

University of Colorado Law School

## Colorado Law Scholarly Commons

---

The Federal Land Policy and Management Act  
(Summer Conference, June 6-8)

1984

---

6-6-1984

### The BLM Planning Process: Chasing the Rabbit

H. Paul Friesema

Paul J. Culhane

Follow this and additional works at: <https://scholar.law.colorado.edu/federal-land-policy-and-management-act>



Part of the [Administrative Law Commons](#), [Constitutional Law Commons](#), [Courts Commons](#), [Environmental Law Commons](#), [Forest Management Commons](#), [Land Use Law Commons](#), [Law and Economics Commons](#), [Legal History Commons](#), [Legislation Commons](#), [Natural Resources Law Commons](#), [Natural Resources Management and Policy Commons](#), [Oil, Gas, and Mineral Law Commons](#), [Property Law and Real Estate Commons](#), [Public Policy Commons](#), [Recreation, Parks and Tourism Administration Commons](#), and the [State and Local Government Law Commons](#)

---

#### Citation Information

Friesema, H. Paul and Culhane, Paul J., "The BLM Planning Process: Chasing the Rabbit" (1984). *The Federal Land Policy and Management Act (Summer Conference, June 6-8)*. <https://scholar.law.colorado.edu/federal-land-policy-and-management-act/4>

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.



H. Paul Friesema & Paul J. Culhane, *The BLM Planning Process: Chasing the Rabbit, in THE FEDERAL LAND POLICY AND MANAGEMENT ACT* (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1984).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

THE BLM PLANNING PROCESS:  
CHASING THE RABBIT

Professor H. Paul Friesema  
Professor Paul J. Culhane

Center for Urban Affairs & Policy Research  
Northwestern University

THE FEDERAL LAND POLICY  
AND MANAGEMENT ACT

Fifth Annual Summer Program  
Sponsored by the Natural Resources  
Law Center, University of Colorado  
School of Law, June 6-8, 1984

## I. INTRODUCTION

- A. The Federal Land Policy and Management Act (FLPMA) authorizes the Bureau of Land Management to conduct comprehensive land use planning as the central facet of its district-level resource decision making. This land use planning process is to include public participation.
- B. As we argued early in the FLPMA era, the FLPMA planning process combines what decision theorists call "rational-comprehensive" decision procedures with other, highly politicized procedural requirements. P. Culhane and H. P. Friesema, 19 Nat. Res. J. 43-74 (1979).
- C. The classic version of "rational-comprehensive" decision making is a four-step process: (1) decision-making consensus on goals -- a preference function is assumed to exist; (2) decision makers identify all possible alternative programs or decisions; (3) they identify all consequences of each alternative; and (4) using some appropriate decision calculus, they select the optimum alternative.
- D. Critics of the rationalist model, beginning with Charles Lindblom, have pointed out the flaw in the assumption of this model -- in political decision making, participants often disagree, a priori, on goals or an ordering of objectives. C. Lindblom, 19 Publ. Admin. Rev. 79-88 (1959). As Professor Charles Anderson of the University of Wisconsin aptly notes, step #1 in the rationalist model is "like the famous recipe for rabbit stew that begins, 'Catch the rabbit'." 73 Amer. Pol. Sci. Rev. 712 (1979).

## II. THE RESOURCE MANAGEMENT PLANNING PROCESS

- A. The primary statutory base of the BLM planning process is Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. §§1701-1782.
1. FLPMA §102(a)(2) declares the congressional policy that management policy for BLM lands is delegated to the land use planning process of FLPMA §202.
  2. FLPMA §202(a) states,  
"The Secretary [of the Interior] shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands."
  3. The remainder of §202 does not specify the details of the planning process, but mandates multiple use management, coordination with other agencies' plans, "a systematic, interdisciplinary approach," public involvement (again), and other general principles.
  4. The BLM planning process is also affected by other substantive statutes (e.g., The Public Rangelands Improvement Act of 1978, the Wilderness Act of 1964).
- B. FLPMA's planning mandate codifies BLM land use planning practices that had evolved during the 1969-76 period without explicit statutory authority. Pre-FLPMA "management framework plans" (MFPs), covered about 80% of BLM lands outside of Alaska by the time of the passage of FLPMA in 1976. BLM planning practice was, to a certain extent, modelled on Forest Service "multiple use planning"

procedures. Thus, notwithstanding changes in nomenclature and formal regulations, some form of land use planning had become a standard operating procedure in the BLM prior to FLPMA. But Resource Management Plans differ in some fundamental ways from MFPS. Cf. Culhane and Friesema, 19 Nat. Res. J. 43-74 (1979); S.T. Dana and S.K. Fairfax, FOREST AND RANGE POLICY (2nd ed.) (McGraw-Hill, 1980).

- C. The current BLM planning process is governed by regulations which became effective July 5, 1983. U.S. Department of the Interior, "Planning, Programming, Budgeting: Planning," 42 C.F.R. Subpart 1601 et seq, 48 Fed. Reg. 20364-20375 (May 5, 1983).
- D. Because of the long planning process no currently available resource management plans have been completed under these new regulations. The existing RMPs were prepared under regulations from the Carter administration (1979).
- E. Most of the land use plans in actual use now and for some time to come are (often amended) Management Framework Plans initiated or even completed prior to the passage of FLPMA (1976).
- F. Section 1610.4 of the new regulations prescribe a process that is to take place at the BLM district level with the resource area as the principal planning unit:
  - 1. Identification of the issues that BLM district and area managers shall address in the planning process. This step, which is integrated with the "scoping" phase of the NEPA process (see below)

- is open to public, intergovernmental, and inter-agency participation.
2. BLM managers prepare "planning criteria," that is, a list of planning constraints resulting from public law, national and state-level agency policies, other agencies' or governments' plans, and so forth.
  3. Area managers and staff collect and assemble inventory data for use in the planning process.
  4. Analysis of the management situation -- planners prepare a determination of the physical and biological capability of a resource area to meet the demands identified in prior steps, national or state objectives set for the area, and so forth.
  5. "All reasonable resource management alternatives shall be considered and several complete alternatives developed for study." § 1610.4(5), underscoring added.
  6. "The District or Area Manager shall estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail." § 1610.4(6), underscoring added.
  7. BLM managers shall select a preferred alternative for identification in the draft plan/EIS.
  8. After consideration of comments received on the draft, the district manager shall recommend to the BLM state director a resource management plan and final EIS.

9. Monitoring and evaluation of the plan implemented.

This is an elaboration and specification of planning stages which has evolved over the years of land use planning in the agency. It is very consistent also with the requirements of NEPA.

III. RESOURCE MANAGEMENT PLANNING AND THE NEPA PROCESS.

- A. Section 1601.0(6) of the 1983 BLM planning regulations defines resource management plans as "major federal actions significantly affecting the quality of the human environment," thus categorically subjecting these plans to the environmental impact statement (EIS) requirement of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.
- B. Land use plans (MFPs) prepared prior to FLPMA were not integrated into the NEPA compliance process. Unlike the other land managing agencies, BLM sought to comply with NEPA at the later "activity plan" stage of its efforts.
- C. The old Management Framework Plans (as the new Resource Management Plans) were designed to be broad conceptual documents, not detailed activity plans. EISs were written on specific functional activities carried out within the "framework" of the land use plan -- such as a grazing program, coal leasing program, or wilderness study.
- D. The linking of the land use plan to the preparation of an environmental impact statement is a major change in the land use planning process within BLM. This was begun under the Carter regulations and is continued under the Watts era regulations.

- E. One major implication of the § 1601.0(6) EIS requirement is to increase access to the BLM planning process.
1. BLM's old MFP documents were not freely available outside the locale of the agency's district offices; thus, BLM's comprehensive land use planning process was open, as a practical matter, chiefly to local user groups.
  2. EISs, by contrast, are widely available. Thus, the BLM planning process is now accessible to regional and national interest groups, other federal agencies, and state government agencies.
  3. BLM's final RMP EISs filed to date demonstrate that a wide range of participants are availing themselves of the opportunity to participate in resource management planning decisions.
- F. Another major implication of linking of the RFM with an EIS may be to reduce the EISs on more functional, specific and detailed plans and activities concerning grazing, minerals leasing, etc. Because of the logic of tiering, it may be possible to comply with NEPA by preparing environmental assessments with activities and activity plans conceptually considered in the RMP. This may shield many details of agency proposals from public scrutiny. But this resale is likely to initiate a major conflict.

#### IV. PUBLIC PARTICIPATION

- A. FLPMA § 202 twice mandates public participation in land use planning -- in the opening sentence of the section, quoted supra, and in § 202(f).

- B. The earlier regulations implementing FLPMA provided an array of opportunities for public participation in the preparation of Resource Management Plans. BLM seemed to adopt the spirit as well as the letter of this public participation requirements, actively seeking broad involvement and participation.
- C. Formal and broad public participation processes have tended to advantage environmental groups rather than consumptive user groups. Cf. P. Culhane, PUBLIC LANDS POLITICS, 242-244 (Johns Hopkins University Press, 1981).
- D. The Reagan administration era rewriting of the FLPMA regulations began with the goal of simplifying the land use planning process in general, and reducing the public participation and intergovernmental input into agency decision making, in particular. The draft regulations provided that the public participation requirements would be the NEPA requirements and regulations of CEQ in implementing NEPA and nothing more.
- E. There was serious opposition to reductions in public participation in the RMP process. Probably because of the unambiguous importance attached to public participation in FLPMA, the final regulations restore many public participation opportunities.
- F. Adequate notice of upcoming planning decisions must be provided in newspapers and the Federal Register, and to a mailing list of interested individuals and groups.

- G. Formal opportunity for participation must be provided at several key points in the planning process:
1. At the beginning of the planning process, in preparation for the identification-of-issues stage in the process;
  2. As a review of the proposed planning criteria to be used in the process;
  3. After the publication of the draft plan/EIS, and after the publication of the final EIS/plan.
  4. Finally, protest procedures provide a avenue for intra-departmental appeal of the final plan (with judicial review another avenue).
- H. FLPMA has a provision that the BLM is "to the extent consistent with the laws governing ... the public lands, [to] coordinate the land use inventory, planning, and management activities with the land use planning and management programs of other Federal departments and agencies and of the states and local government with which the lands are located [FLPMA 202 (c) (9)]. This is generally referred to as the consistency and coordinating requirement.
- I. Western governors and other local government groups have insisted upon more input into land using planning efforts of BLM, not less. The recent BLM policy of trying to be responsive to western state and local government interests has conflicted with the goal of simplifying and reducing participation in BLM planning.

- J. The new regulations develop complex and elaborate procedures for complying with the consistency and coordinating requirements of FLPMA (1610.3-1 and 1610.3-2).
- K. Thus the attempt to simplify, regularize and reduce the public and inter-agency review of BLM plans has ended with regulations which add complexity, perhaps some vetoes, and often seem to invite litigation.
- L. The RMP/EIS requirements and the related planning effort are very consequential for agency activities. The staffing and work patterns of the field offices are organized around these planning mandates. Producing these type of plans seem to be the preeminent agency activity. But it is by no means certain if these planning processes will be able to resolve fundamental conflicts over resource uses of the public lands.

#### V. CONCLUSIONS

- A. The BLM planning process has many characteristics of the classic rational-comprehensive decision model. A comprehensive range of alternatives and consequences must be surveyed. Large amounts of inventory data must be collected. As an aid to comprehensiveness, "interdisciplinary" methods grounded in the "physical, biological, economic, and other sciences" must be employed. And so forth.
- B. Yet, FLPMA and the 1983 Interior regulations on the planning process also provide for access to the planning process by a broad range of interested parties. Thus, while instructing its local managers to act out the subsequent steps in the

rational-comprehensive decision sequence, BLM has provided the opportunity to undermine the necessary first step -- the development of agreed-upon goals. Many groups have quite divergent preferences about the proper management of BLM lands, and they all now have full access to the planning process. But the planning process does not provide a vehicle for resolving these conflicts over goals.

- C. The ability to challenge agency goals has become so widespread that it threatens the agency with decisional paralysis (for a somewhat parallel argument concerning decisional paralysis within the Forest Service planning process, see R.W. Behan, "How to Starve a Lawyer: A Modest Proposal for an Alternate Strategy for Public Involvement," Society of American Foresters Annual Meeting, October, 1980).
- D. Over time it may be possible to use the planning process to arrive at some consensus over agency purposes and goals among the diverse groups trying to influence BLM decisions. But for now it appears that district and area managers will have years of trying to "catch the rabbit."