

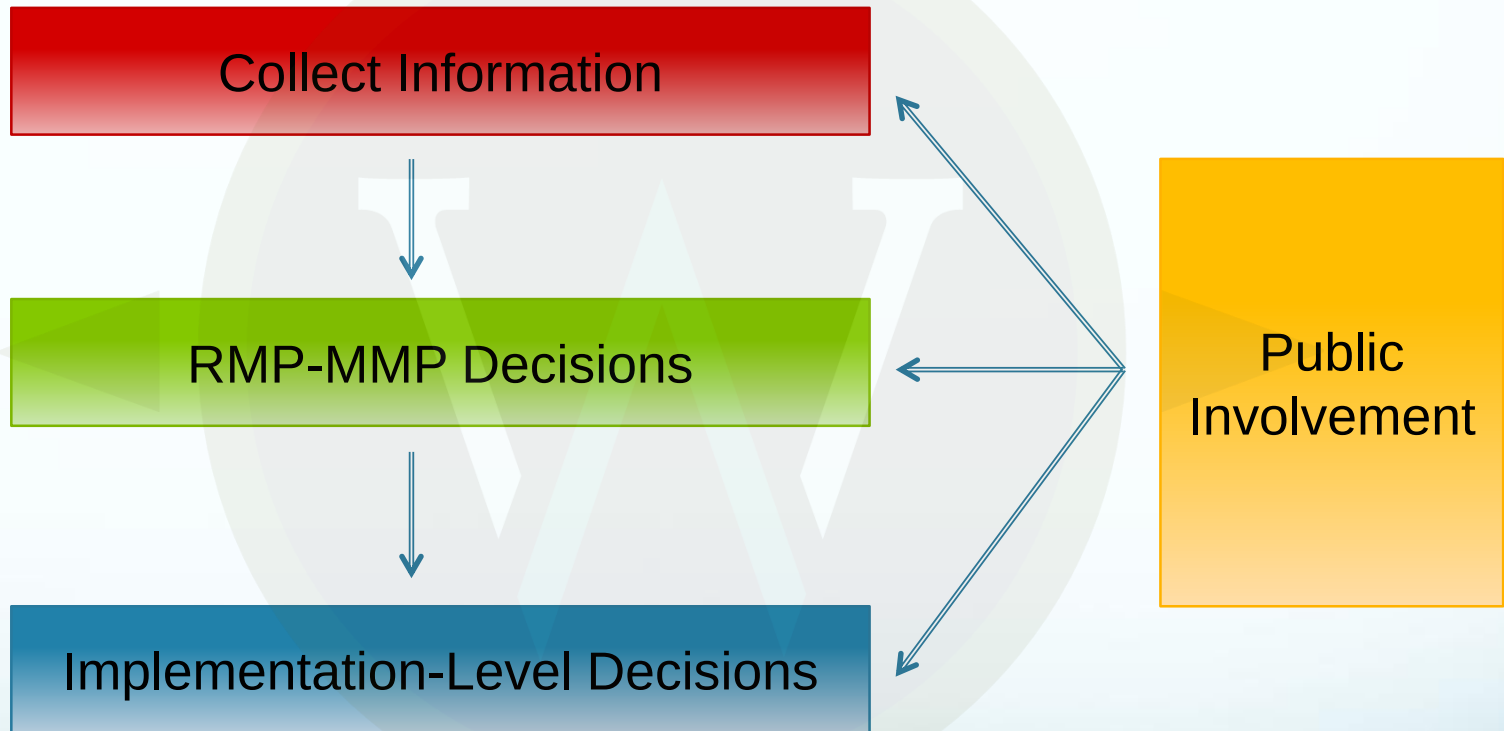


ADVOCATES for the West

Resource Management Plans –
Engaging to Win

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Public Involvement in BLM Decisionmaking and Planning



Resource Management Plans – Engaging to Win

- What are RMPs and MMPs?
- Engaging in RMPs/MMPs planning to maximize conservation outcomes.
- Enforcing RMPs/MMPs to benefit wildlands and wildlife of the American West.

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What are Resource Management Plans and Monument Management Plans?

Resource Management Plans & Monument Management Plans

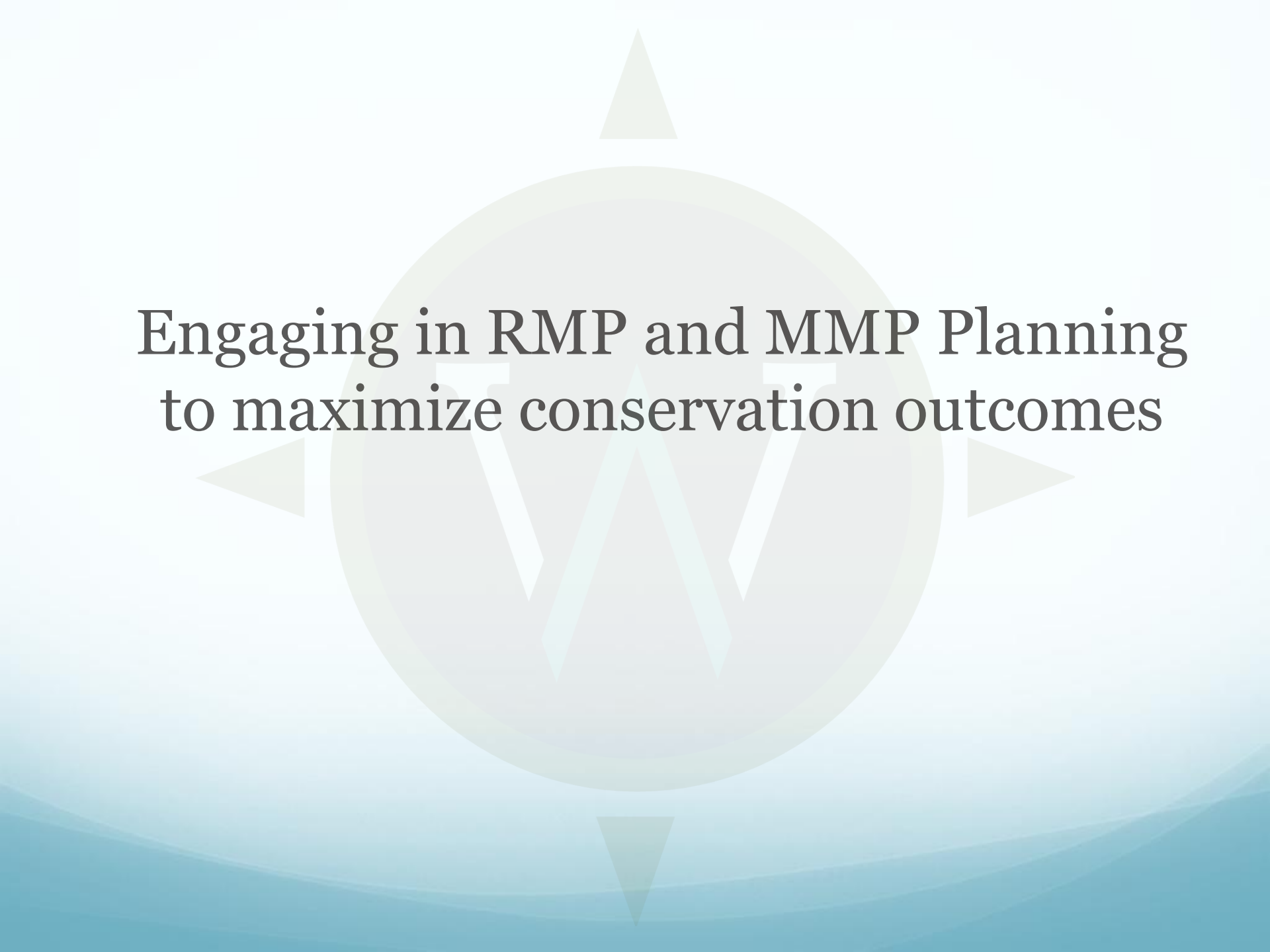
- Management documents that guide future agency actions and subsequent site-specific implementation decisions on a given landscape
- Ensure that the public lands are managed in accordance with the intent of Congress, expressed through FLPMA
- RMPs establish “[l]and areas for limited, restricted or exclusive use” and determine “[a]llowable resource uses (either singly or in combination) and related levels of production or use to be maintained.”

RMPs/MMP are **Statutorily Required**

- § 101 - National interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a **land use planning process** coordinated with other Federal and State planning efforts
- § 201 – Prepare and Maintain Inventory of PL
- § 202 – Develop, Maintain and Revise LUPs with public involvement
 - Public involvement– “The opportunity for participation by affected citizens in rule making, decision making, and planning with respect to public lands, including public hearings . . . or adversary mechanisms, or other such procedures as may be necessary to provide public comment in a particular instance.” FLPMA § 103(d).

Required Process - Elements of RMP/MMP

1. Use and observe the principles of multiple use and sustained yield;
2. use a interdisciplinary approach to integrate physical, biological, economic, and other sciences;
3. give priority to designating and protecting ACECs
4. Rely on an inventory of public lands, their resources, and values;
5. consider present and potential uses of public lands;
6. consider the relative scarcity of the values involved
7. weigh long-term benefits to the public against short-term benefits;
8. Comply with applicable Tribal, Federal, and state law, standards, and implementation plans; and
9. coordinate the land use planning activities with land use planning and management programs of Federal departments, agencies and state/local governments, and policies of Tribal and state land resource management programs.

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Engaging in RMP and MMP Planning
to maximize conservation outcomes

Public Engagement in Resource Management Plans

- **Legally required** - “the Secretary shall, with public involvement and consistent the the terms of [FLPMA], develop, maintain, and when appropriate, revise land use plan. 43 U.S.C. 1712(a)
- “The Secretary shall allow an opportunity for public involvement and . . . shall establish procedures, including public hearings when appropriate, to give Federal, State and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of [land use] plans” 43 USC 1712(f)

Overview of RMP Planning Process



Public Comment Scoping Period – Public Involvement

- Commences with Notice of Intent to develop RMP/Prepare EIS in Fed. Register
- 30-day Comment period usu.
- Substance of Comments – (1) identify key areas and threats; (2) identify conservation alternative; (3) propose management overlays (e.g., ACEC, RNA, WSR); (4) coordinate RMP planning with other planning level decisions (travel plans, winter travel plans, etc.)

Post-Scoping – Pre-Draft RMP – Informal Public Involvement

- BLM – Inventory and Data Collection and Assessment, Analysis of the Management Situation, Formulate Alternatives
- Opportunities for informal public engagement
 - Request and analyze data, seek additional data, identify inadequacies in existing data, submit comments to BLM
 - Review AMS and submit comments; identify and submit additional data
 - If possible, review preliminary draft alternatives and submit comments – esp. if alternatives too limited
 - Reaffirm a range of conservation alternatives

Draft RMP/EIS - Public Involvement

- Notice of Availability in Federal Register, and 90-day comment period
- Public Involvement is critical – attend public open house meetings, and formally submit written comments on (in)adequacy of alternatives, and (in)adequacy of consideration of environmental impacts
- These comments take time and planning
 - Start weaving legal requirements and mandates into comments
 - Identify scale and scope of analysis
 - Feasibility and monitoring issues
 - Propose (again) conservation alternatives
 - Examine, analyze and comment on adequacy of analysis
- Engage and coordinate with coalition partners and allies

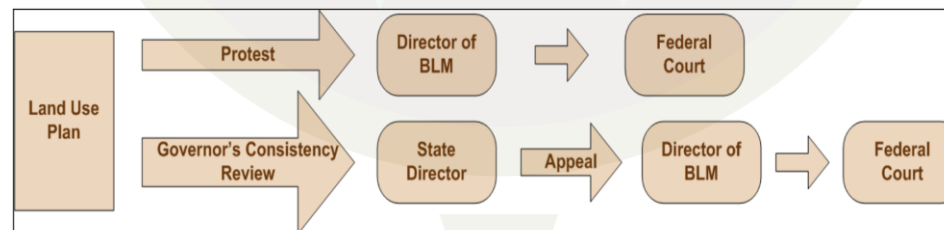
Proposed RMP/Final EIS Public Review and Protest

- Notice of Availability in Federal Register and 30-day protest period
- BLM simultaneously initiates Governor's Consistency Review (60 days)
- Iterative process and protest should be developed using the comments on Draft RMP
- Informal opportunity to engage Governor and weigh in on consistency review – provide recommendations
- Protest Resolved – if protest results in sign. Change to RMP, BLM must provide a Notice of Sign. Change and a 30-day public comment period

Issue Record of Decision (ROD) and Approved RMP

- Final step in process – no further administrative process
- BLM has continuing obligation to maintain, amend, and revise RMP as needed
- RMP amendments require same process as issuing RMP
 - Minor changes re: 30 day comment period on Draft Amendments
 - ACEC requires 60 day
- Federal court litigation is available

Figure 1. Administrative Appeals of BLM Land Use Plans



Source: Bureau of Land Management.

Challenging Approved RMPs/MMPs

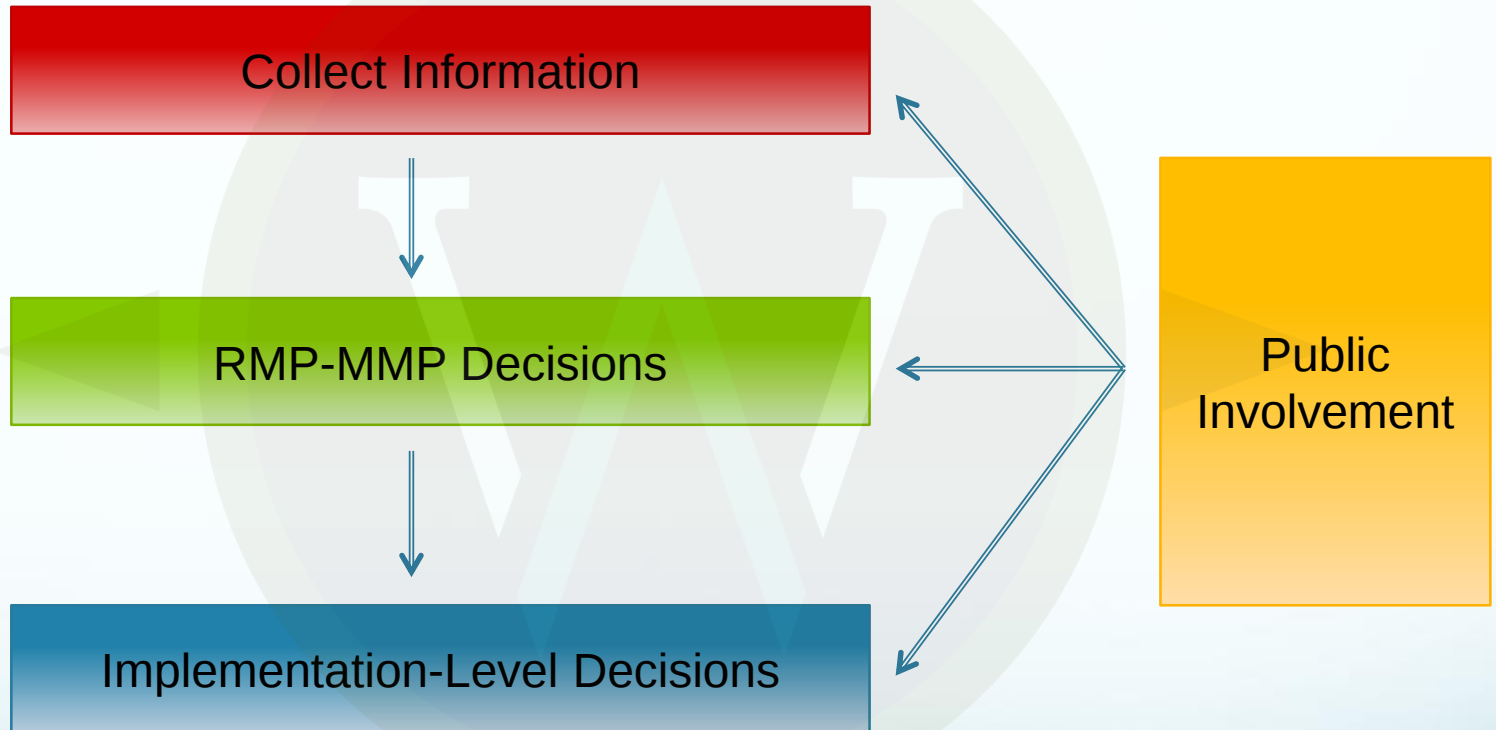
- Adoption of RMPs/MMP are subject to litigation as FAA
- Challenge is finding substantive legal hook – FLPMA planning is largely process based
 - Some hooks – ORV minimization, MUSY, prioritize designation of ACEC
- Plenty of procedural hooks – NEPA, NHPA
- Examples
 - *W. Watersheds Project v. Zinke*, 08-cv-516 (D. Id.) (18 rmeps)
 - *W. Watersheds Project v. MacGregor*, 16-cv-00083 (D. Id.) (SG RMPs)
 - *W. Org. of Resource Councils v. BLM*, 16-cv-21 (D. Mt) (Powder River Basin RMPs and coal development)
 - *SUWA v. Burke*, 12-cvb-257 (D. Ut.) (Richfield RMP – ORVs)

Challenging Approved RMPs/MMPs

- Litigation Hurdles and Planning
 - Standing – examines injury and relief
 - Ripeness – deals with timing of litigation – (1) would delay cause hardship, (2) judicial action interfere with administrative action, and (3) would courts benefit from further factual development
 - Exhaustion – Administrative –
 - Exhaustion required by statute and stayed
 - Exhaustion – Issue
 - Person must structure public participation in such a way that it alerts the agency to the parties' position and allows the agency to meaningfully consider
 - Exception –when flaw is so obvious no need for commentator to point it out = agency has independent knowledge of flaws
 - Available Remedy
 - Vacatur
 - Remand w/o vacatur

Enforcing Resource Management
Plans and Monument Management
Plans to benefit wildlands and
wildlife of the American West

BLM RMP/MMP and Implementation-Level Decisions



Enforcing RMPs & MMPs – Implementation Decisions

- Once new RMP/ROD approved, time to seek to enforce RMP through site-specific implementation decisions
- Public engagement requirements – engage in process and raise issues
- **Consistency provision** - FLPMA requires that all resource management decisions “shall conform to the approved [land use] plan.”
 - Different legal theory – but complimentary – MUSY (permanent impairment to the quality of the environment); UUD, non-impairment standard for WSAs
 - Different legal theory – but complimentary – that NEPA, NHPA, ESA, and other substantive challenges.

Enforcing RMPs & MMPs – Implementation Decisions

- Consistency Requirement – Examples
 - RMP closes certain road/trails, and implementation decision open
 - RMP designates ACEC/RNA and adopts management criteria, and implementation decision waters down mgmt criteria
 - RMP closes area to timber, and implementation decision allows logging
 - RMP prioritizes wildlife, watersheds, recreational or resource protection, and implementation decision undermines these values

Examples: S. Idaho grazing and sage grouse; PAPA field

Federal Court Litigation - Remedies

- **Vacate and Reinstate**
- **Remand and Redo**
- **Delay** – in the Age of Trump – is a tactical victory
- **Run out the clock**
- **Offensive Litigation** – Affirmative, enforceable changes on the ground looking forward, create new standards and obligations for agency in the future, and more process

Questions

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