

CHAPTER 4 CONSULTATION AND COORDINATION, PUBLIC PARTICIPATION, AND PREPARERS

CONSULTATION AND COORDINATION

The importance of federal-state consultation and coordination was established at the beginning of this effort to review and revise the 43 CFR 3809 regulations. In his January 6, 1997, memorandum directing the BLM to start the rulemaking process, the Secretary of the Interior directed that “Coordination with state regulatory programs should be carefully addressed, to ensure that Federal Land Policy and Management Act’s purpose of avoiding unnecessary or undue degradation is achieved, while minimizing duplication and promoting cooperation among regulators.”

We coordinated with state governments, state regulatory agencies, American Indian tribal governments, and other federal agencies, including the Environmental Protection Agency, Fish and Wildlife Service, and the Bureau of Indian Affairs, in developing the proposed regulations and preparing the draft and final EISs. No formally designated cooperating or joint lead agencies helped prepare this EIS.

We began working closely with the governors and state agencies of the “Mining Law” states before issuing the Notice of Intent to Prepare an EIS and continued this consultation through the issuance of the Notice of Availability for the final EIS. The importance of this consultation and coordination was reiterated in the 1998 Interior Appropriations Act, which directed the Secretary of the Interior to certify that he had consulted with the affected states.

On April 8, 1997, March 3, 1998, and again on September 22, 1998, the BLM/Department of the Interior (DOI) team drafting the regulations participated in meetings hosted by the Western Governors’ Association. These meetings with representatives of western state governments and agencies focused on concerns about the concepts and provisions in the working drafts of the proposed regulations. We also solicited written comment on the drafts of the proposed regulations from the states. The Western Governors’ Association was a conduit to facilitate much of the consultation with the states.

Both DOI and BLM officials contacted affected state governors and state regulatory agencies. During the public comment period on the proposed regulations and draft EIS, the BLM/DOI regulation team again met with the western states government and government agency representatives to discuss concerns. This meeting was hosted by the Western Governors’ Association in Denver, Colorado, on January 11, 2000.

To obtain input from American Indians, we consulted and coordinated with the Bureau of Indian Affairs, the Native American Indian Congress, and tribal governments. Key points of consultation

and coordination included a presentation to the Indian Minerals Steering Committee by Robert Anderson, BLM Deputy Assistant Director for Minerals, Realty, and Resource Protection. We also distributed preliminary draft regulations to potentially affected tribal governments and held an information briefing/public meeting on the Fort Belknap Indian Reservation in Montana.

While developing the proposed regulations and preparing the draft EIS, we consulted informally with the Fish and Wildlife Service and National Marine Fisheries Service. In revising the proposed regulations and preparing the final EIS, we prepared a biological assessment of the proposed rules. Before authorizing surface disturbance actions under the 3809 regulations, site-specific consultation may be required under Section 7 of the Endangered Species Act.

Before authorizing surface disturbance, BLM would consider the effects of the site-specific proposal on cultural resources that are listed or eligible for listing on the National Register of Historic Places through the consultation process in Section 106 of the National Historic Preservation Act of 1966.

PUBLIC PARTICIPATION

In January 1997, the Secretary of the Interior directed BLM to continue with the regulation review process promised in 1981 and begun in 1991. Because of the time that had passed since the 1991 effort, we started a new public participation process in early 1997 and requested comments from its field offices on the existing regulations and suggestions for improvement. We encouraged public participation by the following actions:

- Prescoping outreach to special interest groups and government officials.
- Scoping for the EIS, including a formal 81-day comment period and 19 public meetings in 12 cities.
- Placing the proposed regulations, draft EIS, and related documents on BLM's Internet web site.
- Two public comment periods for the EIS and proposed 43 CFR 3809 regulations, including 29 public hearings in 16 cities.

Information gathered during the prescoping outreach and public scoping process was analyzed and used to determine the issues that were addressed and the alternatives presented in detail in the draft EIS. The draft EIS was subject to further public review and comment during the public comment period. Following the second public comment period, the proposed regulations were revised and the final EIS prepared. The final EIS considers and responds to all substantive comments and incorporate changes to the final EIS in response to the comments received during the review period.

We have actively sought public involvement throughout the process to ensure that the process is open and that BLM has considered information from all interested parties, including the following:

- Other federal agencies
- State and local governments.
- American Indian tribal governments.
- The scientific community.
- Professional, conservation, and trade organizations.
- Public land users and stakeholders.
- Citizens at large.

One of the efforts to increase information to the public was to post the proposed regulations, draft EIS, other documents, announcements, and schedules on BLM's Internet web site. The web site was updated regularly to give users the latest information on working drafts of the regulations, schedules, and other information on the project. As of July 31, 2000, the Internet web site had had more than 25,000 visits.

Outreach

In March 1997, we issued a press release to announce the revision effort and a task force of agency staff with experience in the program to coordinate public involvement, develop regulation options, and oversee the preparing of an EIS on the effects of changes to the regulations. From March through May, we conducted briefings on the revision process for conservation and industry groups; congressional offices; and local, state, and federal government agencies. Although this outreach occurred before and not as part of formal scoping, we considered the views expressed in developing the proposed rules and draft EIS.

Beginning in April 1997, we sent information packages to all of our offices for distribution to the public. These information packages contained the following:

- The Secretary of the Interior's January 1997 letter beginning the regulation review.
- A briefing summary of the development of the current regulations and related policies.
- The proposed regulation and EIS schedules.
- An explanation of the proposed process for reviewing and revising the regulations and developing the EIS.

We mailed these information packages to interested or affected stakeholders, passed them out at our offices, and distributed them at meetings with interest groups. In addition, we gave interested parties summaries of the scoping comments from the aborted 1991 reform effort.

Scoping

We conducted extensive public scoping for the draft EIS. On April 4, 1997, a *Federal Register* notice announced BLM's intent to prepare an EIS, requested scoping comments, and gave the schedule for public scoping meetings. We also issued national and local news releases announcing the scoping process. To collect a wide range of comments, we held public scoping or

informational meetings at the locations shown in Table 4-1. In addition to oral comments at public meetings, we received 1,832 comment letters (including email messages) on revising the 3809 regulations.

Table 4-1. Informational and Scoping Meetings for the Draft EIS		
Date (1997)	Location	Approximate Attendance
May 13	Spokane, WA	40
May 13	Denver, CO	125
May 15	Fairbanks, AK	65
May 15	Phoenix, AZ	140
May 20	Casper, WY	20
May 20	Reno, NV	235
May 20	Socorro, NM	15
May 22	Washington, DC	80
May 28	San Francisco, CA	70
May 28	Helena, MT	130
May 28	Salt Lake City, UT	70
June 16	Eugene, OR	40

The deadline for providing scoping comments was ultimately extended through June 23, 1997, but the record remained open until the proposed regulations were being finalized in the fall of 1998. Comments received after June 23, 1997 were reviewed by the regulation and EIS teams.

To establish a framework for scoping , we selected eight topics that had previously been listed as program issues:

- The definition of *unnecessary or undue degradation*.
- The development of specific performance standards for mining and reclamation.
- The 5-acre disturbance threshold between Notice- and Plan-level operations.
- Coordination between state and federal regulators.
- The type and adequacy of penalties for violating regulations.
- The review time frames for Notices and Plans of Operations.
- The definition of *casual use*.
- Requirements for reclamation bonding.

We also invited participants to comment on any other issues of concern in the surface management program.

A comment analysis team was formed to review the comments. In summarizing the scoping comments the team grouped them into comments on the following subjects:

- Eight issue topics originally selected by BLM..
- New issues.
- Suggestions for preparing the EIS.
- Scoping process.

In addition, comments by BLM field office staff were grouped as such. The results of the comment analysis were given to the two teams working on the regulations and the draft EIS. In September 1997, a scoping report summarizing the comments received through June 23, 1997 (BLM 1997a) was distributed to all who submitted comments or expressed an interest in the rulemaking or EIS.

We based the first working draft of the proposed regulations on comments from outreach and scoping, reviews by BLM field offices, and guidance from the Department of the Interior. In February 1998 we requested reviews and comments on the first working draft of the proposed regulations from federal, state, local, and tribal officials. In addition, we released the draft for public review. In response to comments, we prepared a second draft and posted it on the Internet on August 11, 1998. Chapter 1 discusses issues, concerns, and alternatives discussed through scoping.

Public Comment Period

The proposed regulations and draft EIS were subject to public review and comment during two public comment periods. The first period ran from February 9, 1999 to May 10, 1999. Starting on March 23, 2000, we held 29 public hearings in 16 cities on the proposed regulations and draft EIS (see Table 4-2). In addition to the transcripts from the public hearings, we received more than 2,100 comment letters, including email. After the close of the first comment period, BLM released to the public the *43 CFR 3809 Surface Management Regulations Interim Content Analysis Report* (BLM 1999c) summarizing public comments.

Date (1999)	Location	No. of Hearings
March 23	Reno, NV	2
March 25	Elko, NV	2

March 30	Fairbanks, AK	2
March 30	Phoenix, AZ	2
March 30	Lakewood, CO	2
March 31	Casper, WY	2
March 31	Socorro, NM	1
April 7	Salt Lake City, UT	2
April 14	Washington, DC	1
April 14	Helena, MT	2
April 20	San Francisco, CA	2
April 20	Spokane, WA	2
April 21	Ontario, CA	2
April 22	Eugene, OR	2
April 22	Sacramento, CA	2
April 27	Boise, ID	1

On September 29, 1999, the National Research Council (NRC) released its report *Hardrock Mining on Federal Lands* (NCR 1999). This report discussed the Council's assessment of the adequacy of the existing regulatory framework for hardrock mining on federal lands. As directed by Congress, BLM opened an additional 120-day comment period on the proposed regulations and draft EIS to provide input based on the NRC findings and recommendations. We arranged to have the NRC report distributed to all persons and organizations that had expressed an interest in the rulemaking or EIS. In announcing the comment period in the *Federal Register* (October 26, 1999), we requested more public input on the proposed regulations in relationship to the NRC recommendations. This comment period ran from October 26, 1999 to January 24, 2000.

We received more than 400 comment letters during the second public comment period. Following the second comment period, we revised the proposed regulations and prepared the final EIS. The final EIS considered and responded to all substantive comments received during both comment periods and incorporated changes to the final EIS in response to those comments.

DISTRIBUTION

The draft EIS, along with the proposed rules (see Appendix B of draft EIS), was released for public review and comment during two public comment periods. One copy of the draft EIS was mailed to each person and organization that provided comments during scoping or expressed an interest in the rulemaking or EIS. We are similarly distributing the final EIS to all persons and organizations expressing an interest in this rulemaking and to organizations that may not have submitted comments: congressional offices; federal, state, and local agencies; tribal governments;

and conservation and trade organizations. Appendix B lists recipients of the final EIS. Copies of the draft and final EIS and the regulations have also been posted on BLM's Internet web site.

OTHER ACTIONS

Once the final EIS was published, the *Federal Register* announced its availability. No sooner than 30 days after publication of the final EIS, the Secretary of the Interior will issue a record of decision. At the same time, on the basis of that record of decision, the final rules will be published in the *Federal Register*.

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We wish to thank BLM's Arizona State Office, Office of External Affairs, and BLM's National Training Center for their help in preparing this EIS. Judy McDonald of the National Training Center prepared the maps and illustrations, Beth Perault of the Arizona State Office designed and laid out the document, and Dorothea Boothe of the Arizona State Office arranged for and coordinated the document's printing and distribution.

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