

Ravalli County Commissioners Office

From: MACO <MACO@mtcounties.org>
Sent: Monday, July 6, 2015 3:00 PM
To: MACO
Subject: FW: This is a letter of formal protest to the Bureau of Land Management, Department of Interior. We are protesting the manuals of:

Commissioners,

Prairie County Commissioner and MACo 2nd VP, Todd Devlin asked that this be distributed to you.

Thanks,

Harold

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This is a letter of formal protest to the Bureau of Land Management, Department of Interior. We are protesting the manuals of:

This is a letter of formal protest to the Bureau of Land Management, Department of Interior. We are protesting the manuals of:
6310-Conducting Wilderness Characteristics Inventory on BLM Lands (Public) and 6320-Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process (Public)

If the BLM/DOI denies this protest, we are requesting an immediate and automatic appeal to the Interior Board of Land Appeals.

Our protest is explained below.

IN SUMMARY:

The Federal Land Policy Management Act of 1976 (FLPMA) directed the BLM to inventory potential wilderness and periodically report to the President the agency's findings. The BLM

had 15 years to complete this inventory and did. FLPMA's directive for "wilderness characteristics" definition referenced the 1964 Wilderness Act definition. Definition of "wilderness" in the 1964 Wilderness Act has not changed; therefore, new inventory is not needed to comply with FLPMA and the 1964 Wilderness Act.

The BLM justifies this directive (6310 & 6320) in question as a requirement of the agency and refers to section 201 of FLPMA as their directive. This is a faulty justification. The intent of section 201 was to monitor the uses of federal resources under their jurisdiction. "Wilderness Characteristics" or "Wilderness" is not a defined "use" in FLPMA.

BLM Manual 6310 "Wilderness Characteristics" definition and/or guidelines potentially qualifies every acre of BLM managed lands as having wilderness characteristics. This, in turn, would change the entire directive of the BLM of one being "multiple use" management to one of "preservation by means of no - use". Once these lands are cataloged "wilderness characteristics", preservation groups will continually litigate any multiple use not allowed by the 1964 Wilderness Act.

Policy #7 of FLPMA states: goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

Uses of public lands are defined in FLPMA policy. They are: food, habitat for fish, wildlife and domestic animals, minerals, timber, fiber, outdoor recreation, and human occupancy. These are the uses defined and these are the type of "uses" that section 201 is referring to during and after the fifteen year inventory search for "wilderness characteristics". Section 201 was an effort by FLPMA to make sure that BLM monitored trends of uses.

THE MANUALS IN QUESTION:

BLM Manuals 6310 and BLM Manual 6320 are identical in intent to the draft Wild Lands implementation manuals 6300-1 and 6300-22. The Wild Lands manuals served as "guidance to [BLM] field managers for implementing Secretarial Order [3310]" and were released when Secretarial Order 3310 went public December 23, 2010. When Congress defunded Secretarial Order 3310, the Wild Lands implementation manuals were pulled back in compliance with the law.

Just recently, the Wild Lands manuals resurfaced, only slightly modified and under a different name. The policy objectives and underlying goals, however, remain the same: to administratively identify and manage lands with wilderness characteristics. To skirt the Congressional funding prohibition, these updated manuals drops all references to Secretarial Order 3310 and the term "Wild Lands". It's clear that the removal of these terms does not change the underlying policy of identifying, managing, and elevating lands with wilderness characteristics.

Like the Wild Lands policy, the new manuals give BLM carte blanche authority to conduct wilderness inventories. In the new manual, Section .06 A outlines the scenarios in which inventories should be conducted. Public nominations, projects that are already undergoing a National Environmental Policy Act (NEPA) analysis, or "other circumstances in which BLM will find it appropriate to update its wilderness characteristics inventory" are some of the

instances that can prompt BLM to conduct an inventory. These instances were outlined in the Wild Lands manual under the same section (.06 A) but did not include the "other circumstances" language (which actually makes the new manuals harsher than Wild Lands). BLM manpower and resources should not be diverted to investigate numerous and frivolous public nominations. In the case of the NEPA example above, the new policy improperly places the time and cost burden of conducting a wilderness level inventory on a project proponent which will impact the timing and economic viability of the project. The clause that provides blanket authority to BLM to conduct inventories when BLM considers them to be "appropriate" will most certainly lead to abuse and will limit the use of BLM lands.

The "minimum standard" section of both manuals outlines the criteria public submissions must meet in order for BLM to inventory those areas. Not only is the threshold low and beneficial to frivolous nominations, but the thresholds and standards are exactly the same in both manuals (Section .12 of Wild Lands and Section .06B 1 of new manuals).

The new manuals go further than the Wild Lands manuals by seemingly proclaiming wilderness to be a renewable resource. Section .06 A states "In some circumstances conditions relating to wilderness characteristics may have changed over time, and an area that was once determined to lack wilderness characteristic many now possess them."

Disregards Wilderness Act by:

Size:

Both manuals include a provision that gives BLM the authority to identify any "roadless island of the public lands" as possessing wilderness characteristics. This language is extremely broad and could be used to designate an area that is less than 5,000 acres. The Wilderness Act says that for an area to be wilderness it must be at least 5,000 acres. (Section .13 B 1 of the Wild Lands manual and Section .06 C 2 (a) of the new Manual)

Naturalness:

Both manuals include a provision that gives BLM the authority to disregard human impacts to areas that might possess wilderness characteristics. The manuals direct field managers to determine how an "average person" would view a manmade structure or occurrence when describing human impacts of an area. The guidance in both manuals goes on to dictate that "caution should be used in assessing the effect of relatively minor human impacts on naturalness. Some human works are acceptable so long as they are substantially unnoticeable. Avoid an overly strict approach to assessing naturalness." (Section .13 B 2 of the Wild Lands manual and Section .06 C 2 (b) of the new Manual)

Support Documents:

Included in the Appendix of each manual are a set of forms intended to help field managers document and track the inventory process. Appendix A, B, C, and D are included in both and are nearly identical. The is also true for Forms 1 and 2

Subtle Changes:

To show the underlying policy of the new manuals match that of the Wild Lands manuals, it's important to see that the bulk of the text has remained unchanged.

In Wildlands Manual: .12 Wilderness Inventory Procedures: "The wilderness inventory process directive does not mean that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area. Rather, the BLM must ensure that its current inventory is updated with appropriate information to conform to Secretary's Order 3310 and this policy."

In 6310 BLM Manual: .06 B Wilderness Characteristics Inventory Procedures: "The wilderness inventory process directive does not mean that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area. Rather, the BLM must ensure that its inventory is maintained."

In Wild lands Manual: .13 C Final Note: "Inventory areas that meet the size, naturalness, and the outstanding solitude and/or the outstanding primitive and unconfined recreation criteria are described as LWCs."

In 6310 Manual: .06 C Final Note: "Inventory areas that meet the size, naturalness, and the outstanding solitude and/or the outstanding primitive and unconfined recreation criteria are lands with wilderness characteristics."

Concerns and Similarities: 6300-2 and 6320

Process:

Manuals 6300-2 and 6320 direct field managers on what to do once "lands with wilderness characteristics" have been identified. As noted above, the process outlined in the inventory manuals is flawed and will create a new class of lands that require special management (the key difference between the above inventory manuals is that in the Wild Lands manual, this special class is referred to as "Wild Lands" and in the newer manual, a name is not given). Therefore, manual 6320, Considering Lands with Wilderness Characteristics in the BLM land Use Planning Process is illegitimate and must be withdrawn until the policies included in 6310 are fixed.

"Delineated as discrete units"

Despite the fact the entire manual is illegitimate, there are still individual sections that cause concern. As noted above, the new manual does not have a blanket term for lands with wilderness characteristics. But the absence of a name does not stop BLM from moving forward with new classes of public land designations that require special management prescriptions.

Section .06 A 2 outlines the "foundation for the entire planning process." Here, the manual describes how and what should be included in "Preparation Plans". The directives mandate that "Lands with wilderness characteristics must be delineated as discrete units to which management prescriptions may be applied".

One of the core arguments against Wild Lands was that BLM administratively created a new land designation and management regime. Manual 6320 seems to do the same.

Subtle Changes:

Again, the chief differences between the two manuals are subtle and the differences do not impact the bulk of the underlying policy.

Wild Lands Manual: .04 District and Field Managers Responsibilities: "Update and maintain the wilderness inventory for lands within the planning area. Review existing information regarding wilderness characteristics, and gather and evaluate such information submitted by the public or the BLM for consideration and protection of LWCs in land use plans. This evaluation shall include any citizen proposals for designation of LWCs as Wild Lands. Identify all LWCs within the planning area."

New Manual: .04 District and Field Managers Responsibilities: "Ensure that wilderness characteristics inventories are considered and that, as warranted, lands with wilderness characteristics are protected in a manner consistent with this manual in BLM planning processes."

Wild Lands Manual: .13 Land Use Planning Process: "Identify preliminary planning criteria related to wilderness characteristics and their protection, including plan parameters, constraints, or existing planning decision – including designated Wild Lands – that will be carried forward."

New Manual: .06 A 2 Land Use Planning Process: "Identify preliminary planning criteria related to wilderness characteristics and their protection, including plan parameters, constraints, or existing planning decision that will be carried forward."

CONCLUSION:

BLM directives 6310 and 6320 are not in compliance with FLPMA of 1976. They not only are not in compliance, it is illegal.

FLPMA states: "Sec. 603. [43 U.S.C. 1782] (a) Within fifteen years after the date of approval of this Act, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201 (a) of this Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.)".....

The legal structure of Sec. 603 (a) states that review of roadless areas of five thousand acres or more and roadless islands of public lands could only be done during the first 15 years of inventory for "wilderness characteristics". This section is written with a specific timeline defined the first fifteen years of FLPMA's existence that required inventory for "wilderness characteristics" was to be done. Inventory was completed prior to the deadline. That timeline expired on Oct. 1, 1991.

Sec. 201 (a) does direct BLM to prepare and maintain on a continuing basis an inventory, but in the plain language of the statute says that only the first fifteen years were there to be allowed inventory search for "wilderness characteristics" that would be allowed by Congress. (Sec. 603(a)) Any extension of time beyond the first fifteen years to inventory for "wilderness characteristics" would only be allowed by a act of Congress that has not taken place.

Therefore, any executive or administrative implementation to "continue" the search for "wilderness characteristics" without Congressional Approval is unlawful.

The 15 year limitation is also supported by FLPMA's reference to 43 U.S.C. 1784. Lands in Alaska; Bureau of Land Management Land Reviews. [P.L. 96-487, title XIII, §1320, 1980] (page 47) "Notwithstanding any other provision of law, section 1782 of the Federal Land Policy and Management Act of 1976 shall not apply to any lands in Alaska. However, in carrying out his duties under sections 1711 and 1712 of this title and other applicable laws, the Secretary may identify areas in Alaska which he determines are suitable as wilderness and may, from time to time, make recommendations to the Congress for inclusion of any such areas in the National Wilderness Preservation System, pursuant to the provisions of the Wilderness Act [16 U.S.C. 1131 et seq.]. In the absence of congressional action relating to any such recommendation of the Secretary, the Bureau of Land Management shall manage all such areas which are within its jurisdiction in accordance with the applicable land use plans and applicable provisions of law."

Seeing that FLPMA (section 1784) refers to section 1782 (all on page 47), that is guidance in 603 (a), which is the time limitation of inventory for wilderness characteristics only being done in first fifteen years after establishment of FLPMA, Congress was stating that the 1782 limitation did not apply to BLM managed lands in Alaska. If there was not a limitation within United States Code and FLPMA for inventorying "wilderness characteristics", then the above section of law would not have need to be referred to and/or included in FLPMA of 1976 with amendments. FLPMA supports this even more by the same section referring back to FLPMA section 201 (a) [43 USC 1711] that "inventory" is still applicable in Alaska without the fifteen year limitation on "wilderness characteristics". Notice also, that section 1784 directs the "Secretary" to only make recommendations to "Congress", which is different protocol than the direction given in 603 (a) of FLPMA; which states that the "Secretary" "shall from time to time report to the President his recommendation....."

And, finally: After Oct. 1, 1991, BLM and the Department of Interior can't consider or inventory "wilderness characteristics" on one additional acre in the lower 48 states and Hawaii without Congressional approval unless those lands were formally inventoried as such prior to Oct. 1, 1991. They can not do this administratively or even consider public nomination and input. Additionally, in Alaska, inventory can be made for 'wilderness characteristics", but management change and use can only happen with Congressional approval, after the Secretary recommends to Congress, with the BLM's purpose of protecting the additional inventoried lands that have "wilderness characteristics".

NEEDED ACTION:

Department of Interior and BLM must withdraw manuals 6310 and 6320 and any type of implementation they refer to; and promptly and publicly notify by press release the error of your ways. FLPMA is very clear and unambiguous on "wilderness characteristic" inventory timeline. This was not an oversight on part by the DOI / BLM. This was an all out and all knowing attempt to circumvent the law when seeing that the law is this unambiguous. We strongly suggest that DOI / BLM start following statute.

Thank you for your time,

Todd Devlin,

Prairie County Commissioner

2nd VP of MACo

Chair of Eastern Plains Economic Development Corp.

Member: NACo Public Lands Steering Committee

Sent from someplace on something.