Duchesne County Commission
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January 30, 2017

The Honorable Speaker Paul Ryan
H – 232
The Capitol
Washington, DC 20515

RE: BLM's Final Rule on Resource Management Planning (RIN: 1004-AE39)

Dear Speaker Ryan:

On behalf of Duchesne County, Utah, we would like to express our support for use of the Congressional Review Act (CRA) to repeal the unnecessarily burdensome regulations finalized during the Obama Administration. Among those of great concern to our county is the Bureau of Land Management's (BLM) Final Rule on Resource Management Planning which is more commonly referred to as "Planning 2.0" (RIN: 1004-AE39). We respectfully request that the House allow Floor consideration of a joint resolution of disapproval for this Rule.

Duchesne County is the top crude oil producing county and the third largest natural gas producing county in Utah. The energy industry drives our economy. Our constituents hold valid existing leases and are interested in the future of oil and natural gas leasing, exploration and production activities on public lands that will be directly impacted by BLM's management decisions. Our constituents are good stewards of the land, dedicated to meeting environmental requirements, while developing and supplying affordable energy to consumers. We believe Planning 2.0 presents multiple challenges that will prejudice multiple use interests with a bias against oil and gas resources on public lands.

Duchesne County participated in the BLM's Planning 2.0 rulemaking process; however, our comments and objections were ignored in the BLM's haste to enact the rules before the conclusion of the Obama administration.

There are several references throughout Planning 2.0 that its authority is based upon recent Executive and Department of Interior Secretarial direction. In a truly democratic process, when making changes to existing planning regulations, such changes are to be based upon laws or rules that have gone through the appropriate lawmaking or rulemaking process such as the Federal Land Policy and Management Act (FLPMA) or the National Environmental Policy Act (NEPA), and not through a series of directives and memorandums. Furthermore, policy preferences expressed in executive orders, instructional memoranda and various studies and guidance are being treated in Planning 2.0 as equivalent to the statutes underlying BLM's authority.

Given the importance of this Rule, it should only require or encourage actions dictated by foundational statutes and case law. Many of the provisions reach beyond the actual authority of BLM and as such, BLM needs to remember these policy preferences are not supported by law.

Although Planning 2.0 has not yet impacted the energy industry, if it is not repealed, the impacts will impose a significant and harmful burden on individual operators and the industry as a whole. Planning 2.0 provides no certainty for land users and instead creates ambiguity in the planning process. The final rule would allow for all planning documents to be changed at any moment, which does not allow for a set understanding of expectations and long-term planning. The energy industry is not able to adjust plans on a whim and relies on certainty in the planning process before making sizable investments. This added uncertainty will likely result in reduced development of federal minerals and, therefore, lead to a loss of royalty and tax revenue for Federal, state and local governments. The following is a list of changes under Planning 2.0 that will negatively impact the energy industry, which is the major component of Duchesne County's economy:

NET CONSERVATION GAIN MITIGATION STANDARD
"The final rule adopts the proposal that objectives should identify standards to mitigate undesirable impacts to resource conditions, with minor edits. This change supports implementation of the BLM mitigation policy."

§1610.1-2(a) (2) *Objectives*
"(i) Identify standards to mitigate undesirable impacts to resource conditions;"

Planning 2.0 requires Resource Management Plans (RMPs) and Plan Amendments to include, as part of the Objectives, mitigation guidance and standards consistent with BLM Policy. The Presidential Memorandum "Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment" (Presidential Memo) dated November 3, 2015, directed that federal agency mitigation policies establish a mitigation standard of a net benefit goal or, at a minimum, a no net loss goal. A net benefit mitigation standard is when mitigation results in an improvement above the affected environment that existed prior to the project's implementation, or above the "baseline" environmental condition. In accordance with the Presidential Memo, BLM released its policy guidance with regard to determining and applying mitigation on December 22, 2016, ten days after publication in the Federal Register of the Planning 2.0 final rule.

LANDSCAPE-SCALE PLANNING AND PLANNING AREAS THAT CROSS STATE BOUNDARIES

***§1601.0–4* Responsibilities.**
"(a) ...The Director determines the deciding official and the planning area for the preparation of resource management plans and plan amendments that cross State boundaries."

Planning 2.0 contains scant explanation of how a planning area will be determined, other than it is part of the new landscape-scale approach as envisioned through Presidential and Secretarial policies and will be decided by the BLM Director. With little understanding of how the BLM Director will determine planning areas, we believe it will cause the planning process to become unduly complicated, particularly when crossing state boundaries. It is important to note that in the past, BLM's ability to cooperate across state lines has proven to be tentative at best.

Planning 2.0 eliminates the provision requiring that Field Managers prepare, and State Directors approve, Resource Management Plans (RMPs). The result is that RMP development will be centralized to BLM's Washington Office, creating more administrative hurdles and limiting local input and participation. Planning 2.0 further directs that when a planning area crosses state boundaries, one state director, or other designee, will be appointed by the BLM Director as the deciding official making land use planning decisions for all states involved. The Rule does not sufficiently provide a clear understanding of when and if input from the other involved states and BLM offices will take place within the process, nor does it even direct the deciding official to collaborate with the respective governors or state BLM officials when planning areas cross state lines.

SITE-SPECIFIC NEPA ANALYSIS FOR LEASING

"In most circumstances, a resource use determination indicating that a use is allowed, or allowed with restrictions in an area, will not represent a final decision allowing future use authorizations in the area, rather it will indicate that future authorizations for the activities may be considered for approval following site-specific NEPA analysis."

Under Planning 2.0, mineral leasing decisions will happen at the site-specific level rather than during the planning process. We believe this may require an Environmental Impact Statement (EIS) to be prepared at the leasing stage, adding to the already needless duplication and delay in the process. The fact that all new leases are required to conform to the land use plans in place renders this additional layer of analysis completely unnecessary.

The requirement prior to Planning 2.0 was for an environmental assessment (EA) to be prepared for each lease sale which lengthened the time needed before new lease tracts are put up for bid by nearly a year. Changing this to require the preparation of an EIS will lengthen the time even more, resulting in significant delays to new lease issuance without any improvement to the leasing process itself. Experience has shown that BLM oftentimes takes up to seven (7) years or more to complete an EIS.

COOPERATING AGENCY INPUT

It's vitally important that cooperating agencies maintain the current elevated level of input during the planning process. Planning 2.0 appears to place less significance on input from cooperating agencies and local interests during this newly outlined RMP development process. The Rule provides national groups as much input as state and local cooperating agencies through the planning assessment and preliminary alternatives review process. Cooperating agencies, such

as county commissions, provide special expertise as local stakeholders that have been elected to represent their constituents and local interests in processes such as RMP development.

In public land-dominated states, it is essential for cooperating agencies to maintain the current elevated level of input due to the vulnerability of their local economies to the BLM planning process. Only 28 percent of the lands in Duchesne County are under private ownership; yet over one third of the crude oil produced in our county comes from beneath private land surface; due to burdensome federal regulations governing the use of federal surface.

We believe Planning 2.0 does not streamline or otherwise reduce the administrative burden on BLM and in fact does quite the opposite. It substantially increases the planning burden, creates more limitations, provides more litigation opportunities and stymies the BLM from making objective land use decisions in accordance with FLPMA. The final rule gives BLM and the public little guidance as to how planning will be conducted in the future.

We sincerely appreciate the efforts you are making for regulatory relief and thank you for consideration of this request.

Sincerely,

DUCHESNE COUNTY COMMISSIONERS

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Greg Todd
Ken Bench

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