

Introduction to NEPA and the BLM Planning Process

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NEPA

The National Environmental Policy Act (NEPA) requires that agencies prepare “a detailed statement” for any “major Federal action significantly affecting the quality of the human environment.” 42 USC 4332c.

NEPA

The purpose of NEPA is “to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 CFR 1500.1 c.

NEPA

NEPA “sets forth procedural mechanisms to ensure proper consideration of environmental concerns, it does not mandate particular substantive results.”

Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 558 (1978).

“NEPA merely prohibits uninformed – rather than unwise - agency action.” *Robertson v. Methow Valley*, 490 U.S. 332, at 350 (1989).

The NEPA Process

Identify the purpose and need for action and describe the proposed action to the extent known.

Scoping

Identify issues for analysis

Refine proposed action

Develop alternatives to the proposed action

Eliminate alternatives that do not require detailed analysis

Gather data and analyze the reasonable alternatives

Describe the environmental effects of the alternatives

Identify mitigation measures

Implement and monitor

This flow chart outlines the general process for NEPA compliance. Public involvement may occur throughout this process. Additionally, NEPA is iterative and you may revisit some of these steps throughout your process.

BLM Planning Process

The Federal Land Management and Policy Act (FLPMA) requires BLM to develop Resource Management Plans (RMPs) for management of public lands. 43 USC 1712.

BLM Planning Process

BLM develops RMPs to ensure that the public lands are managed in accordance with the intent of Congress as stated in FLPMA under the principles of multiple use and sustained yield.

BLM Planning Process

RMPs are “a preliminary step in the overall process of managing public lands – ‘designed to guide and control future management actions.’” *Norton v. SUWA*, 542 U.S. 55 (2004).

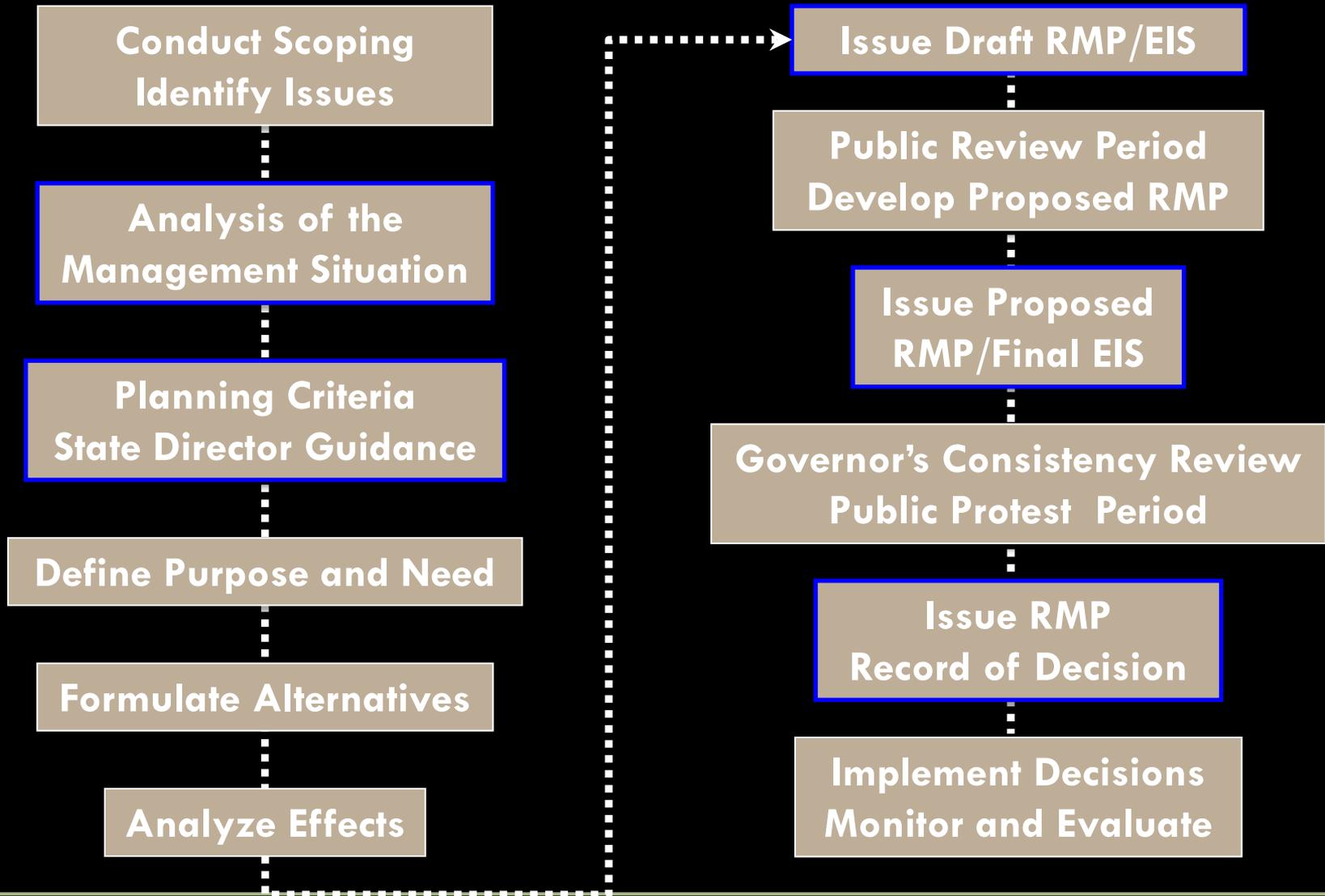
NEPA and the BLM Planning Process

“Approval of a resource management plan is considered a major federal action significantly affecting the quality of the human environment ...” 43 CFR 1601.0-6.

NEPA and the BLM Planning Process

“The environmental analysis of alternatives and the proposed plan shall be accomplished as part of the resource management planning process and, wherever possible, the proposed plan and related environmental impact statement shall be published in a single document.” 43 CFR 1601.0-6.

BLM Planning and NEPA Process



Scoping

- Scoping is the process by which the BLM solicits internal and external input on the issues, impacts, and potential alternatives that will be addressed in a NEPA analysis.
- Formal scoping period for an EIS must be at least 30 days and begins with the publication of the Notice of Intent.

Scoping

What is an issue?

- a point of disagreement, debate, or dispute with a proposed action based on some anticipated environmental effect.

We must analyze issues raised in scoping if

- the issue relates to how the proposed action or alternatives respond to the purpose and need, or
- the issue is associated with a significant impact.

Analysis of Management Situation

Analyze available information to determine the ability to respond to identified issues and opportunities.

Prepared by the interdisciplinary team and presented to the managers

Planning Criteria

Guides development of the RMP and focuses analysis on identified issues

Based on:

- Applicable law, regulation and policy
- State Director's guidance
- Results of scoping
- Coordination with cooperators

Prepared by the interdisciplinary team and made available for public review

Planning Criteria

- Vision and Goals for the Planning Effort
- Draft Purpose and Need
- Guidance on the formulation of Alternatives
- Scope and scale of analysis
- Analytical methods

Purpose and Need

Underlying purpose and need to which agency is responding in proposing the alternatives

Need = problem or opportunity

Purpose = solution; what BLM hopes to accomplish

Purpose and Need dictates the range of alternatives, because alternatives are not reasonable if they do not respond to the purpose and need.

Alternatives

Rigorously explore and objectively evaluate:

No Action

(... no change from current management direction ...)

All reasonable alternatives

(... a reasonable number of examples, covering the full spectrum ...)

Affected Environment

- Succinctly describe current condition and trend of resources at issue
- Description no longer than necessary to understand effects of alternatives

Environmental Consequences

Scientific and analytic basis for comparison of alternatives

- **Direct effects:** occur same time and place as action
- **Indirect effects:** occur later in time, further removed from site than direct, but still reasonably foreseeable
- **Cumulative effects:** incremental effect of the proposed action when added to impacts of other past, present and reasonably foreseeable future actions

Environmental Consequences

Reasonably foreseeable?

- highly probable, based on known opportunities or trends



Trouble brewing

Environmental Consequences

How do you analyze effects of future on-the-ground actions?

Option 1: Keep it very general (pass the buck)



“Construction emissions would depend upon the lengths of pipelines and transmission lines and the numbers of pump and compressor stations built. Impacts would depend on the timing of multiple projects colocated in the same corridor segment and the types of energy transport systems being built. “

Energy Corridor PEIS, p. 3-124

Environmental Consequences

How do you analyze effects of future on-the-ground actions?

Option 2: Make analytical assumptions about a maximum level of activity



“... the number of geothermal power plants estimated in the [reasonably foreseeable development] scenario would result in emissions of approximately 554 tons of carbon dioxide per hour in 2015 ...”

Geothermal FPEIS, p. 4-54

Environmental Consequences

How do you analyze effects of future on-the-ground actions?

Option 3: Make analytical assumptions about typical activities



“Peak concentrations from aerial spraying of fine droplets with 50- to 70-foot buffer zones commonly range from 0.130 to 0.148 ppm ... The BLM typically uses nozzles that produce large droplets, and requires 100-foot or wider buffers, to minimize the risk of herbicides drifting into surface waters ... The application rate of the inert/adjutant compound was fixed at 1 lb a.i./acre.”

Vegetation PEIS, pp. 4-26, 4-80

Mitigation

Mitigation measures are those measures that could reduce or avoid adverse impacts and have not been incorporated into the proposed action or an alternative. An EIS must identify potential mitigation measures.

Draft RMP/EIS - Public Review

- Publish Notice of Availability
- 90-day comment period
- Open houses, public meetings, etc.

Proposed RMP/Final EIS

- Evaluate comments on draft RMP/EIS
- Add alternatives, if necessary
- Add or correct analysis, if necessary
- Develop proposed RMP
- Provide responses to substantive comments on draft RMP/EIS

Proposed RMP/Final EIS

Substantive comments?

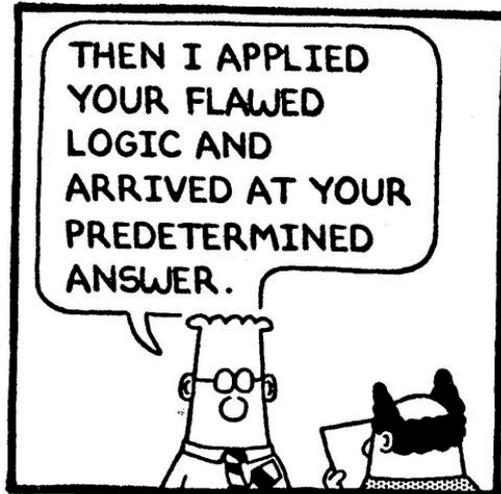
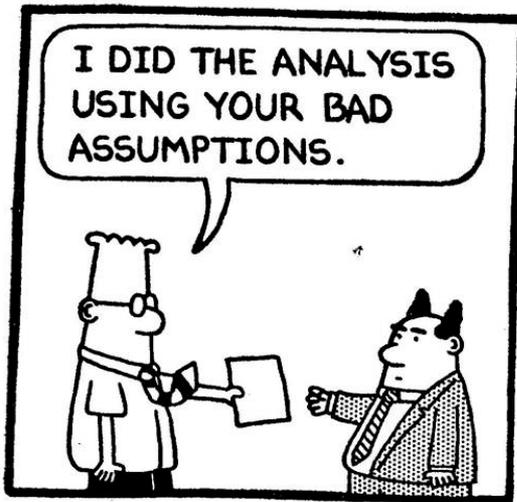
- question, with reasonable basis, the accuracy of information in the EIS.
- question, with reasonable basis, the adequacy of, methodology for, or assumptions used for the environmental analysis.
- present new information relevant to the analysis.
- present reasonable alternatives other than those analyzed in the EIS.
- cause changes or revisions in one or more of the alternatives.

Proposed RMP/Final EIS

- Publish Notice of Availability
- 60-day Governor's consistency review to ensure consistency with state and local plans, policies, and programs.
- 30-day protest period (protests to Director of BLM)

Record of Decision/Approved RMP

- BLM must first resolve any recommendations from the Governor and any protests.
- ROD describes the decision being made and provide the rationale for the decision.
- Approved RMP provides the management goals, objectives, and direction.



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