

# USING FLPMA TO “ZONE” ENERGY

Getches-Wilkinson Center  
“FLPMA Turns 40”  
Boulder, CO  
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# FLPMA AND ENERGY SITING

- “Smart from the Start”  
*or*
- BLM constraining energy development

# FLPMA PLANNING BASICS

## ■ 43 U.S.C. § 1701: Purpose

- (1) retain public lands
- (2) land use planning
- (7) “multiple use and sustained yield”
- (11) protect “areas of critical environmental concern”
- (12) recognize “need” for “domestic mineral, food, timber and fiber”

## ■ 43 U.S.C. § 1702: Definitions

- (c) multiple use
  - “present and future needs”
  - “judicious use of the land”
  - “balanced and diverse resource uses”
- “Who decides the national-local balance, and how those decisions are made?” Congressional Research Service, *Federal Land Ownership* (2014)

“Multiple use management is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put . . .”

*Norton v. SUWA*,  
542 U.S. 55 (2004)

# FLPMA AND OIL & GAS 2010 LEASING REFORM

- Address Applicant-driven Process
- IM 2010-117
  - Land Use Plan Review
  - Lease Parcel Review
  - Master Leasing Plans

*"There's a new  
sheriff in town."*

Secretary Salazar,  
January 2009



*"In the prior administration the oil and gas industry essentially were the Kings of the world . . . the public lands were the essential candy store of the industry . . ."*

Secretary Salazar, January 2010

# FLPMA AND OIL & GAS 2010 LEASING REFORM

- **Land Use Plan Review**
  - “In light of changing circumstances”
- **Lease Parcel Review**
  - Frequency – quarterly, but rotated
  - Nominations to lease – trigger site visit
  - Lease parcel NEPA – public comments
  - Lease deferrals encouraged



## BLM Land Use Plans

113 million acres open to leasing

166 million acres closed to leasing

# FLPMA AND OIL & GAS 2010 LEASING REFORM

## ■ Master Leasing Plans (MLPs)

### ■ Purpose:

- “reconsider RMP leasing decisions”
- “strategically plan for leasing and development”
- “identify/address potential leasing conflicts/environmental impacts from development”
- Landscape level

### ■ Mandatory MLP criteria:

- Substantial portion not leased
- Majority federal mineral interest
- Interest in leasing/discovery



# FLPMA AND OIL & GAS

- **Discretionary MLPs – 30 recommended by NGOs**
  - **MLPs in ongoing RMPs**
    - **North Park MLP in Kremmling RMP (2015)**
      - 0.4% off-limits to O&G
    - **Lander RMP**
      - “Designated Development Areas”
  - **Stand-alone MLPs**
    - **Moab MLP FEIS**
      - 57% no lease/NSO
- **Secretary Jewell: MLPs: oil and gas “in the right places” and “identify places that are too special to drill” (March 2015)**



# FLPMA AND OIL & GAS

- **Landscape-level Planning**
  - **Greater Sage-grouse RMP Amendments**
    - 50 million acres in 10 states
      - 15 FEIS/3 RODs
      - Closure or NSO in priority habitat
      - O&G: 0.6-4 mile NSO lek buffers
      - Reduce well density
      - Limit cumulative surface disturbance
    - Litigation ongoing





# PUBLIC LAND RENEWABLES

*“As Secretary of the Interior, I can see the economic opportunity presented by the new energy economy. Since coming into office, we have prioritized the development of renewable energy on our public lands and off-shore waters.”*

Secretary Salazar



# FLPMA AND RENEWABLES

- “Top Priority”
- Secretarial Order 3283: *Enhancing Renewable Energy Development on Public Lands* (March 2009)
- Secretarial Order 3289: *Addressing Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources* (Sept. 2009)



# FLPMA AND RENEWABLES

- **FLPMA Title V Rights-of-Way (ROWs)**
  - Applicant-driven
  - Post-EPA Act 2005 “land rush”
- **Existing Guidance**
  - Wind: IM 2009-043; Wind PEIS (2005)
  - Solar: IM 2007-097
- **“Fast Track” Solar Initiative (July 2009)**
  - Revise focus of Solar PEIS – “Smart from the Start”
    - Draft: 24 solar energy zones (SEZs) – 29 million acres (2010)
    - Final: 17 SEZs – 285,000 acres (2012)
    - SEZ planning ongoing
      - Nevada, Colorado, Utah, Arizona, California



# FLPMA AND RENEWABLES

- **BLM 2011 Guidance**
  - Addresses siting/speculation
    - IM 2011-060
      - due diligence
    - IM 2011-061
      - screening
    - IM 2011-083
      - mining conflicts
  - **2013 Rule**
    - withdraws land during wind/solar permitting

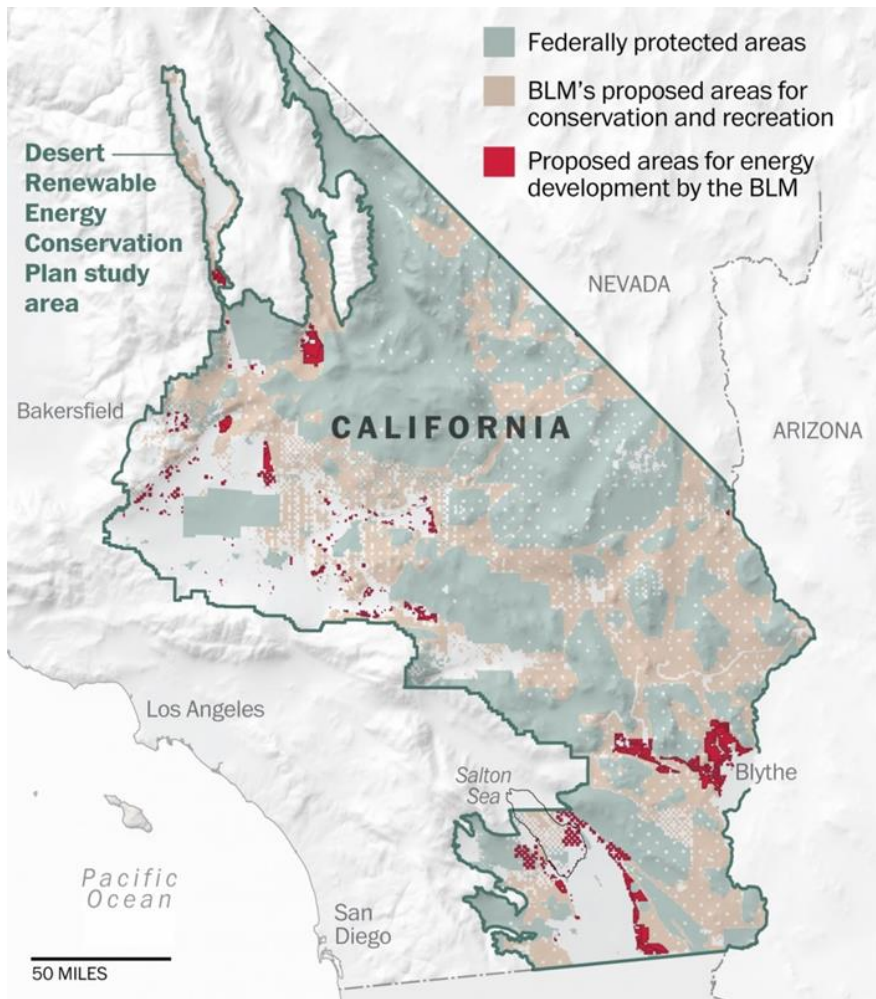


# FLPMA AND RENEWABLES

- **BLM Proposed Rule for Renewables**
  - Competitive leasing proposal
    - Designated leasing areas
    - Financial incentives
  - 2011 guidance into rule
    - Screening process
    - ROW 30-year terms
    - Terms and conditions
      - Due diligence
    - Bonding requirement
    - Rent
      - Per-acre/MW capacity fee



# LANDSCAPE LEVEL PLANNING FOR RENEWABLE ENERGY



## Desert Renewable Energy Conservation Plan ROD (9/2016)

10 M federal ac.  
– 9.6 M ac. conservation/recreation  
388,000 ac. renewable energy

Sources: BLM, U.S. Geological Survey

LARIS KARKLIS/THE WASHINGTON POST

# WHAT'S AHEAD FOR FLPMA AND ENERGY?

## ■ Landscape-level Planning Rule

- 2016 “Planning 2.0” Proposed Rule
  - Less local, across jurisdictions
  - Issues at their “natural scales”

## ■ Planning for Mitigation

- Presidential Memorandum (Nov. 2015)
  - “large-scale plans should inform the identification of areas [for development] . . . locations for protection and restoration or where natural resource values are irreplaceable.”
- Secretarial Order 3330, *Improving Mitigation Policies and Practices at the Department of the Interior* (Oct. 2013)



# QUESTIONS?

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