal and non-Federal lands, and non-public land surface over federally-owned mineral interests.

Subpart 1610—Resource Management Planning

§ 1610.1 Resource management planning framework.

§ 1610.1-1 Guidance and general requirements.

- (a) Guidance for preparation and amendment of resource management plans may be provided by the Director and deciding official, as needed, to help the responsible official prepare a specific resource management plan. Such guidance may include the following:
 - (1) Policy established through Presidential, Secretarial, Director, or deciding official approved documents, so long as such policy is consistent with the Federal laws and regulations applicable to public lands; and
 - (2) Analysis requirements, planning procedures, and other written information and instructions required to be considered in the planning process.
- (b) The BLM will use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences. The expertise of the preparers will be appropriate to the resource values involved, the issues identified

during the issue identification and environmental impact statement scoping stage of the planning process, and the principles of multiple use and sustained yield, or other applicable law. The responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.

- (c) The BLM will use high quality information to inform the preparation, amendment, and maintenance of resource management plans.

§ 1610.1-2 Plan components.

- (a) Plan components guide future management actions within the planning area. Resource management plans will include the following plan components:
 - (1) *Goals.* A goal is a broad statement of desired outcomes addressing resource, environmental, ecological, social, or economic characteristics within a planning area, or a portion of the planning area, toward which management of the land and resources should be directed.
 - (2) *Objectives.* An objective is a concise statement of desired resource conditions developed to guide progress toward one or more goals. An objective is specific, measurable, and should have established time-frames for achievement. To the extent practical, objectives should also:
 - (i) Identify standards to mitigate undesirable effects to resource conditions; and
 - (ii) Provide integrated consideration of resource, environmental, ecological, social, and economic factors.
- (b) Resource management plans also will include the following plan components in order to achieve the goals and objectives of the resource management plan, or applicable legal requirements or policies, consistent with the principles of multiple use and sustained yield or other applicable law:
 - (1) *Designations.* A designation identifies areas of public land where management is directed toward one or more priority resource values or uses.
 - (i) Planning designations are identified through the BLM's land use planning process in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies

such as the designation of areas of critical environmental concern (ACEC) (see § 1610.8-2).

- (ii) Non-discretionary designations are designated by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities.
- (2) *Resource use determinations.* A resource use determination identifies areas of public lands or mineral estate where specific uses are excluded, restricted, or allowed, in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies.
- (3) *Monitoring and evaluation standards.* Monitoring and evaluation standards identify indicators and intervals for monitoring and evaluation to determine whether the resource management plan objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan.
- (4) Lands identified as available for disposal from BLM administration under section 203 of FLPMA, as applicable.

- (c) A plan component may only be changed through a resource management plan amendment or revision, except to correct ~~typographical or mapping errors or to reflect~~ minor changes ~~in data~~.

§ 1610.1-3 Implementation strategies.

- (a) A resource management plan may also include, but is not limited to, the following types of implementation strategies:
 - (1) *Management measures.* A management measure is one or more potential action(s) the BLM may take in order to achieve the goals and objectives of the resource management plan. Management measures may include, but are not limited to, resource management practices, best management practices, standard operating procedures, provision for the preparation of more detailed and specific plans, *feasibility*, or other measures as appropriate;
 - (2) *Monitoring procedures.* Monitoring procedures describe methods for monitoring the resource management plan (see § 1610.6-4 of this part).
- (b) Implementation strategies are not a

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plan component. Implementation strategies are intended to assist the BLM to carry out the plan components.

- (c) Implementation strategies may be updated at any time if the BLM determines that relevant new information is available. Updates to an implementation strategy do not require a plan amendment or the formal interagency coordination as described under §§ 1610.2 and 1610.3. The BLM will make updates to an implementation strategy available for public review at least 30 45 days prior to their implementation.

§ 1610.2 Public involvement.

- (a) The BLM will provide the public with opportunities to become meaningfully involved in and comment on the preparation and amendment of resource management plans. Public involvement in the resource management planning process will conform to the requirements of the National Environmental Policy Act and associated implementing regulations.
- (b) *The Director shall, early in each fiscal year, publish a planning schedule advising the public of the status of each plan in process of preparation or to be started during that fiscal year, the major action on each plan during that fiscal year and projected new planning starts for the 3 succeeding fiscal years. The notice shall call for public comments on projected new planning starts so that such comments can be considered in refining priorities for those years.*
- (c) Public involvement activities conducted by the BLM will be documented by a record or summary of the principal issues discussed and comments made. The record or summary of the principal issues discussed and comments made will be available to the public and open for ~~30~~ 60 days to any participant who wishes to review the record or summary.
- (d) Before the close of each fiscal year, the BLM will post the status of each resource management plan in process of preparation or scheduled to be started to the BLM's Web site.

§ 1610.2-1 Public notice.

- (a) When the BLM prepares a resource management plan or amends a resource management plan and prepares an environmental impact statement to inform the amendment, the BLM will notify the public and provide opportunities for public involvement appropriate to the areas and people involved during the following steps in the planning process:
- (1) *General notice at the outset of the*

process inviting preparation of the planning assessment, as appropriate (see § 1610.4);

- (2) Identification of planning issues (see § 1610.5-1);
- (3) Review of the preliminary resource management alternatives and preliminary rationale for alternatives (see § 1610.5-2(c));
- (4) Review of the basis for analysis (see § 1610.5-3(a)(1));
- (5) Comment on the draft resource management plan (see § 1610.5-4); and
- (6) Protest of the proposed resource management plan (see §§ 1610.5-5 and 1610.6-2).
- (b) When the BLM amends a resource management plan and prepares an environmental assessment to inform the amendment, the BLM will notify the public and provide opportunities for public involvement appropriate to the areas and people involved during the following steps in the planning process:
- (1) Identification of planning issues (see § 1610.6-6(a));
- (2) Comment on the draft resource management plan amendment, as appropriate (see § 1610.6-6(a)); and
- (3) Protest of the proposed resource management plan amendment (see §§ 1610.5-5 and 1610.6-2).
- (c) The BLM will announce opportunities for public involvement by posting a notice on the BLM's Web site, at all BLM offices within the planning area, and at other public locations, as appropriate.
- (d) Individuals or groups may request to be notified of opportunities for public involvement related to the preparation or amendment of a resource management plan. The BLM will notify those individuals or groups through written or electronic means.
- (e) The BLM will notify the public at least 15 days before any public involvement activities where the public is invited to attend, such as a public meeting.
- (f) When initiating the identification of planning issues (see § 1610.5-1), in addition to the public notification requirements of §§ 1610.2-1(c) and 1610.2-1(d), the BLM will notify the public as follows:
- (1) When the BLM initiates the preparation of a plan amendment and an environmental assessment will be prepared to inform the amendment, the BLM will publish a notice in appropriate media, including newspapers of general circulation in the planning area.

- (2) When the BLM initiates the preparation of a resource management plan, or a plan amendment and an environmental impact statement will be prepared to inform the amendment, the BLM will also publish a notice of intent in the **Federal Register**. This notice may also constitute the scoping notice required by regulation for the National Environmental Policy Act (40CFR 1501.7).
- (3) This notice will include the following:
- (i) Description of the proposed planning action;
- (ii) Identification of the geographic area for which the resource management plan is to be prepared;
- (iii) The general types of issues anticipated;
- (iv) The expertise to be represented and used to prepare the resource management plan, in order to achieve an interdisciplinary approach (see § 1610.1-1(b));
- (v) The kind and extent of public involvement opportunities to be provided, as known at the time;
- (vi) The times, dates, and locations scheduled or anticipated for any public meetings, hearings, conferences, or other gatherings, as known at the time;
- (vii) The name, title, address, and telephone number of the BLM official who may be contacted for further information; and
- (viii) The location and availability of documents relevant to the planning process.
- (g) *A list of individuals and groups known to be interested in or affected by a resource management plan or amendment shall be maintained by the responsible official and those on the list shall be notified of public participation activities. Individuals or groups may ask to be placed on this list. Public participation activities conducted by the BLM shall be documented by a record or summary of the principal issues discussed and comments made. The documentation together with a list of attendees shall be available to the public and open for 30 days to any participant who wishes to clarify the views he/she expressed.*
- (h) *At least 15 days' public notice shall be given for public involvement activities where the*

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public is invited to attend.

- (i) If, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is encompassed by the range of alternatives in the final environmental impact statement or environmental assessment, but is substantially different than the proposed resource management plan or plan amendment, the BLM will, in coordination with cooperating agencies, notify the public and request written comments on the change and consider comments received before the resource management plan or plan amendment is approved (see § 1610.6– 1(b)).
- (j) The BLM will notify the public when a resource management plan or plan amendment has been approved.
- (k) When changes are made to an approved resource management plan through plan maintenance, the BLM will notify the public and make the changes available for public review at least 30 45 days prior to their implementation.
- (l) When changes are made to an implementation strategy, the BLM will notify the public and make the changes available for public review at least 30 days prior to their implementation.

§ 1610.2–2 Public comment periods.

- (a) Any time the BLM requests written comments during the preparation or amendment of a resource management plan, the BLM will notify the public and provide for at least 30 45 calendar days for response, unless a longer period is required by law or regulation.
- (b) When requesting written comments on a draft plan amendment and an environmental impact statement is prepared to inform the amendment, the BLM will provide at least 45 90 calendar days for response. The 45 90-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental impact statement in the **Federal Register**.
- (c) When requesting written comments on a draft resource management plan and draft environmental impact statement, the BLM will provide at least 60 90 calendar days for response. The 60 90-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental impact statement in the **Federal Register**.

§ 1610.2–3 Availability of the resource management plan.

- (a) The BLM will make copies of the draft,

proposed, and approved resource management plan or plan amendment reasonably available to the public. At a minimum, the BLM will make copies of these documents available electronically and at all BLM offices within the planning area.

- (b) Upon request, the BLM will make single printed copies of the draft or proposed resource management plan or plan amendment available to individual members of the public during the public involvement process. After the BLM approves a resource management plan or plan amendment, the BLM may charge a fee for additional printed copies. Fees for reproducing requested documents beyond those used as part of the public involvement activities and other than single printed copies of the resource management plan or plan amendment may be charged according to the Department of the Interior schedule for Freedom of Information Act requests in 43 CFR part 2.

§ 1610.3 Coordination with other Federal agencies, State and local governments, and Indian tribes.

§ 1610.3–1 Coordination of planning efforts.

- (a) *Objectives of coordination.* In addition to the public involvement prescribed by § 1610.2, and to the extent consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations, the following coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes. The objectives of this coordination are for the BLM to:
 - (1) Keep apprised of non-BLM land use and resource related planning and management programs;
 - (2) Assure that the BLM considers those plans that are germane in the development of resource management plans for public lands;
 - (3) Assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans;
 - (4) Provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes, in the development of resource management plans, including early notice of final decisions that may have a significant impact on non-Federal lands; and
 - (5) Where possible and appropriate,

develop resource management plans collaboratively in coordination with cooperating agencies.

- (b) *Cooperating agencies.* When preparing a resource management plan, the responsible official will invite follow applicable regulations regarding the invitation of eligible governmental entities (see 43 CFR 46.225) to participate as cooperating agencies. The same requirement applies when the BLM amends a resource management plan and prepares an environmental impact statement to inform the amendment. In addition, the responsible official must consider a request by an eligible governmental entity to participate as a cooperating agency (see 43 CFR 46.225(c)). If there is a denial for a request to become a cooperating agency, the deciding official will respond to the request explaining why the denial is appropriate.⁴
 - (1) When a cooperating agency is a non-Federal agency, a memorandum of understanding will be used and will include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the BLM of any documents, including drafts (see 43 CFR 46.225(d)).
 - (2) The responsible official will collaborate with cooperating agencies, as feasible and appropriate given their interests, scope of expertise and the constraints of their resources, during the following steps in the planning process:
 - (i) Identification of planning issues (see § 1610.5–1);
 - (ii) Formulation of resource management alternatives (see § 1610.5– 2);
 - (iii) Estimation of effects of alternatives (see § 1610.5–3);
 - (iv) Preparation of the draft resource management plan (see § 1610.5–4); and
 - (v) Preparation of the proposed resource management plan and implementation strategies (see § 1610.5– 5).
- (c) *Coordination requirements.* The BLM will provide Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs.
 - (1) To facilitate coordination with State governments, deciding officials should seek the input of the Governor(s) on the timing, scope,

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and coordination of resource management planning; definition of planning areas; scheduling of public involvement activities; and resource management opportunities and constraints on public lands.

- (2) Deciding officials may seek written agreements with Governors or their designated representatives on processes and procedural topics such as exchanging information, providing advice and participation, and timeframes for receiving State government participation and review in a timely fashion. If an agreement is not reached, the deciding official will provide opportunity for Governor and State agency review, advice, and suggestions on issues and topics that the deciding official has reason to believe could affect or influence State government programs.
- (3) The responsible official will notify relevant State agencies of opportunities for **meaningful**⁵ public involvement in the preparation and amendment of resource management plans consistent with State procedures for coordination of Federal activities for circulation among State agencies, if such procedures exist. The responsible official also will notify Federal agencies, the elected heads of county boards, other local government units, and elected government officials of Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment. These notices will be issued simultaneously with the public notices required under § 1610.2-1 of this part.
- (4) The BLM will provide Federal agencies, State and local governments, and Indian tribes the time period prescribed under § 1610.2 of this part for review and comment on resource management plans and plan amendments.
- (d) **Consistency Review.** The deciding official, in compliance with section 1611 of this title, shall:
- (1) Ensure that it is as consistent as possible with **land use and resource related planning and management 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 **resource management plan or plan amendment is inconsistent with such land use and resource related planning and management 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 deciding official believes may lead to resolution of such inconsistencies.**
- (4) The resource management plan documentation shall show how those inconsistencies were addressed and, if possible, resolved.
- (e) *Resource advisory councils.* When an advisory council has been formed under section 309 of FLPMA for the area addressed in a resource management plan or plan amendment, the BLM will inform that council, seek its views, and consider them throughout the planning process.

§ 1610.3-2 Consistency requirements.

- (a) Resource management plans will be consistent with **officially approved or adopted land use plans, land use and resource related planning and management programs** of other Federal agencies, State and local governments, and Indian tribes 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.
- (1) The BLM will, to the extent practical, keep apprised of **officially approved and adopted land use plans of State and local governments and Indian tribes State and local governmental and tribal land use and resource related planning and management programs. and give consideration to those plans that are germane in the development of resource management plans.**
- (2) **The BLM is not required to address the consistency requirements of this section if the responsible official has not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.**
- (3) If a Federal agency, State and local government, or Indian tribe notifies the responsible official, in writing,

of what they believe to be **specific** inconsistencies between the BLM resource management plan and their **officially approved and adopted land use plans** land use and resource related planning and management programs, the BLM will, in coordination with any cooperating agencies, **resource management plan** provide, within 90 days, documentation **will** describing the extent to which the BLM could reconcile any inconsistencies and show whether the BLM plans to.⁶ **show how those inconsistencies were addressed and, if possible, resolved them.**

- (4) (4) Where **the officially approved and adopted land use plans of State and local government differ from each other** land use and resource related planning and management programs differ, those of the higher authority will normally be followed.
- (b) *Governor's consistency review.* Prior to the approval of a proposed resource management plan or plan amendment, the deciding official will submit to the Governor of the State(s) involved, the proposed resource management plan or plan amendment and will identify any **relevant** known inconsistencies with **the officially approved and adopted land use plans of State and local governments State or local land use and resource related planning and management programs.**
- (1) The Governor(s) may submit a written document to the deciding official within 60 days after receiving the proposed resource management plan or plan amendment that:
- (i) Identifies inconsistencies with **officially approved and adopted land use plans of State and local governments State or local land use and resource related planning and management programs** and provides recommendations to remedy the identified inconsistencies; or
- (ii) Waives or reduces the 60-day period.
- (2) If the Governor(s) does not respond within the 60-day period, the resource management plan or plan amendment is presumed to be consistent.
- (3) If the document submitted by the Governor(s) recommends **substantive**⁷ changes that were not considered during the public involvement process, the BLM will

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notify the public and request written comments on these changes.

- (4) The deciding official will notify the Governor(s) in writing of his or her decision regarding these recommendations and the reasons for this decision.
- (i) The Governor(s) may submit a written appeal to the Director within 30 days after receiving the deciding official's decision.
- (ii) ~~The Director will consider the Governor(s)' comments in rendering a final decision. The Director shall accept the recommendations of the Governor(s) if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Director will notify the Governor(s) in writing of his or her decision regarding the Governor's appeal. The BLM will notify the public of this decision and make the written decision available to the public publish in the Federal Register the reasons for his/her determination to accept or reject such Governor's recommendations.~~

§ 1610.4 Planning assessment.

Before initiating the preparation of a resource management plan the BLM will, consistent with the nature, scope, scale, and timing of the planning effort, complete a planning assessment.

- (a) *Information gathering.* The responsible official will:
- (1) Arrange for relevant resource, environmental, ecological, social, economic, and institutional data and information to be gathered, or assembled if already available, including the identification of potential ACECs (see § 1610.8-2). Inventory data and information will be gathered in a manner that aids the planning process and avoids unnecessary data-gathering;
- (2) Identify, in coordination with cooperating agencies, relevant national, regional, or local land use and resource related planning and management programs for consideration in the planning assessment. These may include, but are not limited to, executive or Secretarial orders, Departmental or BLM policy, Director or deciding official guidance, mitigation strategies, interagency initiatives, and State or multi-state resource plans;
- (3) Provide opportunities for other Federal

agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other policies, guidance, strategies, or plans described under paragraph (a)(2) of this section,⁸ for the BLM's consideration in the planning assessment; and

- (4) Identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area.
- (b) *Information quality.* The responsible official will evaluate the data and information gathered under paragraph (a) of this section to determine if it is high quality information appropriate for use in the planning assessment and to identify any data gaps or further information needs and identify strategies to obtain missing or incomplete data or information.⁹
- (c) *Assessment.* The responsible official will assess the resource, environmental, ecological, social, and economic conditions of the planning area. At a minimum, the responsible official will consider and document the following factors in this assessment when they are applicable:
- (1) Resource management authorized by FLPMA and other relevant authorities;
- (2) Land status and ownership, existing resource uses, infrastructure, and access patterns in the planning area;
- (3) Current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions;
- (4) Known resource ~~thresholds opportunities, constraints, or limitations;~~
- (5) ~~Specific requirements and constraints to achieve consistency and avoid possible conflicts with land use and resource related planning and management programs of other Federal agencies, State and local government agencies, and Indian tribes;~~
- (6) Areas of potential importance within the planning area, including:
- (i) Areas of tribal, traditional, or cultural importance;
- (ii) Habitat for special status species, including State and/or federally-listed threatened and endangered species;
- (iii) Other areas of key fish and wildlife habitat such as big game wintering and summer areas, birdnesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact

- habitat;
- (iv) ~~Areas of relative ecological importance¹⁰, such as~~ Areas focused on dominant patterns of habitat extent, habitat condition, habitat connectivity, and overall plant and animal species diversity. ~~that increase the ability of terrestrial and aqautics within the planning area to adapt to, resist, or recover from change;~~
- (v) Lands with wilderness characteristics, candidate wild and scenic rivers, or areas of significant scenic value;
- (vi) Areas of significant historical value, including paleontological sites;
- (vii) Existing designations located in the planning area, such as wilderness, wilderness study areas, wild and scenic rivers, national scenic or historic trails, or ACECs;
- (viii) Areas with potential for renewable or non-renewable energy development or energy transmission;
- (ix) Areas of importance for recreation activities or access;
- (x) Areas of importance for public health and safety, such as abandoned mine lands or natural hazards;
- (7) Dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change; and
- (8) The various goods and services, including ecological services, that people obtain from the planning area such as:
- (i) ~~The socioeconomic impacts and contributions. The degree of local, regional, national, or international importance of these goods and services;¹¹~~
- (ii) Available forecasts and analyses related to the supply and demand for these goods and services; and
- (iii) The estimated levels of these goods and services that may be produced on a sustained yield basis.
- (d) *Planning assessment report.* The responsible official will document the planning assessment in a report made available for public ~~review comment~~, which includes the identification and rationale for potential ACECs. To the extent practical, any non-sensitive geospatial information used in the planning assessment should be made

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available to the public on the BLM's Website.

- (e) *Plan amendments.* Before initiating the preparation of a plan amendment for which an environmental impact statement will be prepared, the BLM will complete a planning assessment for the geographic area being considered for amendment. The deciding official may waive this requirement for maintenance.¹² ~~minor amendments or if an existing planning assessment is determined to be adequate.~~

§ 1610.5 Preparation of a resource management plan.

When preparing a resource management plan, or a plan amendment for which an environmental impact statement will be prepared, the BLM, in coordination with any cooperating agencies, will follow the process described in §§ 1610.5-1 through 1610.5-75.

§ 1610.5-1 Identification of planning issues.

- (a) The responsible official will prepare a preliminary statement of purpose and need, which briefly indicates the underlying purpose and need to which the BLM is responding (see 43 CFR 46.420). This statement will be informed by Director and deciding official guidance (see § 1610.1-1(a)), public views (see § 1610.4(a)(4)), the planning assessment (see § 1610.4(c)), the results of any previous monitoring and evaluation within the planning area (see § 1610.6-4), Federal laws and regulations applicable to public lands, and the purposes, policies, and programs of such laws and regulations. The BLM will initiate the identification of planning issues by notifying the public and making the preliminary statement of purpose and need available for public review.
- (b) The public, other Federal agencies, State and local governments, and Indian tribes will be given an opportunity to suggest concerns, needs, opportunities, conflicts or constraints related to resource management for consideration in the preparation of the resource management plan. The responsible official, in coordination with cooperating agencies, will analyze those suggestions and other available data and information, such as the planning assessment (see § 1610.4-1), and determine the planning issues to be addressed during the planning process. Planning issues may be modified during the planning process to incorporate new information. The identification of planning issues should be integrated with the scoping process required by

regulations implementing the National Environmental Policy Act (40CFR 1501.7).

§ 1610.5-2 Formulation of resource management alternatives.

- (a) *Alternatives development.* The BLM, in coordination with any cooperating agencies, will consider all reasonable resource management alternatives (alternatives) and develop several complete alternatives for detailed study. The decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM.
- (1) The alternatives developed will be informed by the Director and deciding official guidance (see § 1610.1(a)), in coordination with any cooperating agencies, the planning assessment (see § 1610.4), and the planning issues (see § 1610.5-1).
- (2) In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, reasonable variations may be treated as sub-alternatives.
- (3) One alternative will be for no action, which means continuation of present level or systems of resource management.
- (4) The resource management plan will note any alternatives identified and eliminated from detailed study and will briefly discuss the reasons for their elimination.
- (b) *Rationale for alternatives.* The resource management plan will describe the rationale for the differences between alternatives. The rationale will include:
- (1) A description of how each alternative addresses the planning issues, consistent with the principles of multiple use and sustained yield, or other applicable law;
- (2) A description of how each alternative does or does not achieve consistency with land use and resource related planning and management programs of other Federal agencies, State and local government agencies and Indian tribes, that were identified during the planning assessment or in coordination with cooperating agencies. Where an inconsistency exists, the rationale for alternatives should describe the extent to which the BLM could reconcile any such inconsistency.¹³
- (3) A description of management direction that is common to all alternatives; and

- (4) A description of how management direction varies across alternatives to address the planning issues.

- (c) *Public review of preliminary alternatives.* The responsible official will make the preliminary alternatives and the preliminary rationale for alternatives available for public review prior to the publication of the draft resource management plan and draft environmental impact statement.
- (d) *Changes to preliminary alternatives.* The BLM may change the preliminary alternatives and preliminary rationale for alternatives as planning proceeds if it determines that public suggestions or other new information make such changes necessary.

§ 1610.5-3 Estimation of effects of alternatives.

- (a) *Basis for analysis.* The responsible official, in coordination with any cooperating agencies, will identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social, and economic effects of implementing each alternative considered in detail.
- (1) The responsible official will make the preliminary procedures, assumptions, and indicators available for public review prior to the publication of the draft resource management plan and draft environmental impact statement.
- (2) The BLM may change the procedures, assumptions, and indicators as planning proceeds if it determines that public suggestions or other new information make such changes necessary.
- (b) *Effects analysis.* The responsible official, in coordination with any cooperating agencies, will estimate and display the environmental, ecological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects will be guided by the basis for analysis, the planning assessment, and procedures implementing the National Environmental Policy Act. The estimate may be stated in terms of probable ranges where effects cannot be precisely determined.

§ 1610.5-4 Preparation of the draft resource management plan, selection of preferred alternatives and preparation of implementation strategies.

- (a) The responsible official, in coordination with any cooperating agencies, will prepare a draft resource management plan based on Director and deciding official guidance, cooperating agency

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input, the planning assessment, the planning issues, and the estimation of the effects of alternatives. The draft resource management plan and draft environmental impact statement will evaluate the alternatives, identify one or more preferred alternatives and, if provided, potential implementation strategies⁴⁴ and explain the rationale for the preference. The decision to select a preferred alternative remains the exclusive responsibility of the BLM. The resulting draft resource management plan and draft environmental impact statement will be forwarded to the deciding official for publication and filing with the Environmental Protection Agency for publication in the Federal Register.

- (b) This draft resource management plan and draft environmental impact statement will be provided for comment to the Governor(s) of the State(s) involved, and to officials of other Federal agencies, State and local governments, and Indian tribes that the deciding official has reason to believe would be interested (see § 1610.3–1(c)). This action constitutes compliance with the requirements of § 3420.1–7 of this title.

§ 1610.5–5 Selection of the proposed resource management plan and preparation of implementation strategies.

- (a) After publication of the draft resource management plan and draft environmental impact statement, the responsible official will, in coordination with any cooperating agencies, evaluate the comments received and prepare the proposed resource management plan and final environmental impact statement.
- (b) The responsible official will prepare implementation strategies for the proposed resource management plan, as appropriate. Preparation of any implementation strategy requires interagency coordination as described under §§ 1610.2 and 1610.3.
- (c) The deciding official will publish these documents and file the final environmental impact statement with the Environmental Protection Agency.

§ 1610.6 Resource management plan approval, implementation and modification.

§ 1610.6–1 Resource management plan approval and implementation.

- (a) The deciding official may approve the resource management plan or plan amendment for which an environmental impact statement was prepared no earlier than 30 days after

the Environmental Protection Agency publishes a notice of availability of the final environmental impact statement in the Federal Register.

- (b) Approval will be withheld on any portion of a resource management plan or plan amendment being protested (see § 1610.6–2) until final action has been completed on such protest. If, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is encompassed by the range of alternatives in the final environmental impact statement or environmental assessment, but is substantially different than the proposed resource management plan or plan amendment, the BLM will notify the public and request written comments on the change before the resource management plan or plan amendment is approved.
- (c) The approval of a resource management plan or a plan amendment for which an environmental impact statement is prepared will be documented in a concise public record of the decision, meeting the requirements of regulations for the National Environmental Policy Act of 1969 (see 40 CFR § 1505.2).

§ 1610.6–2 Protest procedures.

- (a) Any person who participated in the preparation of the resource management plan or plan amendment and has an interest which may be adversely affected by the approval of a proposed resource management plan or plan amendment may protest such approval. A protest may raise only those issues which were submitted for the record during the preparation of the resource management plan or plan amendment (see §§ 1610.4 and 1610.5).

- (1) *Submission.* The protest must be in writing and must be filed with the Director. The protest may be filed as a hard-copy or electronically. The responsible official will specify protest filing procedures for each resource management plan or plan amendment, including the method the public may use to submit a protest electronically.
- (2) *Timing.* For resource management plans or plan amendments for which an environmental impact statement was prepared, the protest must be filed within 30 days after the date the Environmental Protection Agency published the notice of availability of the final environmental impact statement in the Federal Register. For plan amendments for which an

environmental assessment was prepared, the protest must be filed within 30 days after the date that the BLM notifies the public of availability of the amendment.

- (3) *Content requirements.* The protest must:
- Include the name, mailing address, telephone number, email address (if available), and interest of the person filing the protest;
 - State how the protestor participated in the preparation of the resource management plan or plan amendment;
 - Identify the plan component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands or the purposes, policies and programs of such laws and regulations, or in their absence, land use and resource related planning and management programs of State agencies, Indian tribes and local governments;
 - Concisely explain why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs of such laws and regulations, or land use and resource related planning and management programs of State agencies, Indian tribes and local governments and identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment; and
 - Include a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record.
- (4) *Availability.* Upon request, the Director will make protests available to the public.
- (b) Except as otherwise provided in § 1610.6–1(b), the Director will render a written decision on all protests before approval of the resource management plan or plan amendment. The Director will notify protesting parties of the decision. The decision on the protest and the reasons for the decision will be made available to the public. The decision of the Director is the final

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decision of the Department of the Interior.

- (c) The Director may dismiss any protest that does not meet the requirements of this section.

§ 1610.6-3 Conformity and implementation.

- (a) All future resource management authorizations and actions, and subsequent more detailed or specific planning, will conform to the plan components of the approved resource management plan.
- (b) After a resource management plan or plan amendment is approved, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement, or other instrument of occupancy and use, the BLM will take appropriate measures, subject to valid existing rights, to make operations and activities under existing permits, contracts, cooperative agreements, or other instruments for occupancy and use, conform to the plan components of the approved resource management plan or plan amendment within a reasonable period of time. Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or plan amendment may appeal such action pursuant to 43 CFR 4.400 at the time the specific action is proposed for implementation.
- (c) If a proposed action is not in conformance with a plan component, and the deciding official determines that such action warrants further consideration before a resource management plan revision is scheduled, such consideration will be through a resource management plan amendment in accordance with § 1610.6-6 of this part.
- (d) More detailed and site specific plans for coal, oil shale and tar sand resources will be prepared in accordance with specific regulations for those resources: part 3400 of this title for coal; part 3900 of this title for oil shale; and part 3140 of this title for tar sand. These activity plans will be in conformance with land use plans prepared and approved under the provisions of this part.

§ 1610.6-4 Monitoring and evaluation.

The BLM will monitor and evaluate the resource management plan in accordance with the monitoring and evaluation standards and monitoring procedures to determine whether there is sufficient cause to warrant amendment or revision of the resource management plan. The responsible

official will document the evaluation of the resource management plan for public review.

§ 1610.6-5 Maintenance.

Resource management plans may be maintained as necessary to ~~reflect correct~~ ~~typographical or mapping errors or to~~ ~~reflect~~ minor changes¹⁵ ~~in mapping or data~~. Maintenance will not change a plan component of the approved resource management plan and ~~, except to correct~~ ~~typographical or mapping errors or to~~ ~~reflect minor changes in mapping or data~~. ~~shall not result in expansion in the scope of resource uses or restrictions, or change terms, conditions, and decision of the approved plan~~. Maintenance is not considered a resource management plan amendment and does not require the formal public involvement and interagency coordination processes described under §§ 1610.2 and 1610.3 of this part or the preparation of an environmental assessment or environmental impact statement. When changes are made to an approved resource management plan through plan maintenance, the BLM will notify the public and make the changes available for public review at least 30 days prior to their implementation. ~~Maintenance shall be documented in plans and supporting records~~.

§ 1610.6-6 Amendment.

- (a) A plan component may be changed through amendment. An amendment may be initiated when the BLM determines monitoring and evaluation findings, new high quality information, new or revised policy, a proposed action, or other relevant changes in circumstances, such as changes in resource, environmental, ecological, social, or economic conditions, warrants a change to one or more of the plan components of the approved resource management plan. An amendment will be made in conjunction with an environmental assessment of the proposed change, or an environmental impact statement, if necessary. When amending a resource management plan, the BLM will provide for public involvement (see § 1610.2), interagency coordination and consistency (see § 1610.3), and protest (see § 1610.6-2). In all cases, the effect of the amendment on other plan components will be evaluated. If the amendment is being considered in response to a specific proposal, the effects analysis required for the proposal and for the amendment may occur simultaneously.
- (b) If the environmental assessment does not disclose significant impacts, the responsible official may make a finding

of no significant impact and then make a recommendation on the amendment to the deciding official for approval. Upon approval, the BLM will issue a public notice of the action taken on the amendment. If the amendment is approved, it may be implemented 30 days after such notice.

- (c) If the BLM amends several resource management plans simultaneously, a single programmatic environmental impact statement or environmental assessment may be prepared to address all amendments.

§ 1610.6-7 Revision.

The BLM may revise a resource management plan, as necessary, when monitoring and evaluation findings ~~(§ 1610.4-9)~~ ~~(§ 1610.6-4)~~¹⁶, new data, new or revised policy, or other relevant changes in circumstances affect the entire resource management plan or major portions of the resource management plan. Revisions will comply with all of the requirements of this part for preparing and approving a resource management plan.

§ 1610.6-8 Situations where action can be taken based on another agency's plan, or a land use analysis.

These regulations authorize the preparation of a resource management plan for whatever public land interests exist in a given land area, including mixed ownership where the public land estate is under non-Federal surface, or administration of the land is shared by the BLM and another Federal agency. The BLM may rely on the plans or the land use analysis of other agencies when split or shared estate conditions exist in any of the following situations:

- (a) Another agency's plan (Federal, tribal, State, or local) may be relied on as a basis for an action only if it is comprehensive and has considered the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public involvement; ~~and is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations~~.¹⁷
- (b) After evaluation and review, the BLM may adopt another agency's plan for continued use as a resource management plan so long as ~~the plan is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs of such laws and regulations~~, and an agreement is reached between the BLM

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and the other agency to provide for maintenance and amendment of the plan, as necessary.

- (c) A land use analysis may be relied on to consider a coal lease when there is no Federal ownership interest in the surface or when coal resources are insufficient to justify plan preparation costs. The land use analysis process, as authorized by the Federal Coal Leasing Amendments Act, consists of an environmental assessment or impact statement, public participation as required by § 1610.2, the consultation and consistency determinations required by § 1610.3, the protest procedure prescribed by § 1610.6-2, and a decision on the coal lease proposal. A land use analysis meets the planning requirements of section 202 of FLPMA.

§ 1610.7 Management decision review by Congress.

FLPMA requires that any BLM management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, will be reported by the Secretary to Congress before it can be implemented. This report is not required prior to approval of a resource management plan which, if fully or partially implemented, would result in such an elimination of use(s). The required report will be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use.

§ 1610.8 Designation of areas.

§ 1610.8-1 Designation of areas unsuitable for surface mining.

- (a)
- (1) The planning process is the chief process by which public land is reviewed to assess whether there are areas unsuitable for all or certain types of surface coal mining operations under section 522(b) of the Surface Mining Control and Reclamation Act. The unsuitability criteria to be applied during the planning process are found in § 3461.1 of this title.
- (2) When petitions to designate land unsuitable under section 522(c) of the Surface Mining Control and Reclamation Act are referred to the BLM for comment, the resource management plan, or plan amendment if available, will be the basis for review.

- (3) After a resource management plan or plan amendment is approved in which lands are assessed as unsuitable, the BLM will take all necessary steps to implement the results of the unsuitability review as it applies to all or certain types of coal mining.

- (b)
- (1) The resource management planning process is the chief process by which public lands are reviewed for designation as unsuitable for entry or leasing for mining operations for minerals and materials other than coal under section 601 of the Surface Mining Control and Reclamation Act.
- (2) When petitions to designate lands unsuitable under section 601 of the Surface Mining Control and Reclamation Act are received by the BLM, the resource management plan, if available, will be the basis for determinations for designation.
- (3) After a resource management plan or plan amendment in which lands are designated unsuitable is approved, the BLM will take all necessary steps to implement the results of the unsuitability review as it applies to minerals or materials other than coal.

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

- (a) Areas having potential for ACEC designation and protection will be identified through inventory of public lands and during the planning assessment. The inventory data will be analyzed to determine whether there are areas containing resources, values, systems or processes, or hazards eligible for further consideration for designation as an ACEC. In order to be a potential ACEC, both of the following criteria must be met:
- (1) *Relevance.* There must be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard; and
- (2) *Importance.* The value, resource, system, process, or hazard described in paragraph (a)(1) of this section must have substantial significance and values. This generally requires qualities of special worth, consequence, meaning, distinctiveness, or cause for concern. A natural hazard can be important if it is a significant threat to human life or property.
- (b) Potential ACECs will be considered for

designation during the preparation or amendment of a resource management plan. The identification of a potential ACEC does not, in of itself, change or prevent change of the management or use of public lands.

- (c) Potential ACECs require special management attention (when such areas are developed or used or no development is required) to protect and prevent irreparable damage to the important historic, cultural, or scenic values, fish and wildlife resources or other natural system or process, or to protect life and safety from natural hazards.
- (1) Upon release of a draft resource management plan or plan amendment involving a potential ACEC, ~~the BLM will notify the public of each potential ACEC and any special management attention which would occur if it were formally designated.~~ **the deciding official shall publish a notice in the Federal Register listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated. The notice shall provide a 60-day period for public comment on the proposed ACEC designation.**
- (2) The approval of a resource management plan or plan amendment that contains an ACEC constitutes formal designation of an ACEC. The approved plan will include a list of all designated ACECs, and include any special management attention identified to protect the designated ACECs.

§ 1610.9 Transition period.

- (a) Until superseded by resource management plans, management framework plans may be the basis for considering proposed actions as follows:
- (1) The management framework plan must be in compliance with the principle of multiple use and sustained yield, or other applicable law, and must have been developed with public involvement and governmental coordination, but not necessarily precisely as prescribed in §§ 1610.2 and 1610.3 of this part.
- (2) For proposed actions a determination will be made by the responsible official whether the proposed action is in conformance with the management framework plan. Such determination will be in writing and will explain the reasons

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for the determination.

- (i) If the proposed action is in conformance with the management framework plan, it may be further considered for decision under procedures applicable to that type of action, including the regulatory provisions of the National Environmental Policy Act.
- (ii) If the proposed action is not in conformance with the management framework plan, and if the proposed action warrants further consideration before a resource management plan is scheduled for preparation, such consideration will be through an amendment to the management framework plan under the provisions of § 1610.6-6 of this part.

(b)

- (1) If an action is proposed where public lands are not covered by a management framework plan or a resource management plan, an environmental assessment or an environmental impact statement, if necessary, plus any other data and analysis deemed necessary by the BLM to make an informed decision, will be used to assess the impacts of the proposal and to provide a basis for a decision on the proposal.
- (2) A land disposal action may be considered before a resource management plan is scheduled for preparation, through a planning analysis, using the process described in § 1610.6-6 of this part for amending a plan.

(c)

- (1) When considering whether a proposed action is in conformance with a resource management plan, the BLM will use an existing resource management plan approved prior to April 25, 2016 until it is superseded by a resource management plan or plan amendment prepared under the regulations in this part. In such circumstances, the proposed action must either be specifically provided for in the resource management plan or clearly consistent with the terms, conditions, and decisions of the approved plan.
- (2) If a resource management plan is amended by a plan amendment prepared under the regulations in this part, a future proposed action must either be consistent with the plan components of the approved

resource management plan or the terms, conditions, and decisions of the approved resource management plan.

- (3) If the preparation, revision, or amendment of a plan was formally initiated by issuance of a notice of intent in the **Federal Register** prior to April 25, 2016, the BLM may complete and approve the resource management plan or plan amendment pursuant to the requirements of this part or to the provisions of the planning regulations in 43 CFR part 1600 (revised as of October 1, 2015).

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¹ This is a term of art that should be defined for compliance with FLPMA §202(c)(9), DOI Regulations, and NEPA Regulations;

² "Minor Change" is added for better consistency throughout the document. The language is pulled from the BLM Land Use Planning Handbook H-1601 at Appendix F, page 14 and existing 43 CFR §1610.5-4.

³ FLPMA requires consistency with four different types of "plans," not just "land use," and not "officially adopted," or "approved." *Accord* FLPMA § 202(c)(9): State, local, and tribal "**land use planning and management programs**... statewide outdoor recreation **plans**... approved land **resource management programs**... land use **plans**... **plans germane** in the development of land use **plans**... land use **programs**... local **plans**." The NEPA Regulations also speak to consistency at 40 CFR §1502.16(c) "This section [Environmental consequences] shall include discussions of: (c) Possible conflicts between the proposed action and the objectives of federal, regional and local (and in the case of a reservation, Indian tribe) **land use plans, policies and controls** for the area concerned. (See §1506.2(d))."

⁴ Replaces existing §1610.3-1. Coordination of planning efforts. (b) "State Directors and Field Managers will consider any requests of other Federal agencies, state and local governments, and federally recognized Indian tribes for cooperating agency status. Field managers who deny such requests will inform the State Director of the denial. The State Director will determine if the denial is appropriate." *Accord* DOI's NEPA Regulations at 43 CFR 46.225 (c) "The Responsible Official for the lead bureau must consider any request by an eligible governmental entity to participate in a particular environmental impact statement as a cooperating agency. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, he or she must state the reasons in the environmental impact statement. Denial of a request or not extending an invitation for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*"

⁵ FLPMA § 202(c)(9) requires meaningful public involvement.

⁶ See 40 CFR §1506.2(d) Elimination of duplication with State and local procedures, "...Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."

⁷ There is no definition for the term "substantive." This means the BLM can interpret its meaning in its sole discretion. This will take staff time to determine first if the recommendation is "substantive," then how to respond. The BLM should respond to every recommendation if the Governor took the time to draft them. This does not serve the BLM's purposes to save money on staff time or to ensure State involvement.

⁸ This shouldn't be limited to what's considered in (a)(2) if the public or non-cooperating agencies want to suggest "other policies, guidance, strategies, or plans."

⁹ This is very helpful for public review and involvement. If the public knows what the BLM does not have or cannot obtain, then it gives the public the opportunity to help obtain that data or offer to develop studies. New language from BLM Land Use Planning Handbook H-1601-1, Appendix G, Page 1. The US Geological Survey could also use this information to base future research efforts towards areas where information is lacking and needed from management decisions.

¹⁰ We ask that the BLM either omit or clearly define the meaning of "relative ecological importance." The BLM Land Use Planning Handbook has a section in Appendix F entitled, "Identify Areas of Relative Ecological Importance to Guide Land Uses and Management." To maintain existing language, the three paragraphs can be pared down to this as a suggested revision to 1610.4 (c)(5)(iv): *Areas of relative ecological importance focused on dominant patterns of habitat extent, habitat condition, habitat connectivity, and overall plant and animal species diversity.*

¹¹ The BLM's NEPA Handbook h1790-2008 at page 62 says "Socioeconomic impacts are usually indirect and largely fall on communities and local government institutions, by definition located outside BLM-managed lands. While some mitigation strategies are within the BLM's control, (such as regulating the pace of mineral exploration and development to minimize rapid, disruptive social change), most mitigation strategies require action by other government entities—typically cities, counties, and State agencies," *citing* the BLM Handbook of Socio-Economic Mitigation, IV-2.

¹² There is either plan maintenance or a plan amendment. There is no in-between. If an EIS is required, then this cannot be waived.

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¹³ See 40 C.F.R. §1506.2. The goal is to describe inconsistencies early on in the planning process to determine how inconsistencies can be reconciled prior to the draft.

¹⁴ Adding this exercise could help to prevent non-implementable decisions.

¹⁵ See definition for "minor change."

¹⁶ § 1610.4-9 does not exist in the proposed Regulations. It was instead moved to § 1610.6-4.

¹⁷ This language is unnecessary. The agency must always be consistent with Federal laws and policy.

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May 25, 2016

Director Neil Kornze
Director (630)
Bureau of Land Management
U.S. Department of the Interior
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Re: Comments on Bureau of Land Management Planning 2.0 (81 FR 9674)

Dear Director Kornze,

Thank you for providing a first draft of your proposed planning regulations. As the state association for all 17 of Nevada's counties, the Nevada Association of Counties ("NACO") greatly appreciates the opportunity to greatly improve the BLM's proposed language and submits this comment letter on BLM Planning 2.0, which proposes to amend 43 C.F.R. 1601, 1610.¹ According to the BLM, [Planning 2.0 "responds to a 2011 BLM strategic review that identified challenges and opportunities for the BLM and to recent Executive and Secretarial direction that encourages science-based decision-making; landscape-scale management approaches; adaptive management techniques to manage for uncertainty; and active coordination and collaboration with partners and stakeholders. In this proposed rule, the BLM proposes targeted changes to the existing planning regulations in 43 CFR subparts 1601 and 1610 and explains the rationale."](#)² Planning 2.0 seeks to achieve three goals: "(1) Improve the BLM's ability to respond to social and environmental change in a timely manner; (2) provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans; and (3) improve the BLM's ability to address landscape-scale resource issues and to apply landscape-scale management approaches. The Planning 2.0 initiative includes this proposed rule and a forthcoming revision of the *BLM Land Use Planning Handbook* (H-1601-1)."³

Integrated land management efforts are essential to successful land management planning. Director Kornze, you recently said "Managing the public's land is a tremendous honor for the employees of this agency, and our work depends on close cooperative relationships with partners and local communities... Today's announcement builds on the work we do every day to provide opportunities for the public to be part of managing these incredible

¹ All materials cited herein, the majority of which are readily available online, are incorporated in full by reference.

² 81 FR 9674

³ 81 FR 9674.

landscapes." NACO agrees that close cooperative relationships with partners and local communities is key to successful land management planning. NACO works with county government to adopt and maintain local, regional, state and national cooperation which will result in a positive influence on public policy and optimize land management planning.

County boundaries cover both private and federal land to provide fundamental services such as local land management planning, zoning, infrastructure, maintenance, water, wildlife protection, and the first critical responses to natural disasters. Thus, it is imperative that the Bureau of Land Management ("BLM") maintain regulatory language that supports the above stated goals. This can be achieved within the proposed framework provided in Planning 2.0 by re-integrating language omitted from existing regulations along with suggested changes that would improve relations.

Overview

Planning regulations help Agencies implement the directives of their authorizing statutes. Once established, and unless challenged in court, these regulations represent the Agency's interpretation of its authority and responsibilities. Regulations also help to manage internal and external expectations, and for that reason an agency must, by law, adhere to procedures established by its own regulations. Thus, the proposed regulations, or Planning 2.0, articulate the BLM's interpretation of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq. ("FLPMA") and its responsibilities over land management planning. Planning 2.0 is the best chance NACO and counties will have to ensure that the BLM's regulations do in fact reflect the spirit and intent of FLPMA with respect to local government planning and coordination, and meaningful public involvement.

NACO agrees that the BLM's goals and narrative is positive and in alignment with its statutory authority. Goals are important but the commitment can only be solidified within the regulatory text. While the discussions within Planning 2.0, narrative from press announcements and hearings, and webinars continually stress the importance of local relationships, yet the text of the proposed language as compared to the existing regulatory language slashes instead of enhances the language that in practice will support the inter-governmental and public roles. This contradiction is perplexing yet is a pattern that is the main contributor to increasing tensions in the West where local governments and the public feel as if they are completely ignored as part of a box to check during the planning process. Because the language in the proposed regulations change the way the BLM will interact with State, local, and tribal governments for land management planning, it is important that we work together to ensure the language achieves in practice this positive narrative.

NACO has attended and hosted several webinars and discussions with BLM staff to help further understand these significant proposed regulatory changes. It is with a deep understanding of the proposed changes that NACO offers recommendations to improve language in support of the BLM's stated goals. [There are several missed opportunities in the](#)

[proposed planning regulations](#). Given the importance of these regulation changes, NACO has worked with a coalition of stakeholders to offer the attachment "Annotated Comments and Revisions" as a formal request to change the proposed language in a way that helps achieve each and every one of the BLM's stated goals. This comment letter details the reasoning for each proposed change within the following outline:

- I. Compliance with Statutory Requirements (NEPA and FLPMA)**
 - A. Cooperating Agency Status only satisfies NEPA; Even Then to Comply with NEPA the Proposed Regulations Should Re-Incorporate Cooperating Agencies Where They Were Eliminated Throughout the Proposed Regulatory Text
 - B. FLPMA Contains Additional Requirements That Have Not Been Adequately Addressed
 - C. The Regulations Could Better Integrate Overlapping NEPA and FLPMA Requirements
- II. Unintended Yet Foreseeable Consequences**
 - A. Equal Access to Justice Considerations
 - B. Reduced Emphasis on Local Relationship-Building With the BLM
- III. Impacts to Judicial Guidance**
 - A. The BLM Should Wait for Judicial Guidance Prior to Adoption of the Proposed Regulations
 - B. Changes in Regulations Will Impact Standing Case Law

Discuss where to add: Ability to adopt USFS Regs for planning process if joint process.

I. Compliance with Statutory Requirements (NEPA and FLPMA)

Agencies are required by law to comply with their own regulations. These regulations are purposed to implement the directives of enabling statutes. The Federal Land Policy and Management Act ("FLPMA") and National Environmental Policy Act ("NEPA") direct the BLM in its land management practices. Thus, the BLM may not adopt Regulations that are contrary to the directives of FLPMA or NEPA.⁴ To determine what the regulations must contain, according to case law "if the intent of Congress is clear, that is the end of the matter," the agency must adopt Regulations to effectuate the intent. The intent of Congress can be determined by looking at the (1) plain language of the statute; and (2) the legislative history. It is only when "the statute is silent or ambiguous with respect to the specific issue" that the BLM may interpret its duties and make policy decisions according to this

⁴ These comments focus only on FLPMA and NEPA requirements. The BLM cites to all of its authority under proposed § 1601.0-3 (Authority), including: sections 201 and 202 of the FLPMA of 1976, 43 U.S.C. 1711-1712; the Public Rangelands Improvement Act of 1978, 43 U.S.C. 1901; section 3 of the Federal Coal Leasing Plan amendments Act of 1976, 30 U.S.C. 201(a); sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*; and the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA").

interpretation.⁵

FLPMA and NEPA are two distinct statutes that together create three separate but equally important responsibilities to State, local and tribal government as well as to the public: Coordination, Consistency Review, and Public Involvement. It is extremely important that these three distinct responsibilities remain separated throughout the planning process. The counties do not seek to minimize public involvement but instead to increase public involvement while at the same time elevating the local government role as directed by FLPMA.

BLM should integrate FLPMA and NEPA where it increases efficiency or where they overlap; but only where it is permissible. These statutes build off one another. If the agency is using NEPA's Cooperating Agency status in the same way that other agencies use it then the directives of FLPMA are being missed. It is not enough to say that the BLM also intends to comply with FLPMA; the terms of compliance should be included in the Regulations.

A. Cooperating Agency Status only satisfies NEPA; Even Then the Proposed Regulations Eliminate Cooperating Agencies Throughout the Proposed Regulatory Text

The BLM ignores intergovernmental coordination if the BLM gives to local and state government the same treatment as another agency acting subject to NEPA review pursuant to a separate enabling statute (for example, the Endangered Species Act). Because an RMP always triggers NEPA review, there exists a tendency to view these as inextricably intertwined. Yet absent NEPA review, the requirements of FLPMA remain. Thus, the BLM must provide additional opportunities for coordination above and beyond the Cooperating Agency Status involvement as required by NEPA.

If the process is the same for another agency then only NEPA is being satisfied.

Executive Memorandum on NEPA and Cooperating Agencies (does not limit).

Memorandum for the Heads of Federal Agencies, James Connaughton, Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, January 30, 2002.

"fostering intergovernmental trust... ability to adopt environmental documents. The intent of Cooperating Agency.

2.0 is actually reducing the trust.

⁵ *Chevron U.S.A. v. NRDC*, 467 U.S. 837 (1984), 842–843.

If the goal is to enhance trust, then why do these changes limit local government and cooperating agency participation.

"Agencies are urged to integrate NEPA Requirements... and reminded that cooperating agency status does not satisfy or end those other requirements..."

1. **"In Collaboration with Cooperating Agencies" Should be Added Back in, but Changed to "In Coordination with Cooperating Agencies."**
2. **The BLM Should Consider Cooperating Agency Requests**

(a) *Cooperating agencies.* When preparing a resource management plan, the responsible official will ~~invite~~ ~~follow applicable regulations regarding the invitation of~~ eligible governmental entities (see 43 CFR 46.225) to participate as cooperating agencies. The same requirement applies when the BLM amends a resource management plan and prepares an environmental impact statement to inform the amendment. ~~In addition, the responsible official must consider a request by an eligible governmental entity to participate as a cooperating agency (see 43 CFR 46.225(c)). If there is a denial for a request to become a cooperating agency, the deciding official will respond to the request explaining why the denial is appropriate.~~¹

B. FLPMA Contains Additional Requirements That Have Not Been Adequately Addressed

Coordination, Consistency, Local Economies, Public Involvement, Meaningful Public Involvement above and beyond what NEPA Provides.

If the Regulations do not contain adequate and consistent language for these requirements with local government then: (1) The BLM will not have discrete, specific steps for compliance; and (2) we will not know when or how coordination, consistency review, or [meaningful] public involvement will happen or if it will be reliably applied across planning efforts.

This is also problematic for Planning 2.0 because we cannot provide comment and input on how the BLM plans to comply with FLPMA. The incentive to comply with these FLPMA sections is greatly reduced if there is no way to enforce the agency's responsibilities without judicial redress. (Look at the plain language of FLPMA, starting with §202(c)(9)).

Cooperating Agencies should not be asked to comment with the general public. Haven't taken comments into account until the draft stage. Should be obligated to address comments earlier. At point now even with Planning 2.0- why waste our time and resources because it doesn't seem to be working as intended.

1. FLPMA Requires More to Fulfill Coordination Requirements with State and Local Governments

FLPMA requires that the BLM "coordinate" its land use planning efforts, which includes developing planning regulations with other State, local, Federal, and tribal governments with jurisdiction over BLM managed land.

Cross-jurisdictional coordination is key to successful land management planning. Because these regulations propose to change the way the BLM interacts with State, local, and tribal governments for land management planning, NACO is very concerned about any changes in Regulations that appear to reduce local government involvement. Current litigation over land management planning highlights concerns with current practices.

On coordination, Congress is clear:

"a land use planning process *coordinated* with other Federal and State planning efforts." 43 U.S.C. 1701(a). (Emphasis added).

"The Secretary **shall...** to the extent consistent with the laws governing the administration of the public lands, ***coordinate*** the land use inventory, planning, and management activities of or for such lands **with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located.**" 43 U.S.C. 1712 (c). (Emphasis Added).

Look at: 75-H441-37 at page 360: NACO Recommendation for modification of the provision establishing... state and local roles...

i. The Plan Assessment Must be Created in Coordination with Collaborating Agencies

§ 1610.4 Planning assessment.

(2) Identify, in **collaboration with cooperating agencies**, relevant national, regional, or local **land use and resource related planning and management programs** for consideration in the planning assessment. ~~These may include, but are not limited to, executive or Secretarial orders, Departmental or BLM policy, Director or deciding official guidance, mitigation strategies, interagency initiatives, and State or multi-state resource plans;~~ⁱⁱ

(3) Provide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other policies, guidance, strategies, or plans ~~described under paragraph (a)(2) of this section;~~ⁱⁱⁱ for the BLM's consideration in the planning assessment.

ii. FLPMA Requires *Meaningful* Public Involvement with State and local Governments

Look at BLM Handbook- language that says the obligation for the BLM to coordinate and find consistency is not done away with. Don't have to be a cooperating agency to have the involvement. This is a key point.

(3) The responsible official will notify relevant State agencies of opportunities for **meaningful** public involvement in the preparation and amendment of resource management plans consistent with State procedures for coordination of Federal activities for circulation among State agencies, if such procedures exist.

iii. Local Officials Should Drive the Planning Process; Especially at a Landscape Scale

This is a safety net for local government that cannot be a Cooperating Agency. They should still be treated differently- somewhere between a Cooperating Agency and the General Public. Meaningful is a qualifier that means something more than notice and comment.

2. FLPMA Requires Public Involvement for the General Public

FLPMA distinguishes public involvement from coordination with state and local governments for the purposes of land management planning. FLPMA governs land management. In recognition that states and local government share land management responsibilities, it is a policy of FLPMA that "their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts."⁶ A separate, but equally important FLPMA policy is that the BLM must also "consider the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decision making."⁷ This requirement can be described as "public involvement." While NEPA may serve to satisfy public involvement requirements, it does not satisfy the requirement that the BLM coordinate with state and local governments in land use planning efforts.

- i. Public Involvement By Definition Includes Public Notice and Comment – Or More**
- ii. There is a Need for Longer public comment periods**

This is an Equal Access to Justice issue.

⁶ 43 U.S.C.S. § 1701(a)(2)

⁷ 43 U.S.C.S. §1701(a)(5).

- iii. **The Plan Assessment Report Must Be Made Available for Public Review and Comment.**
- iv. Adds requirements that will make it harder for the public to participate and protest.
- v. **Preparation of Implementation Strategies Must Be made Available for Public Review and Comment**
 - 1. Publication in the Federal Register is Necessary

Planning Assessment should be included

C. FLPMA Requires Consistency Review; Should be Integrated with NEPA Requirements

§ 1610.3–2 Consistency requirements.

(a) Resource management plans will be consistent with ~~officially approved or adopted land use plans~~ **land use and resource related planning and management programs** of other Federal agencies, State and local governments, and Indian tribes 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. (2) The BLM will, to the extent practical, keep apprised of ~~officially approved and adopted land use plans of State and local governments and Indian tribes~~ **State and local governmental and tribal land use and resource related planning and management programs. and give consideration to those plans that are germane in the development of resource management plans.**
~~–(3) The BLM is not required to address the consistency requirements of this section if the responsible official has not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.~~

1. "Officially Approved and Adopted Land Use Plans"

The BLM should allow for flexibility for consistency review; limiting what qualifies as “officially approved and adopted land use plans” Is Overly Restrictive And Directly Conflicts with FLPMA Language.

Consistency includes consideration of, but is not limited to: **"other Federal and State planning efforts," "the statewide outdoor recreation plans** developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460l–4 et seq. note], and of or for Indian tribes by, among other things, **considering the policies of approved State and tribal land resource management programs.** In implementing this directive, the Secretary shall, to the extent he finds practical, **keep apprised of State, local, and tribal land use**

plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands"⁸

Land use and resource related planning and management programs Agreed: Umbrella is broad enough, okay term. Concern- don't want BLM saying "we don't have to coordinate on this because... not adopted, etc." Point National NACo making in comment letter.

Nevada Statutes- a lot of legislative declarations like NRS 548- resource planning best at local level. Just a declaration but the ultimate authority for water allocation and management goes back to state even though we can plan and exert influence on the local level. Afraid this language might give an open end to the BLM to say you have all the authority to plan but they'll diminish local government involvement.

Clarify in narrative examples. Intent- to expand, not to limit. Consistent with NEPA- to help with that. Special expertise- related program experience. Still have to demonstrate that you have that program related experience but we can use that to show how programs are important and necessary.

1502.16 Environmental consequences: (c) Possible conflicts between the proposed action and the objectives of federal, regional, state, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See 1506.2(d)).

At Planning 2.0- narrative that local governments are trying to quash the public voice and not just trying to assert our special status. Trying to box out other public. This deletion might unintentionally feed that narrative. Instead, we're trying to assert in addition to public comment that's available. We're not making ourselves the only voice.

We've spent a long time trying to get the agencies to understand what consistency means. People are only now beginning to be comfortable with what it is when we talk about consistency and resource-related plans. Comfortable with how broad they can be, and the scope is initially defined by the provider with the caveat that whatever you provide you have to back up substantively.

43 CFR 1610.3-2; 43 CFR 1610.2; 40 CFR 1502.16(c), 1506.2; LandUse Planning Handbook at Page 6 H-1601-1 BLM pages 6, 9, 11, 12, 25; NEPA Handbook H1790-2008-1 at 55,

§ 1601.0-5 Definitions.

Consistent^{iv} means that resource management plans and plan amendments will adhere to the terms, conditions, and decisions of *land use and resource related planning and management programs*, or in their absence, with policies and programs, subject to the qualifications of other Federal agencies, State agencies, Indian tribes and local governments that may be affected, subject to §1610.3 of this title.

Officially approved and adopted land use plans *land use and resource related planning and management programs* or means plans, policies, programs, controls and processes prepared ~~and approved pursuant to and~~ in accordance

⁸ 43 U.S.C. 1701(a)

with authorization provided by Federal, State or local authorities.^v ~~land use plans prepared and approved by other Federal agencies, State and local governments, and Indian tribes pursuant to and in accordance with authorization provided by Federal, State, or local constitutions, legislation, or charters which have the force and effect of State law.~~

(d) *Consistency Review.*^{vi} The deciding official, in compliance with section 1611 of this title, shall:

(1) Ensure that it is as consistent as possible with existing or proposed **land use and resource related planning and management 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 **resource management plan or plan amendment** is inconsistent with such **land use and resource related planning and management 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 **deciding official** believes may lead to resolution of such inconsistencies.

(4) The resource management plan documentation shall show how those inconsistencies were addressed and, if possible, resolved.

2. Consistency Review Must Begin during the Planning Assessment and Continue Throughout the Planning Process

This is also an integration issue. See below "The Regulations Could Better Integrate Overlapping NEPA and FLPMA Requirements."

Should begin at the Planning Assessment.

CEQ Requires Documentation anyway, so this will help with the goal of meeting NEPA requirements at this stage. The Planning Assessment Report then again at the DEIS level.

If the BLM is at any point worried about getting the correct information, it is important to stress that they may use the cooperating agencies to help make sure they are in compliance with coordination and consistency review.

"assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans" 43 U.S.C. 1712 (c).
(Emphasis Added).

, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands.
43 U.S.C. 1712 (c). (Emphasis Added).

"Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." 43 U.S.C. 1712 (c). (Emphasis Added).

The BLM Planning regulations were last amended in 2005. Those planning amendments added some of the language the BLM now seeks to omit on the issue of consistency review. This means that at that time, the BLM remained committed to working with local governments.

Since then, what we have seen is the greater sage grouse plans. Looking to the MSJ for Nevada, it is clear that the BLM did not provide consistency review at all for counties. It seems convenient that...

NOTE: If the BLM is at any point worried about getting the correct information, it is important to stress that they may use the cooperating agencies to help make sure they are in compliance with coordination and consistency review.

§ 1610.4 Planning assessment.

(c) (5) Specific requirements and constraints to achieve consistency and avoid possible conflicts with land use and resource related planning and management programs of other Federal agencies, State and local government agencies, and Indian tribes;

§ 1610.5–2 Formulation of resource management alternatives.

(b)

(2) A description of how each alternative does or does not achieve consistency with land use planning and management programs of other Federal agencies, State and local government agencies and Indian tribes, that were identified during the planning assessment or in collaboration with cooperating agencies. Where an inconsistency exists, the rationale for alternatives should describe the extent to which the BLM could reconcile any such inconsistency.^{vii}

3. Raise the inconsistency in writing?

§ 1610.3–2 Consistency requirements.

(3) If a Federal agency, State and local government, or Indian tribe notifies the responsible official, in writing, of what they believe to be specific inconsistencies between the BLM resource management plan and their ~~officially approved and adopted land use plans~~ land use and resource related planning and management programs, the BLM will, in coordination with any cooperating agencies, ~~resource management plan~~ provide, within 90 days, documentation ~~will~~ describing the extent to which the BLM could reconcile any such inconsistencies and show whether the BLM plans to.^{viii} ~~show how those inconsistencies were addressed and~~, if possible, resolve ~~d~~ them.

(4) Where ~~the officially approved and adopted land use plans of State and local government differ from each other~~ land use and resource related planning and management programs differ, those of the higher authority will normally be followed.

4. The Governor's Consistency Review Should Remain

§ 1610.3-2 Consistency requirements.

(b) *Governor's consistency review.* Prior to the approval of a proposed resource management plan or plan amendment, the deciding official will submit to the Governor of the State(s) involved, the proposed resource management plan or plan amendment and will identify any ~~relevant~~ known inconsistencies with ~~the officially approved and adopted land use plans of State and local governments~~ State or local land use and resource related planning and management programs.

(1) The Governor(s) may submit a written document to the deciding official within 60 days after receiving the proposed resource management plan or plan amendment that:

(i) Identifies inconsistencies with ~~officially approved and adopted land use plans of State and local governments~~ State or local land use and resource related planning and management programs and provides recommendations to remedy the identified inconsistencies; or

(ii) Waives or reduces the 60-day period.

(2) If the Governor(s) does not respond within the 60-day period, the resource management plan or plan amendment is presumed to be consistent.

(3) If the document submitted by the Governor(s) recommends ~~substantive~~^{ix} changes that were not considered during the public involvement process, the BLM will notify the public and request written comments on these changes.

(4) The deciding official will notify the Governor(s) in writing of his or her decision regarding these recommendations and the reasons for this decision.

(i) The Governor(s) may submit a written appeal to the Director within 30 days after receiving the deciding official's decision.

(ii) The ~~Director will consider the Governor(s)' comments in rendering a final decision.~~ The Director shall accept the recommendations of the Governor(s) if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Director will notify the Governor(s) in writing of his or her decision regarding the Governor's appeal. The BLM will ~~notify the public of this decision and make the written decision available to the public~~ publish in the **Federal Register** the reasons for his/her determination to accept or reject such Governor's recommendations.

D. The Regulations Could Better Integrate Overlapping NEPA and FLPMA Requirements

Although NEPA and FLPMA require different things of the BLM in the instances mentioned above, there are areas where integrating overlapping requirements greatly improves the process. The suggestions provided above under "~~FLPMA Requires Consistency Review; Should be Integrated with NEPA Requirements~~" meet this request.

1. Where Planners (Deciding Officials and Responsible Officials) Are Elevated to Positions Outside the Planning Area, Landscape Level Planning Undermines the Purpose of NEPA and FLPMA

Understand the intent is a mechanism to appoint the most appropriate official for multiple-jurisdiction planning. But there is a potential for abuse the way the Regulations are written. Want to avoid the issue of having an official living thousands of miles away from the planning area. Reduces the

Reduces the voice of local government and the role of State Directors

Reduces the importance of local relationship building.

2. NEPA and FLPMA Consistency Review Requirements Should be Integrated

See above.

3. A Change Triggers Either Plan Maintenance or a Plan Amendment; Maintenance is Appropriate Only for Minor Changes

Added definition for "minor change" to clarify this

4. Landscape Level Planning Impacts Analyses Should Not Be Used to De-Emphasize Local Impacts

§ 1610.4 Planning assessment.

(c)(4) Known resource thresholds, [constraints](#), or [limitations](#)

5. Remove the Term "areas of ecological importance" or Improve Clarity

Interferes with the process and is confusing. This is better placed under development of potential ACECs or it should be clear that this should not create an additional category. For informational and good management practice purposes only.

6. Proposed Definition for "Mitigation" Should Align with NEPA Requirements

II. Unintended Yet Foreseeable Consequences

A. No Need

In recent litigation, there have been no concerns with the plans and programs with which the BLM needed to seek consistency. Rather, the issue is the consistency process. This only Why would the BLM feel the need to change these provisions? Were there every problems with identifying resource plans or with achieving consistency? (Look at MSJ)

B. Equal Access to Justice

1. Cost to Re-Name Local Planning Efforts

2. Impacts to Local Economies

C. Reduced Emphasis on Local BLM Relationships

"Such **officials in each State are authorized to furnish advice to the Secretary** with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him." 43 U.S.C. 1712 (c). (Emphasis Added).

D. Less Notice and Comment Means More Litigation

1. Implementation Strategies Only Appear in FEIS

2. Less Opportunities for the BLM to Resolve Problems

Final Agency Action will be tricky with language mandated by FLPMA but not present in the Regulations. Gives more room for interpretation and as a result more lawsuits.

III. Impacts to Judicial Guidance

A. The BLM Should Wait for Judicial Guidance Prior to Adoption of the Proposed Regulations

B. Changes in Regulations Will Impact Standing Case Law

ⁱ Replaces existing §1610.3-1. Coordination of planning efforts. (b) "State Directors and Field Managers will consider any requests of other Federal agencies, state and local governments, and federally recognized Indian tribes for cooperating agency status. Field managers who deny such requests will inform the State Director of the denial. The State Director will determine if the denial is appropriate." DOI's NEPA Regulations also contain this language at [43 CFR 46.225](#) (c) "The Responsible Official for the lead bureau must consider any request by an eligible governmental entity to participate in a particular environmental impact statement as a cooperating agency. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, he or she must state the reasons in the environmental impact statement. Denial of a request or not extending an invitation for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*"

ⁱⁱ These examples are better suited for Handbook or guidance. BLM has the freedom to consider all of these "land use planning and management programs" examples as defined in §1601.0-5.

ⁱⁱⁱ This shouldn't be limited to what's considered in (a)(2) if the public or non-cooperating agencies want to suggest "other policies, guidance, strategies, or plans."

^{iv} This is a term of art that should be defined for compliance with FLPMA

^v FLPMA requires consistency with four different types of "plans," not just "land use," and not "officially adopted," or "approved." FLPMA § 202(c)(9) State, local, and tribal "**land use planning and management programs**... statewide outdoor recreation **plans**... approved land **resource management programs**... land use **plans**... **plans germane** in the development of land use **plans**... land use **programs**... local **plans**." The NEPA Regulations also speak to consistency at 40 CFR §1502.16(c) "This section [Environmental consequences] shall include discussions of: (c) Possible conflicts between the proposed action and the objectives of federal, regional and local (and in the case of a reservation, Indian tribe) **land use plans, policies and controls** for the area concerned. (See §1506.2(d))."

^{vi} See existing 43 C.F.R. §1610.3-1 (d)

^{vii} See 40 C.F.R. §1506.2. The goal here is to describe inconsistencies earlier on to determine how they can be reconciled prior to the draft, if at all. This gives cooperators time to respond before the draft is published

^{viii} See 40 CFR §1506.2(d) Elimination of duplication with State and local procedures, "...Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."

^{ix} There is no definition for the term "substantive." This means the BLM can interpret its meaning in its sole discretion. This will take staff time to determine first if the recommendation is "substantive," then how to respond. The BLM should respond to every recommendation if the Governor took the time to draft them. This does not serve the BLM's purposes to save money on staff time or to ensure State involvement.