

July 25, 2015

Ms. Ruth Welch
Colorado State Director
Bureau of Land Management
2850 Youngfield Street
Lakewood, CO 80215-7093

Mr. Keith Berger
Field Manager
Royal Gorge Field Office
3028 East Main Street
Cañon City, CO 81212

Re: Response to BLM's Notice of Intent to Revise an Existing Resource Management Plan and Preparation of an EIS; Review of NEPA, FLMPA and CEQ Procedural Mandates; Planning Criteria and Issues for Inclusion in the Resource-Management Planning Process

Via: Web access (<http://www.blm.gov/co/st/en/fo/rgfo.html>); electronic mail (rgfo_rmp_comments@ blm.gov and facsimile at (719) 269-8599.

Dear Ms. Welch and Mr. Berger:

This correspondence provides our response to BLMs Notice of Intent (NOI) during revision and consolidation of its Resource Management Plan (RMP) and preparation of an Environmental Impact Statement (EIS).

Our comments were prepared from Royal Gorge Field Office (RGFO) planning memoranda, documents from the public record, proposed legislation, knowledge of RMP revisions being undertaken in other parts of the Country, and with good understanding of the Federal Land Management Policy Act¹ (FLPMA), the National Environmental Policy Act² (NEPA) and the implementing Council on Environmental Quality³ (CEQ) regulations.

Throughout this document we reference heavily the NEPA, FLPMA and CEQ congressional mandates and appropriate, implementing Executive Orders. Because statutory mandates are the law to be implemented by administrative processes, such statutes drive the RMP process and, if conflicts exist, supersede administrative policy and agency guidance.

The scoping process, draft EIS and ultimately the final RMP must include measurable, reproducible and accurate scientific data and standards⁴ drawn from objective, peer-reviewed, publically-noticed documents and sources. For those documents that are "influential" in nature - such as information, studies or data for RMPs - the federal standards are even higher.

¹ 43 USC 1712 (c)

² 42 USC §§4321 - 4347

³ 40 CFR §§1500-1508

⁴ Data Quality Act (Information Quality Act). Section 515(a) 3504(d)(1); 3516. 66 FR 34489

All reference documents BLM proposes to use must contain a clear, published, and a demonstrable record of 3rd- party scientific review and public access. As example, if BLM wishes to incorporate the June 2015 *Management Analysis for the Eastern Colorado RMP*⁵ or the April, 2015 *Visual Resource Inventory* by Logan Simpson into the RMP process, the Data Quality Act requires those documents be independently peer-reviewed and formally placed out for public comment prior to the agency proposing them for the NEPA Scoping process. Because of the far-reaching NEPA and FLMPA implications, quantitatively-based landscape-area procedures such as those referenced in BLMs H-8410-1 Manual must also have undergone a rigorous scientific and 3rd party review prior to utilization in NEPA and EIS scoping process.

We intend, as a unit of local government exercising its NEPA prerogative with BLM,⁶ to coordinate land use planning in tandem with BLM as it implements its FLMPA, multiple-use directive and fulfills its responsibilities to balance Human Health and Natural Environment under NEPA:

“The Congress.....declares it is the continuing policy of the Federal Government, in cooperation with State and Local Governments..... to use all practical means and measures.....to create and maintain conditions where man and nature can exist together in productive harmony and fulfill the social, economic and other requirements for present and future generations of Americans.”⁷

Congress is specific in its intent that the NEPA EIS and FLPMA process be conducted in tandem with locally-elected County Commissions, and BLM is responsible to remain apprized of and align its RMP scoping activities with local plans from the 38-County planning area.⁸ None of the documents we reviewed referenced solicitation, inventory or review of individual County Plans, and we believe this a directive to be a fundamental component of the alternative-generation process:

“The Secretary [of Interior].....shall 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.....In implementing this directive, the Secretary shall.....keep apprized 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; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed.....”

⁵ *Analysis of the Management Situation for the Eastern Colorado Resource Management Plan*. Prepared by USDOJ Royal Gorge Field Office.

⁶ 40 CFR §1508.12. Definition of Local Governments as qualifying as Federal Agencies.

⁷ 42 USC §4331 (a). NEPA Statutory Policies and Goals.

⁸ 43 USC §1712(c)(9).

In preparation for upcoming scoping meetings, this commission is providing *Planning Criteria* and *Planning Issues* for inclusion in the Scoping and EIS Process. As we know BLM understands, *Planning Criteria* are Statutes, Standards, Rules and Measures that guide the selection of alternatives for the RMP process; for their part, *Planning Issues* are those items that could result in public land use conflicts, problems or opportunities, and identification of those issues early can avoid conflicts later in the process. We have also included procedural recommendations to streamline the planning, technical-review and permitting process.

For purposes of the RMP revision, we view the January 1995 *Resource Management Plan*⁹ and May, 1996 administrative *Record of Decision*¹⁰ as the Baseline documents from which all alternative(s) are to be assessed, issues gauged, and changes are to be weighed, evaluated and quantified. Any new planning criteria or planning issues contemplated by BLM beyond the 1995 RMP represents a scope change from existing agency policy and therefore must be separately called out and screened, and their impacts or benefits specifically evaluated in the NEPA EIS process using planning criteria.

We have identified planning issues and criteria for inclusion in the RMP process. Because these planning issues and criteria are based upon referenced NEPA statutes, CEQ Regulations, Executive Orders and land-use plans, any differences or conflicts with existing administrative policy must be resolved through review and realignment with the NEPA and FLPMA congressional mandates and codified Executive intent.

As local government having parity with BLM during the NEPA process, we are open to supporting those reviews as the need may arise.

Planning Issues for RMP Process -

- What quantitative benefits or impacts to communities, economies or the tax base will be realized if access to mineral resources is increased, restricted or changed from the Baseline 1995 RMP and Record of Decision?
- If environmental mitigation, management actions, best management practices, adaptive management or other requirements are imposed on public lands beyond the approved 1995 RMP, what additional cost implications or quantifiable benefits may be expected to local towns, communities, private landholders, agribusiness, ranching and industry?
- All identified cost-impact differentials or benefit(s)¹¹ between the existing RMP and proposed alternatives must be quantified and reported as part of the EIS.
- What direct or indirect effects to local communities, the tax base, culture and/or customs could result from withdrawal, changes in management of split-estate mineral leases and lands?

⁹ *Proposed Resource Management Plan and Final Environmental Impact Statement*. L. Mac Berta. January, 1995.

¹⁰ *Record of Decision and Approved Resource Management Plan*. Donald Glaser, Colorado State Director. May, 1996.

¹¹ EO 12291 Section 3 (d)(2)

- It is conceivable that Conservation Easements taken on privately-owned surface land could inhibit access to public minerals beneath those lands. What specific safeguards will be incorporated into the RMP to encourage and safeguard future access to public minerals beneath privately held lands?
- What diminution or increase in adjacent, regional or private property values could result from the imposition of buffer zones, viewsheds, conservation easements, or heritage/cultural area restrictions?
- What procedures, methods or best practices will BLM incorporate into the NEPA/EIS process to evaluate the potential for interference with constitutionally-protected private property rights and ensure compliance with Executive Order 12630?
- What matrices are in place or will be developed to compare and jointly evaluate the impact of alternatives such that competing human and environmental decisions can be effectively balanced during decisionmaking?
- How can the impacts of proposed RMP changes in public land management actions, mineral-lease modifications and/or new environmental restrictions be effectively evaluated such that the changes to beef supply chain, ranching, agriculture and associated impacts to migrant workers, Hispanics and disadvantaged populations can be clearly understood?
- We believe the revised RMP should include Permit and Application review time constraints specifying in the event of Agency inaction, access to public resources is automatically granted.

Planning Criteria for Inclusion in the RMP process:

Specific, appropriate planning criteria we would like to see incorporated throughout the EIS, and alternative-generation process include:

- a) **EO 12630** - *Governmental Actions and Interference with Constitutionally Protected Property Rights*;
- b) **EO 12866** - *Regulatory Planning and Review*;
- c) **EOs 12898 and 12250** - *Environmental Justice and Minority Populations*;
- d) **2 USC §1501**: *Unfunded Mandates Act*;
- e) **Section 515 of the Consolidated Appropriations Act, 2001** - *Data Quality Act*;
- f) **EO 13352** - *Facilitation of Cooperative Conservation*;
- g) **EOs 12372 and 13575** - *Intergovernmental Coordination with State and Local Governments; White House Rural Council*;
- h) **5 USC §§ 601-612** *Regulatory Flexibility Act*;
- i) **EO 12291** - *Agency Accountability; Duplication Assessment; Cost/Benefit Analysis*;
- j) **40 CFR §1508.8** - *Effects*;
- k) **40 CFR §1508.27(7)** - *Evaluation of Significant and Cumulative Effects of Actions on Human Environments*;

- 1) **43 CFR §1610** - *Resource Management Planning*
 - 1610.3-1 *Coordination*
 - 1610.3-2 *Consistency Requirements*
 - 1610.4-1 *Identification of Issues*
 - 1610.4-2 *Development of Planning Criteria*
 - 1610.4-3 *Inventory Data and Information*
 - 1610.4-4 *Analysis of Management Situations*
 - 1610.4-5 *Formulation of Alternatives*

Fundamental Doctrines and Superseding National Policy:

- Doctrine of Multiple Use
- **42 USC §4331(a)** - *“To create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”*
- **42 USC §4331(b)** - *“To use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions and programs, and resources to the end the nation may – (5) achieve balance between population and resource use which permit high standards of living and a wide sharing of life’s amenities.”*

We look forward to working with BLM throughout the land-use plan review and EIS process:

Regards,