

22 June 2016

**Testimony of Professor Mark Squillace, University of Colorado Law School
on the Bureau of Land Management's Planning 2.0 Initiative
to the Subcommittee on Public Lands, Forests, and Mining
of the Senate Committee on Energy and Natural Resources
114th Cong., 2nd Sess. 2016**

Senator Lisa Murkowski
Chair, Senate Committee on Energy & Natural Resources
United States Senate
Washington, D.C. 20510-6150

Dear Chairman Murkowski:

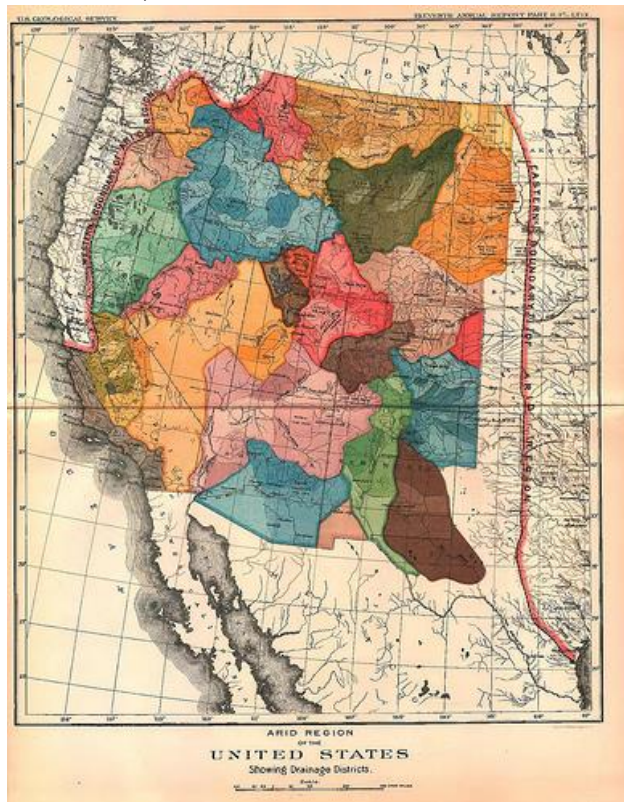
Thank you for the opportunity to share this statement on the Bureau of Land Management's (BLM) Planning 2.0 initiative with the Subcommittee on Public Lands, Forests, and Mining of the Senate Committee on Energy and Natural Resources. My name is Mark Squillace. I am a professor of law at the University of Colorado Law School. I teach primarily in the field of environmental and natural resources law and have written extensively on public lands and land use planning. I am also a former employee of the BLM and the Interior Solicitor's Office and a primary author of comments submitted on behalf of myself and 26 other law professors from around the country on the BLM's draft planning rules. I have appended a copy of those comments to this statement. The testimony I offer here is my own and does not necessarily reflect the views of the University of Colorado or its employees.

My testimony focuses on three items: (1) the structural problems with the current land use planning framework; (2) the opportunity for the BLM to incorporate landscape level planning into its planning regime; and (3) the need for the BLM to establish an effective program for monitoring and adapting to new information or changed circumstances.

I. The Structural Problems with BLM's Land Use Planning Program

In 1890 Major John Wesley Powell, the great American explorer, published a map of the western United States to support his proposal to divide the western states along watershed boundaries. 11th Annual Report of the U.S. Geological Survey, Part II, Pl. LXIX (1890). Looking at Powell's map today, it is not hard to appreciate Powell as our first landscape ecologist. While Powell's focus was on finding ways to make western irrigation more efficient, it was not lost on him that watersheds respected landscapes, and that it is easier to manage these landscapes if they are contained in a single coherent political unit. Powell's approach, of course did not carry the day and the west was carved up into boxy shapes that largely ignore the natural geography of the

western landscape. And while the BLM has been somewhat better in considering geography before designating resource management areas, the inclination to identify compact units with straight line boundaries, much like the division of western states, has seemed hard to break.



Powell's Map of the West, 1890

The BLM's current planning initiative offers an opportunity for the agency to break from these historic patterns. As proposed, however, the "Planning 2.0" effort seems like a missed opportunity to rethink in fundamental ways land use planning on BLM lands. A big part of this rethinking should involve incorporating landscape-level planning into the process as described more fully below.

II. Landscape Level Planning

The BLM has suggested that landscape-level planning is one of the goals of the Planning 2.0 initiative. Yet the phrase never appears even once in the proposed rule itself, and it is difficult to see how the current proposal will allow the BLM to move toward a planning model that looks beyond political boundaries and its traditional resource management areas. This is particularly disappointing in light of Secretarial Order 3330, which established a Department-wide mitigation strategy and directed agencies to use

a landscape-scale approach to resource management.

I am not suggesting that the BLM move away from its current unit planning process in favor of landscape-level planning altogether, although it might make sense to move in this direction over the long term. Rather I support a BLM effort to prepare a relatively simple and streamlined landscape-level plan before commencing unit planning so that the context for unit planning is better understood. One simple way for the BLM to address this problem within the framework of the proposed rules would be to require that the new "planning assessment" process (proposed 43 CFR §1610.4) be carried out at the landscape level.

The BLM has made good progress doing landscape-level inventories through its rapid ecological assessments (REAs). The agency could build on that work by requiring or at least experimenting with landscape-level planning assessments. Among many other benefits, this change would make it far easier for the BLM and the interested public to identify cross-jurisdictional issues. Such issues might include wildlife corridors, utility or development corridors, and opportunities for protecting lands with important conservation values that cross resource management area boundaries. Indeed, it is hard to see how cross-jurisdictional issues can be effectively identified and understood without some form of landscape-level analysis.

Once a landscape level assessment is completed, the BLM can tackle the unit level resource management plan (RMP). For various reasons, the RMP should be simplified and streamlined much like the landscape-level plan. Three particular reasons for simplifying the RMP stand out:

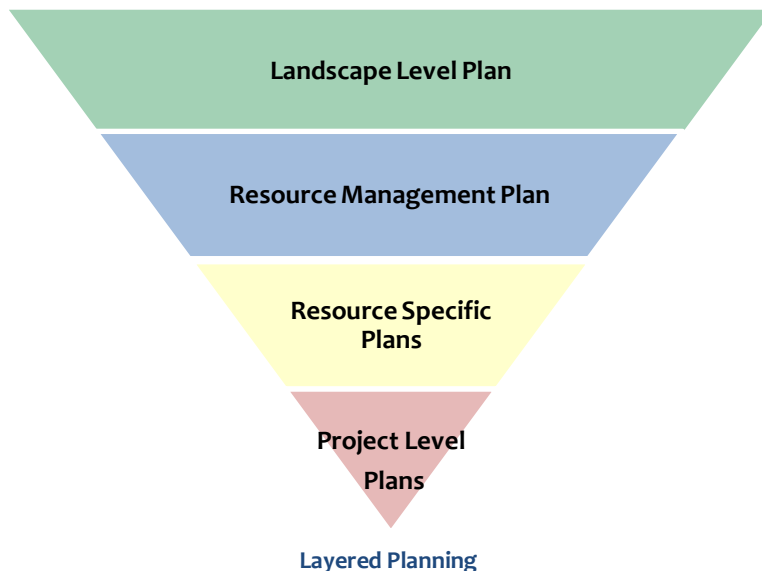
- (1) First, and as will be discussed more fully below, the BLM should employ an adaptive management strategy once its plans are completed. For adaptive management to work, however, plans must be nimble. In this context that means capable of rapid change when new information or changed circumstances demonstrate that such change is warranted. Rapid change is simply not feasible if the plans are too complex and take too long to develop.
- (2) Second, the current planning process unduly saps the BLM's resources and makes it nearly impossible for the BLM to commit sufficient resources to a new level of planning at the landscape level, not to mention a robust monitoring and adaptation program.
- (3) Third, the planning process has become so complex and time-consuming that only professionals and those with a direct stake in the outcome have the ability to participate in a meaningful way.

Simplifying the process at both the landscape and unit levels likely means focusing on just three things:

- (1) Making basic land use decisions for each tract of land within the management area;
- (2) Setting specific, measurable, and time-bound goals or objectives for each tract within the planning area; and
- (3) Establishing specific and comprehensive metrics that will form the basis for a robust monitoring program to determine whether the goals and objectives are being met.

The RMP level need not and should not address resource specific matters that can be addressed at a lower planning level, as is often done with travel management plans and, more recently, oil and gas master leasing plans.

To summarize and describe visually, I imagine four planning layers in an inverted triangle: (1) the landscape, ecosystem, or watershed layer; (2) a management unit layer; (3) a resource layer; and (4) a project layer. Each successive layer should be narrower and more specific than the layer above it. While at first blush, a layered approach might appear to impose more work on the agency, substantial time could be saved by focusing the agency's attention on the particular suite of issues that present themselves at each planning level, and *only* those issues.

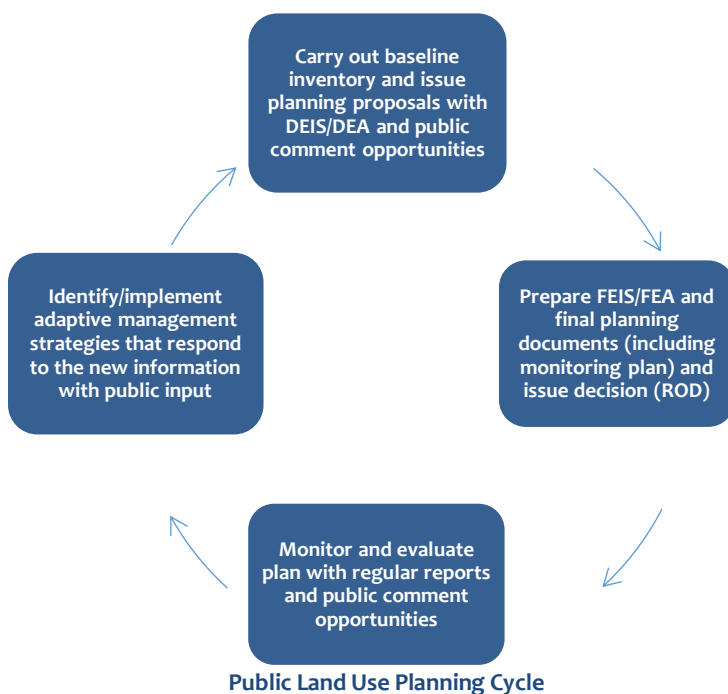


Streamlining might also be facilitated by establishing a Planning Dashboard along the lines of the Permitting Dashboard mandated by Title XLI of the Fixing America's Surface Transportation Act (FAST Act). See <https://www.permits.performance.gov/>. The permitting dashboard required under the FAST Act applies only to large infrastructure projects, its basic requirement that federal

agencies maintain an on-line system for tracking projects, with specific timetables, projected dates for completing stages of the review process, and issuance of decisions, could be readily adapted to the planning context, and could help agencies define and schedule their work so that they can better meet their target dates. Incentives might be introduced to reward offices and agency officials who consistently meet their targets while also avoiding conflict and controversy.

III. Adaptive Management

Adaptive management is often described as a simple idea of “learning by doing.” In practice, adaptive management is designed to be more forgiving on the front end of decisionmaking in terms of complexity and detail because it incorporates a program for regularly evaluating performance and then changing or adapting the original decision to reflect the lessons learned from actual experience. The diagram below offers a visual representation of adaptive management in the land use planning context.



Somewhat like landscape-level management, the BLM appears to support adaptive management but never actually refers to the term in the proposed rule. Moreover, the proposed rules do not establish any clear process for ensuring that adaptive management principles will be used to adapt plans when warranted by new information or changed circumstances.

The proposed rules do, however, make an important nod in the direction of adaptive management by requiring that plans include “goals” and “objectives.” Proposed 43 CFR §1610.1-2(a). Objectives in particular are described as being specific and measurable, with time-frames for achievement. *Id.* Unfortunately,

nothing in the proposed rules ties these goals and objectives to the monitoring program itself. Nor do the proposed rules commit the BLM to actually adapting their plans. Rather, the proposed language relating to “monitoring and evaluation” is a single paragraph that offers nothing specific about how those vital tasks will be carried out. Proposed 43 CFR §1610.6-4.

The BLM made substantial progress in developing a framework for monitoring and adaptive management with its various sage grouse management plans. While the jury is still out as to how that program will work, the BLM should use that experience to inform its final planning rules. This is particularly critical for any final planning rules because the BLM has a poor track record when it comes to robust monitoring, evaluation, and assessment of monitoring data. These are all critical elements of any program that promises to implement an adaptive management strategy. Vague language such as appears in the proposed rules is inadequate especially because it does not afford field personnel with sufficient guidance. What is needed are: (1) specific and measurable

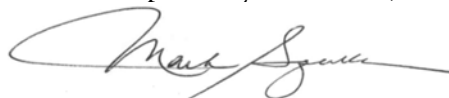
standards that can inform the BLM about the state of the resources it is seeking to manage and protect; (2) a robust and transparent program that monitors the status of these resource with appropriate metrics that the agency has established; (3) a transparent process for evaluating the data obtained through monitoring, perhaps with public input and a regular report describing the conclusions; and (4) timely adaptation of the plans at every appropriate layer to reflect the information developed through the monitoring and evaluation process.

Before closing let me offer a few thoughts about two issues that have generated some controversy during the public comment process. The first concerns the consistency reviews mandated by FLPMA to ensure that the BLM's RMPs are consistent to the maximum extent practical with other Federal, State, local, and Tribal land use plans. While the tenor of the language both in FLPMA and the proposed rules suggests a process for resolving conflicts, the consistency review might also offer an opportunity to identify and promote common management strategies. Landscape-level planning would actually help here by allowing the BLM to better understand cross-jurisdictional issues and thereby identify and resolve possible inconsistencies with other plans. I share the concern raised in the comments submitted by the Western Governors Association about the presumption of consistency with state and local plans if a Governor fails to respond within 60 days from the date a proposed plan is received. But rather than extending the review period, this concern might be better addressed by a commitment from the BLM to work with the states and other governmental entities to identify and resolve potential conflicts as the planning process unfolds and well before the plan is submitted for the formal 60-day review.

A similar approach might be used for public participation generally. The BLM should engage interested parties in a meaningful way as plans evolve and well before they are approved. Early engagement will not necessarily resolve all of the conflicting views about the plans but it will lay them out in the open and thereby take pressure off both the agency and the public during the formal comment period. Importantly, the BLM should also recognize that streamlining each discrete layer or phase of the planning process will ensure more effective public engagement than a lengthy public comment period. Finally, a robust adaptive management program also provides assurances that planning is an ongoing, cyclical process that affords the public multiple opportunities to engage the agency, not only during the development of the plan, but also as it evolves in response to new information and changed circumstances.

I want to thank the Subcommittee once again for the opportunity to offer this testimony. I am grateful for your careful consideration of these comments and urge the Subcommittee to provide the BLM with constructive guidance as to how they can best move forward to improve their land use planning program for our public domain lands.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark Squillace', written in a cursive style.

Mark Squillace