

Protest Procedures

The protest procedures in 43 CFR 1610.5-2 allow for the administrative review of the State Director's proposed decision and associated written record by the BLM Director. The Director will determine whether the BLM followed established procedure, considered relevant information in reaching a proposed decision, and whether the proposed decision is consistent with BLM policy. It is not a time to defend proposed decisions but should be a neutral, objective, and unbiased review.

The Director has delegated signing of response letters to protests to the Assistant Director, Renewable Resources and Planning (AD-200). Acting in support of the Director, the Group Manager, WO-210 is responsible for the oversight of the entire process once a protest is filed through final resolution. Each protest is considered in close coordination with the involved State Director and affected WO groups, other WO policy officials, and as appropriate, the Office of the Solicitor. The Group Manager, WO-210 makes recommendations to the Assistant Director for final resolution of the protest following established review and clearance procedures.

It will be the goal to resolve all protests within 90 days to the extent possible. If it is not possible to resolve and respond to the protest(s) within 90 days, the Group Manager, WO-210 should send a letter acknowledging receipt of the protest to the originating party, indicating that a more detailed response will follow.

Washington Office Initial Evaluation of Protests

The purposes of this evaluation are to: 1) expeditiously identify and dismiss those protests found not valid or sufficient and, 2) to facilitate field and WO staff review of the issues raised in valid protests. To the extent practicable, WO-210 will examine all protests for completeness (compliance with the content requirements of the regulations) within 20 business days of the date of receipt in WO-210 using the following steps:

1. The Protest Coordinator will establish a case file for each protest received. Each protest will be consecutively serialized using the following coding: PP-SO-PN-FY-# ("PP" means Plan Protest, "SO" means the responsible State Office, "PN" means a plan name identifier of up to several letters, "FY" means the last two digits of the fiscal year, "#" is a sequential number assigned as the filings are received). To the extent possible, all actions in this section will be completed within 5 business days of receipt. The Protest Coordinator will notify State Office planners of assigned numbers and will also assure that additional protests, which appear to have been sent to the Director with copies to field offices, are not still in route and are within prescribed time frames.

2. The Protest Coordinator will check to ensure that each protest was filed within the protest period (see 43 CFR 1610.5-2(a)(1)). In accordance with well-established regulatory, legal, and judicial precedents, legal documents (including plan protests seeking administrative review) are accepted if the postmark is not later than the last day of the filing or protest period. BLM does not need to receive a protest by the end of the protest period, unless the public is

officially and widely noticed. In all cases, the protest period shall be 30 days (however, the protest period should always end on a business day - if the 30th day falls on a Saturday or Sunday, the protest period should end the following Monday). The regulations do not allow for the extension of the protest period for any reason. In determining timeliness, the BLM will employ a strict standard. If the originator filed a protest after the protest period, the WO will dismiss it and respond to the originator in writing. If the originator filed a protest on time, proceed to the next step. The initiation of the protest period for EIS level plans and amendments is the Environmental Protection Agency (EPA) *Federal Register* Notice of Availability and the actual mailing date for plan amendments or planning area analyses supported by environmental assessments.

3. The Protest Coordinator will examine each protest to see if it is complete (see 43 CFR 1610.5-2(a)(2)(i)-(v)). The term “complete” as used in this section means that all five of the elements listed are addressed in the protest filing:

- (i) the name, mailing address, telephone number, and interest of the person filing the protest,
- (ii) a statement of the issue or issues being protested,
- (iii) a statement of the part or parts of the plan or amendment being protested,
- (iv) a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record, and
- (v) a concise statement explaining why the State Director’s decision is believed to be wrong.

The term “complete” also means that BLM received all attachments or other data that is referred to in the protest letter. If necessary, the Group Manager, WO-210 may request (by certified mail, return receipt requested) a protesting party to remedy identified deficiencies. The protesting party must respond to this request no later than 10 business days from the date of the receipt of the request. If WO does not receive a response, the protest will be processed to the extent possible. Minor omissions will not be used as a reason to dismiss a protest.

4. State liaisons, in coordination with the respective State/Field Office, will evaluate each protest for content. The planning regulations at 43 CFR 1610.5-2(a)(v) require that a protest include a concise statement explaining why the State Director’s decision is believed to be wrong. Mere disagreement with a proposed decision or unsubstantiated allegations of violations of regulation, law, legal precedents, or other guidance documents will not meet the requirement of this regulation. In making this determination, a broad standard shall be employed. When the BLM finds that the protesting party is merely expressing either an opinion, or an unsupported allegation, the BLM will dismiss the protest while still addressing any concerns raised (see boilerplate language in Attachment 3).

5. For protests that meet the above criteria, the Protest Coordinator will forward a copy to the responsible State Director and Field Office(s) for further evaluation and a detailed analysis. In the interest of rapid resolution, if it is clear that a protest meets the requirements

noted above, the WO will forward it to the affected State immediately rather than waiting until the end of the protest period. State liaisons should also ensure that copies of the protests are distributed to all affected WO program staffs.

State Office Evaluation and Detailed Review

1. The State Director and Field Office(s) will assess the following criteria to determine the validity of the protest (refer to Attachment 2 for documentation requirements):

A. Does the protesting party have standing? The protesting party must have participated in some phase of the planning process (scoping, draft, or other points where comments are invited), either through the filing of written comments for inclusion in the planning record or, by providing oral comments (through a public meeting, hearing or other BLM forum). The responsible Field Office Manager will review the planning records to make this determination. If the determination is made that no participation has occurred, no further review of the protest is required. The AD-200 will issue a written decision that dismisses the protest for lack of standing. Even though the protest is being dismissed, the decision should also address any comments or concerns that were raised.

B. Has the protesting party raised these issues before in the planning process? The planning regulations require that any issue raised on protest must have been raised for the record by the protesting party previously in the planning process. In this determination, a broad standard will be employed. If the responsible State/Field Office determines that none of the issues has been raised before by the protesting party, the BLM will dismiss the protest as outlined in the above paragraph. If some of the issues were previously raised by the protesting party, then the detailed State Director's analysis will indicate which issues were raised previously and which are newly introduced.

C. Are the issues the protesting party raised germane to the planning process? An issue is generally germane when a protesting party raises an issue about a resource condition, a land use allocation, or the adequacy or inadequacy of a management prescription and associated terms and conditions. An issue may not be germane if, for example, it is beyond the scope of a particular effort, or if it involves a matter normally addressed in plan implementation. If issues raised in the protest are determined to be not germane to the planning process, the protest will be dismissed, as outlined above, with a complete explanation of why it is being dismissed.

If the answers to the above questions are all "yes," the State Director should continue the analysis starting with Step 2 below. If the answers to one or more of the questions is "no," the State Director should complete a draft response in accordance with Attachment 3 and forward the document to the appropriate State liaison who will complete a response that dismisses the protest.

2. State Directors and Field Offices must prepare a point-by-point analysis for each germane issue or concern raised (see Attachment 2, Items 5-8). An issue must have been raised

previously and must be germane to the process. It should be supported by facts and not just an unsubstantiated opinion. A concern may be an observation, an unsubstantiated opinion, an issue not raised previously, or an issue not germane to the process.

For this analysis, it is crucial to address the following decision-related factors: the facts considered; procedures followed; and, authorities employed. When citing published data from the planning record, the State/Field Office must provide the document, date of publication, and page number(s). When citing material from unpublished BLM records, the State/Field Office must provide sufficient identification to show that it was existing at the time of the planning process. Such material, which may show that a resource value is absent, not threatened, or unremarkable, may be a source of information critical to the disposition of an issue.

3. The State Director will document the point-by-point analysis of each protest and provide to WO-210 using the format in Attachment 2. Any other information pertinent to the Director's review and that might help resolve the protest should also be included in this analysis. The State Office will transmit this to the Group Manager, WO-210 not later than 60 days after the protest is received in the State Office. The State Director is also encouraged to submit preliminary draft responses in order to expedite the process. These preliminary draft responses should be prepared using the boilerplate language in Attachment 3, Item 4.

4. As a result of the above analysis, the State Director recommends, and if the Director concurs, he/she or a designated representative are strongly encouraged to consult and negotiate with protesting parties and discuss germane protest issues. When such consultation results in agreement on the issues protested, the protesting party must be advised to provide to the Director a written notice withdrawing the protest. In some cases, the protesting party will not withdraw the protest, but may be willing to accept a clarification or non-substantive change to the proposed decision that effectively resolves the contested issues. A non-substantive change would not require a notice of significant change as required by 43 CFR 1610.5-1(b), but could clarify implementation direction or commit the Bureau to further analysis and announcement of proposed actions subject to further NEPA review and potential appeals under applicable regulations.

For large numbers of protests or complex protests, the WO may send a team to work with the State Office and Field Office in analyzing issues and preparing draft responses.

Washington Office Final Review

1. The Group Manager, WO-210 will prepare a draft response and decision on each protest (see Attachment 3, item 4). The decision will have a standard organization and phraseology to the maximum extent possible. This decision will incorporate the results of the WO and SO evaluations, SO and WO-210 analyses of the protest points, and a clear statement of the action rendered on the protest (dismissed, denied, returned to the State Director for further consideration, or upheld in total or in part).

2. If a protest is returned in whole or in part to the State Director, WO-210 will consult and work with the affected State and Field Office to negotiate the decision. If a proposed plan

decision is clarified or modified in a non-substantive manner, WO-210 will prepare the revised language or commitment for clarification in the decision document in consultation with the affected State and Field Office.

3. As a decision is drafted, WO-210 will coordinate with other Washington Office program staffs for the specific program comments, as necessary. As WO-210 receives comments or additional information from other WO staffs, modifications will be made as necessary. Program offices are normally consulted when a protest involves one or more of the following: non-compliance with a national policy guidance and legal requirements; precedent setting departures from the existing resource management practices or a major change in the use of resources in the area covered by the plan; and/or subject areas or matters where special expertise is required.

4. The state liaison will forward the proposed decision for surnaming, in draft form, to the appropriate Assistant Directors. Other officials, such as the involved Group Managers and the Solicitor, are included as circumstances warrant. If changes are necessary, such changes will be annotated on the draft decision and routing will continue (see Attachment 3 for a more detailed explanation of this process).

5. Once surnaming of the draft is complete and appropriate changes are made, the state liaison will send each protest response and decision to the Assistant Director, WO-200 for final signature.

6. Once signed, the Protest Coordinator will assure that the protest decision is sent to the protesting party by certified mail, return receipt requested. The Protest Coordinator will also route a copy to the appropriate State Director and Field Manager(s). When this has been done, the State Director may sign the appropriate decision document for the RMP or RMP amendment upheld under protest.

7. In the event a substantive portion of the proposed plan is returned to the State Director and a supplemental analysis will be required, the State Director will be given the option to approve and implement those portions of the proposed plan which were not protested or remanded for reconsideration.