

# NEPA basics

## BLM Nevada Statewide Resources Advisory Council

Elko, NV

06 February 2014

---

**David Pritchett**

*Planning & Environmental Coordinator*

BLM, Nevada State Office

# What is NEPA?

- **Federal Law, signed by President Nixon on January 1, 1970**
- (1970 also laws on Clean Air, Clean Water, Environmental Protection)
- **NEPA is our Basic National Charter for Protection and Enhancement of the Environment**
- **Mandated that all Federal Agencies:**  
*“utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment.”*

## NEPA is...?

National Environmental Protection Act

Nasty Environmental Protection Agency

National Environmental Policy Act

Never Ever Propose Anthing

# NEPA Does:

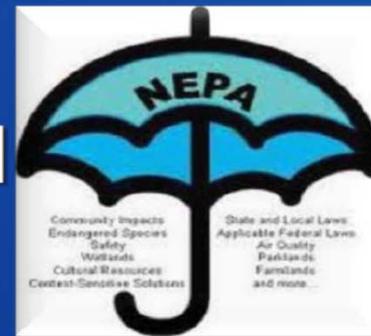
- Inform the decision maker **before** the decision is made.

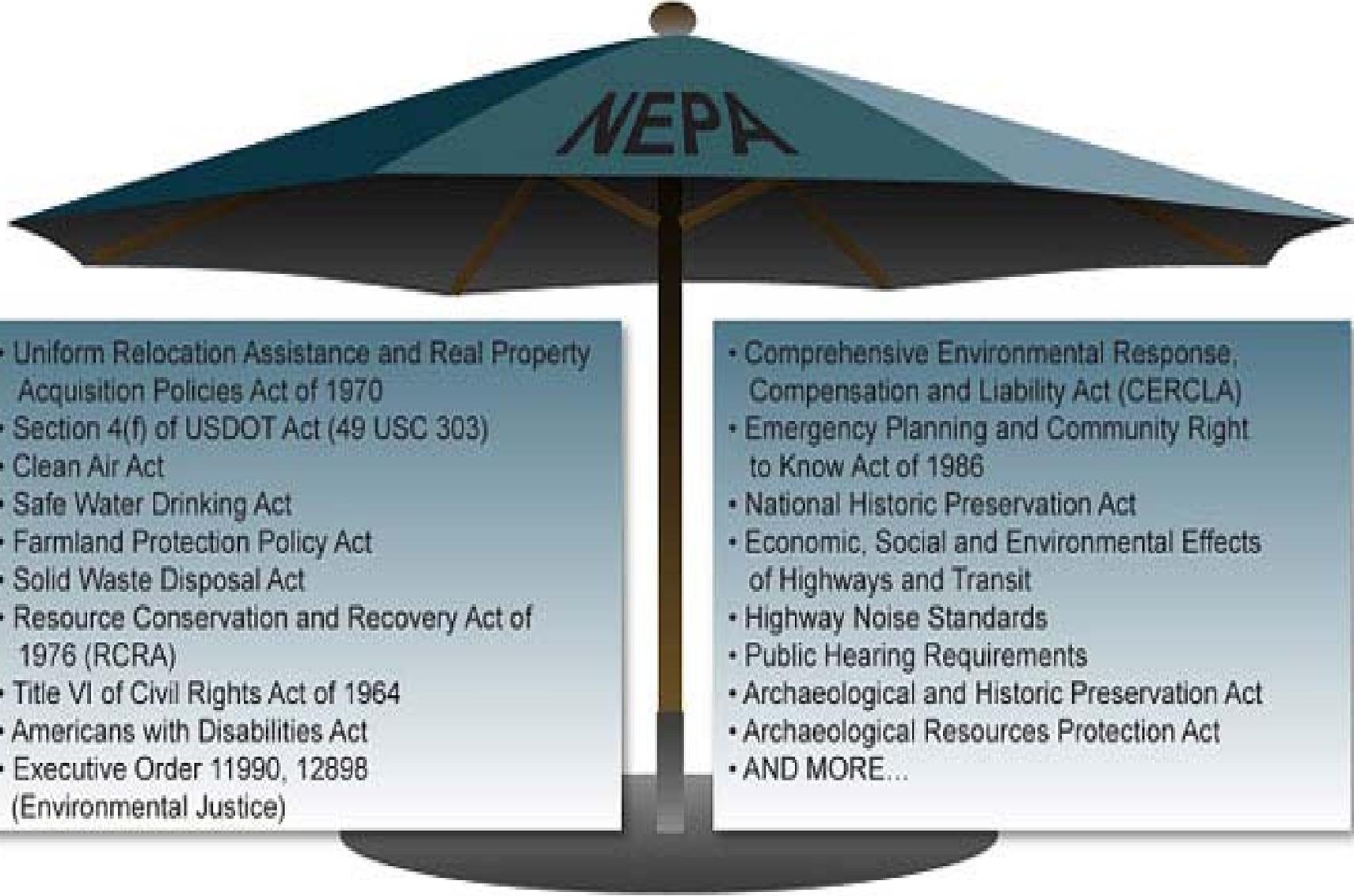


- Require agencies to take a **hard look at** the **action, alternatives, environmental effects, and mitigation.**



- Require agencies to **disclose info**
- Serve as “**umbrella**” to coordinate other laws and regulations.





# NEPA

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Section 4(f) of USDOT Act (49 USC 303)
- Clean Air Act
- Safe Water Drinking Act
- Farmland Protection Policy Act
- Solid Waste Disposal Act
- Resource Conservation and Recovery Act of 1976 (RCRA)
- Title VI of Civil Rights Act of 1964
- Americans with Disabilities Act
- Executive Order 11990, 12898 (Environmental Justice)

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Emergency Planning and Community Right to Know Act of 1986
- National Historic Preservation Act
- Economic, Social and Environmental Effects of Highways and Transit
- Highway Noise Standards
- Public Hearing Requirements
- Archaeological and Historic Preservation Act
- Archaeological Resources Protection Act
- AND MORE...

# 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.

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 1500.1c.

# NEPA = *Disclosure*

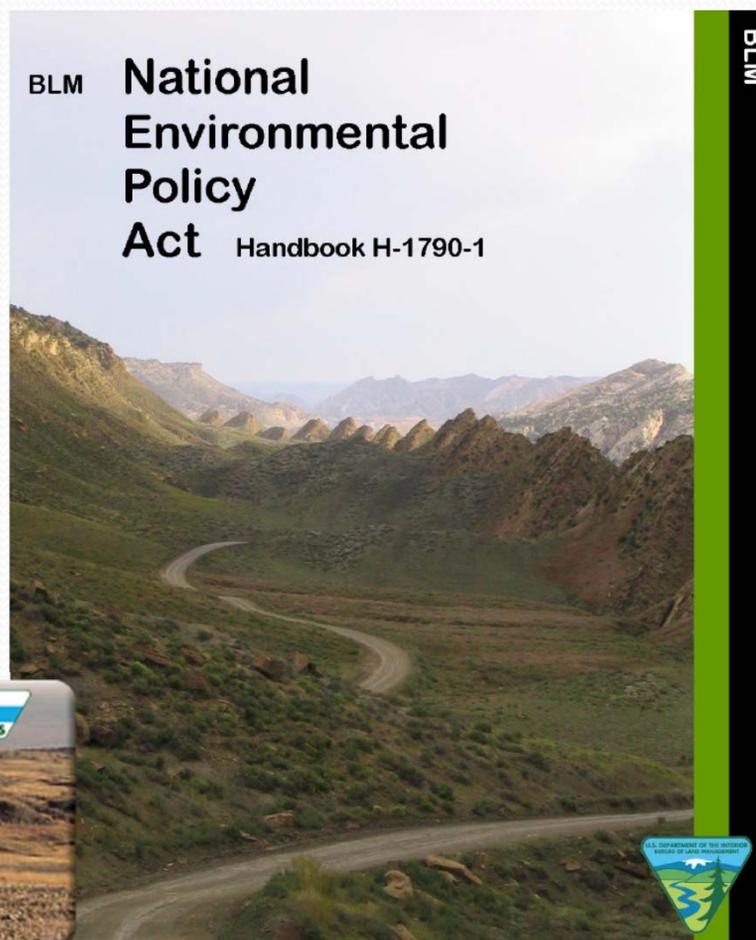
NEPA “sets forth procedural mechanisms to ensure proper consideration of environmental concerns, it does not mandate particular substantive results.”

*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).

# NEPA implementation details

- Established *Council on Environmental Quality* (CEQ)
- Regulations for Agency Implementation
  - 40 CFR Parts 1500-1508
- Dept. of the Interior, Manual Guidance
  - Departmental CX 43 CFR 46.210(a)
  - BLM CXs 516 DM 11.9  
(Categorical Exclusions)
- Manual Guidance
  - **BLM- NEPA Handbook H-1790-1**
  - BIA- NEPA Handbook 59 IAM 3-H



# When is NEPA Required?

- A proposal for Federal *action* triggers NEPA.
- Representative BLM Federal *actions*:
  - BLM has goal and is preparing to make a decision on one or more alternative means of accomplishing that goal (40 CFR 1508.23).
  - Proposed action and effects are subject to BLM control and responsibility (40 CFR 1508.18), including funding.
  - Action has environmental and social effects that can be meaningfully evaluated (40 CFR 1508.23).
  - Effects of the proposed action are related to the natural and physical environment, and the relationship of people with that environment (40 CFR 1508.8; 40 CFR 1508.14).

# The Federal Action

**Actions** include, “**projects and programs** entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised **agency rules, regulations, plans, policies, or procedures; and legislative proposals.**”

(40 CFR 1508.18(a))

# Federal Actions

**Actions** tend to fall into one of these general types (40 CFR 1508.18(b)):

1. Adoption of **policy** (rules, regulations, agreements).
2. Adoption of **formal plans** that guide or prescribe uses of federal resources.
3. Adoption of **programs** (grouping of actions to implement policy or plan)
4. Approval of **projects** (issue permits, regulatory decision, federal activities, federally assisted activities)

# NEPA Documents & Products

## Determined by Internal Screening of Proposed Action:

- *Exemptions* from NEPA – Cleanup of a hazardous material spill, wildland fire suppression activities, emergency stabilization actions following wildland fires or other disasters.
- Categorical *Exclusions* per DoI, BLM (**CX**)
- Statutory Categorical Exclusions (Section 390, Energy Policy Act)
- Determination of NEPA Adequacy (**DNA**)
- Notice of Intent (**NoI**)
- Environmental Assessment (**EA**) if no Finding of No Significant Impact (**FONSI**)
- Environmental Impact Statement (**EIS**)
- Record of Decision (**RoD**)
- ..more in the *Alphabet Soup*..?



There are 3 levels of NEPA documentation

Categorical Exclusion (CE)

Environmental Assessment (EA)

Environmental Impact Statement (EIS)

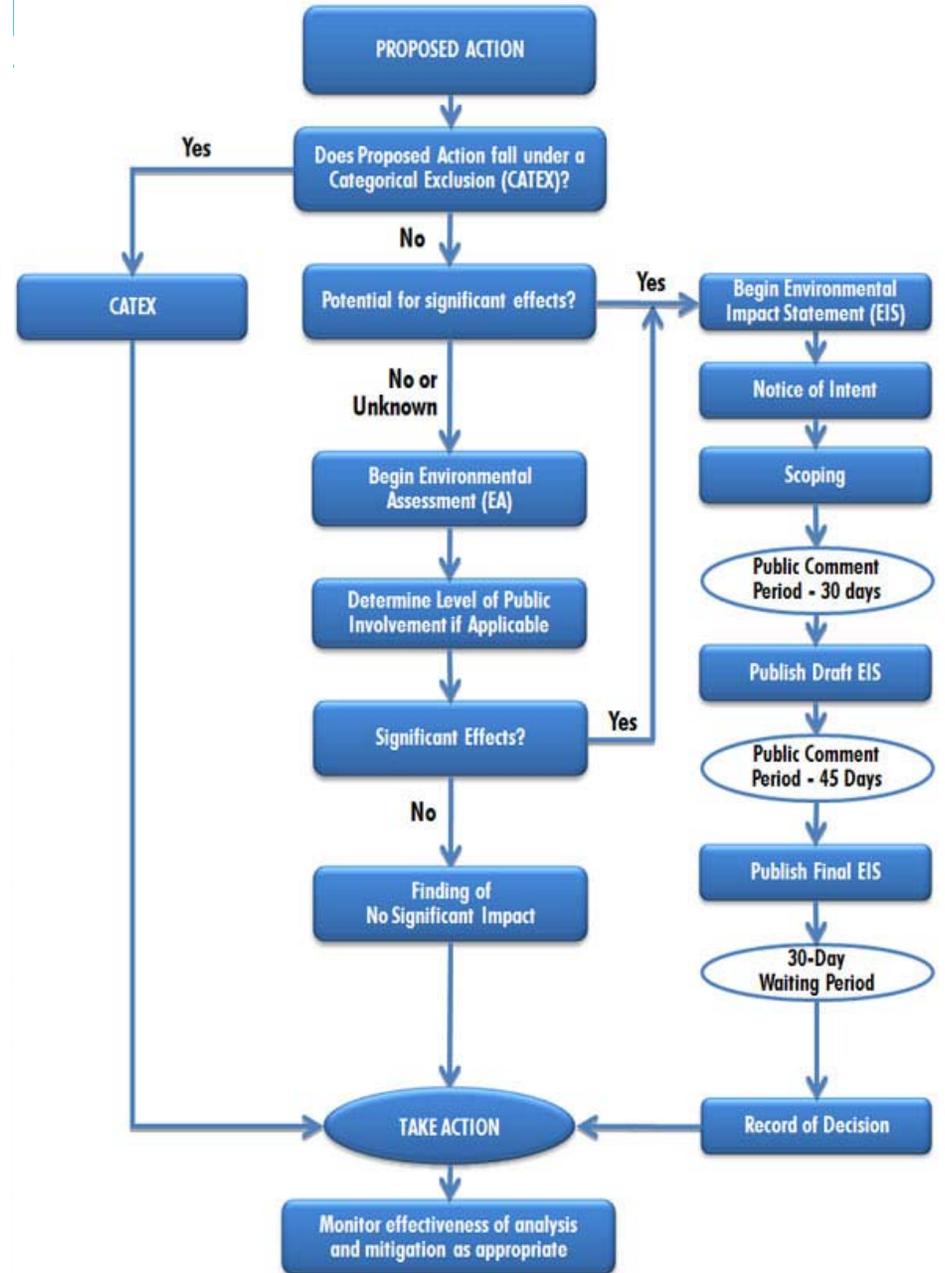
# The NEPA Process

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



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.

Eliminate alternatives that do not require detailed analysis



# CATEGORICAL EXCLUSIONS (CXs)

- CXs **not applicable** under *Extraordinary Circumstances*
- **Extraordinary Circumstances (aka NEPA Checklist)**
  - 12 circumstances
  - Can't use if **any** one or more applies from the Checklist (e.g., significant impacts on a listed or proposed to be listed [candidate] species, **Greater Sage-Grouse**)

*When in doubt, prepare a EA or EIS to verify no significant adverse impacts from the proposed action.*

Extraordinary Circumstance	YES	NO
a) Have significant adverse effects on public health and safety.		X
b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas.		X
c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources.		X
d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		X
e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		X
f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		X
g) Have significant impacts on properties listed, or eligible for listing, in the National Register of Historic Places as determined by either the bureau of office.		X
h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.		X
i) Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		X
j) Have a disproportionately high and adverse effect on low income or minority populations		X
k) Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly affect the physical integrity of such sacred sites.		X
l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species.		X

# 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.

## *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.

# 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?*

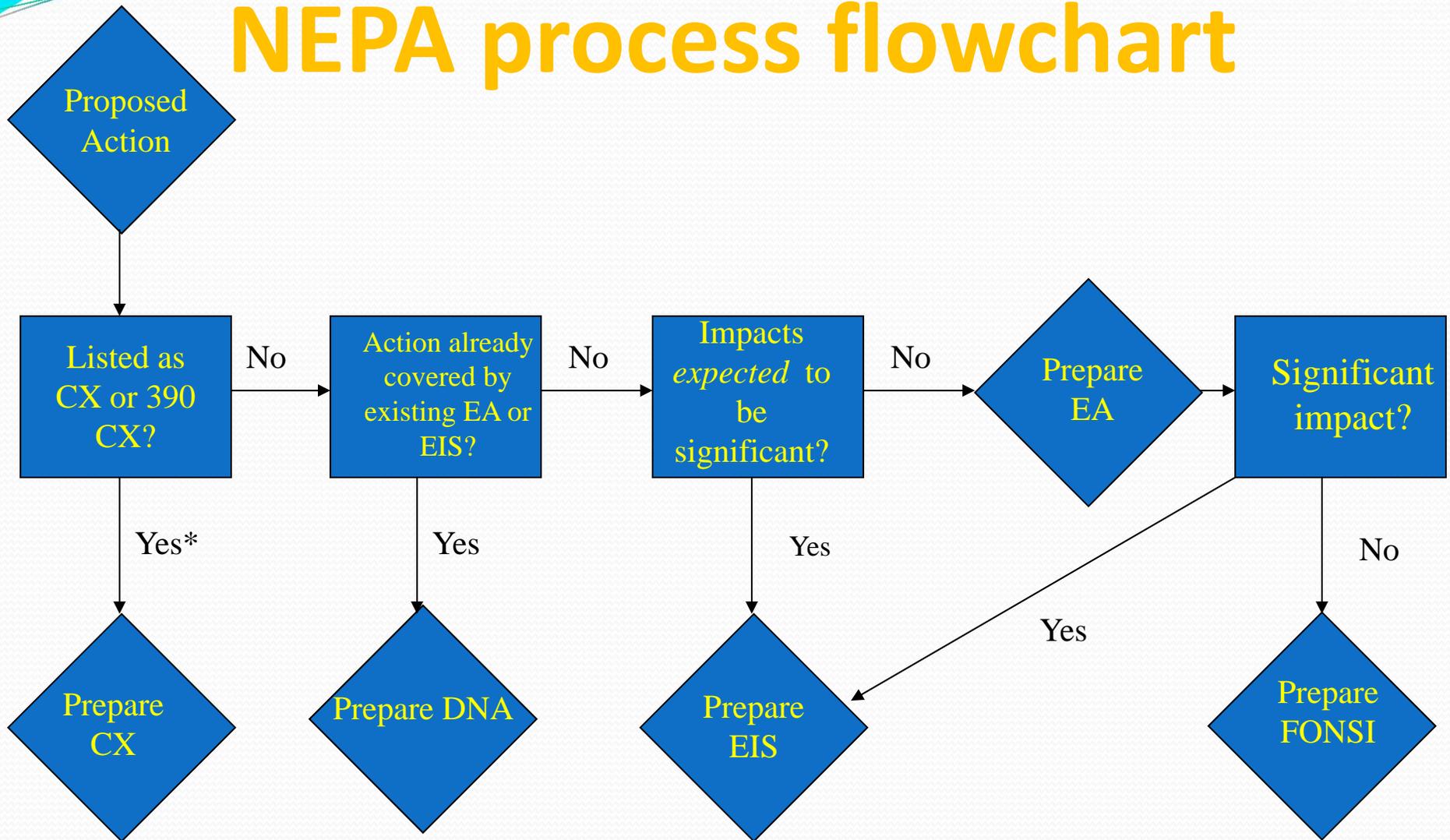
*Option 3: Make analytical assumptions about typical activities*



“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/adjuvant compound was fixed at 1 lb a.i./acre.”

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

# NEPA process flowchart



# EA purpose

- Defines proposed action.
- Documents existing RMP conformance (Resource Management Plan).
- Facilitates interdisciplinary and **public review** of proposed action
- Identifies Affected Environment.
- Identifies Potential Effects and Impacts (*Environmental Consequences*).
- Facilitates development and identification of **Mitigation** (or **Conditions of Approval**)
- Determines whether or not an EIS is required if significant impacts (Environmental Impact Statement)
- Documents NEPA compliance (RoD, FONSI)

# Eight Questions for an EA

1. What is Proposed? [40CFR1502.4(a)]
2. Why does the agency need to take the Action? [40CRF1502.13]
3. What factors will be used to make the decision among the **alternatives**? [40CFR 1502.23]
4. Are alternatives available to complete what is being proposed? [40CFR1502.14 and 1508.25(b)]
5. What will happen if the proposed action is not conducted? [40CFR1502.14(d), and 1508.25(b)(1)]
6. What are the effects? [40CFR1508.8, 1502.14, and 1502.16]
7. Is there any way to mitigate adverse effects? [40CFR1500.2(e), 1502.14(f), 1502.16(h)]
8. How will the effects be monitored? [40CFR 1505.2(c), 1505.3]

# EA contents

- Purpose & Need for *Proposed Action*
- Description of *Proposed Action* & Alternatives Considered
  - Design Features
  - Connected Actions (or why not connected)
- Conformance with Existing Resource Management Plan (RMP)
- Relationship to Other Statutes, Regulations, Policies, Plans or Other Environmental Analyses
- Affected Environment (substantive description)
- Environmental Effects (and Mitigation) (even more substantive!)
  - Supplemental Authorities to be Considered
  - Direct, Indirect, and Cumulative Impacts (substantive description)
- Listing of Tribes, Individuals, Agencies Consulted
- List of Preparers
- References Cited
- FONSI, ***Finding*** of No Significant Impact
- Decision Record or RoD

# How to Participate

## References

- *Citizen's Guide*
- BLM- NEPA Handbook
- Federal Register Notices
- News Articles
- Website: [www.BLM.gov/NV](http://www.BLM.gov/NV)
- ePlanning NEPA Register

## Participation

*(as an individual, organization, agency)*

- email lists
- Informational Outreach Meetings
- **Commenting** on Proposed Actions
  - Public Scoping comments
  - Comments on Draft documents

COUNCIL ON ENVIRONMENTAL QUALITY  
EXECUTIVE OFFICE OF THE PRESIDENT

## A Citizen's Guide to the NEPA

*Having Your  
Voice Heard*



DECEMBER 2007

## *Substantive comments?*

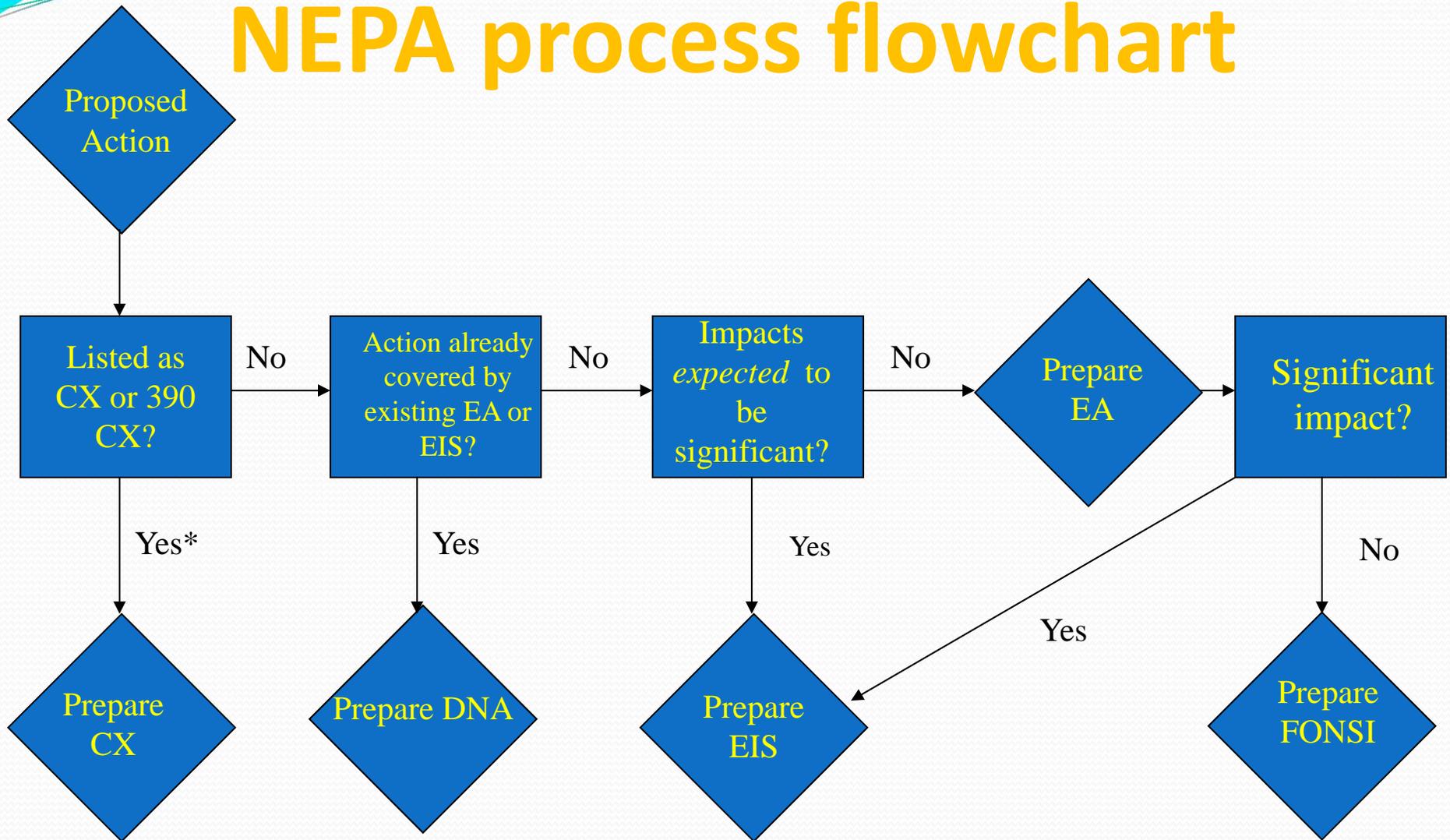
- question, with reasonable basis, the accuracy of information in the EIS.
- question, with reasonable basis, the adequacy of, methodology for, or assumptions used for the environmental analysis.
- present new information relevant to the analysis.
- present reasonable alternatives other than those analyzed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

# Public Involvement & Disclosure

- CEQ Regulations direct agencies to encourage and facilitate public involvement in NEPA process to fullest extent possible [40 CFR 1500.2(d) & 1506.6)]
- **CX** No commenting
- **DNA** No commenting
- **NoI** Yes (30 days)
- **EA** Yes (30 days min.)
- **EIS** Yes (45 days min.)
- **RoD**, protest (30 days)
  - APDs must be posted a minimum 30 days before the action [43 CFR 3162.3-1(g) ].
  - Use BLM **ePlanning** system !!



# NEPA process flowchart



# Public Involvement for EAs

- Some is required (per NEPA handbook, regulations)
- Public Involvement may include:
  - External scoping per Notice of Intent (NoI)... helps greatly to define ***Reasonable Alternatives*** and ***Mitigation Measures***.
  - Public notification before EA and/or EIS preparation.
  - Public review and comment on completed EA and unsigned FONSI prior to issuance of final decision.
    - NEPA documents are not protestable or appealable
    - However, the ***decision to implement an action*** based upon the NEPA document is protestable or appealable!
    - Where agencies get “dinged” --***Legal Vulnerabilities***-- is usually on:
      - Process (especially if not an EIS)
      - Cumulative Impact Analysis

# How to identify good Mitigation

- Resource Management Plans
- Technical and Scientific Information
- Endangered Species Recovery and/or Management Plans
- Inter-Disciplinary Teams
- Programmatic NEPA Documents
- Site-Specific NEPA Documents (EAs, CXs)
- Best Management Practices (BMPs)
- **Pre-Approval Onsite Field Evaluations for APDs**
- Applicant Proposals (APDs, *Sundries*, RoW applications)
- **Public Scoping Comments**
- Other sources..?

# Regional Mitigation Framework

- Regional NEPA (EIS)
  - Solar Programmatic EIS
  - SEZ Mitigation Strategy (Technical Reference)
  - Sage Grouse Planning EIS / Priority Sage Grouse Conservation Areas
  - DRECP EIS / Conservation Lands
- LCC Regional Strategies
- Draft IM – Adapting to Climate Change



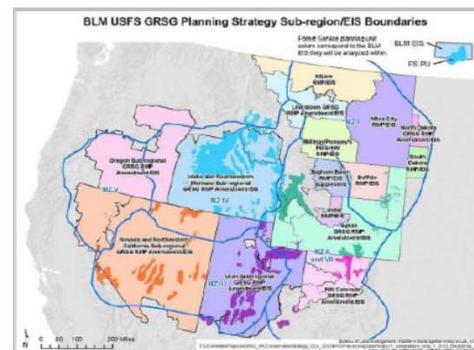
- Mojave Basin and Range REA
- Central Basin and Range REA
- San Luis / Taos Plateau REA
- Sonoran Desert REA
- Colorado Plateau REA
- Middle Rockies REA
- Northern Great Basin REA
- Wyoming Basin REA
- Others (Priority Habitats)
- Draft IM – Incorporating Assessments into Planning and NEPA

## Ecoregional Assessments

## Regional Mitigation Policy Draft Manual 1794 IM 2013-142

- Training – Mitigation Broadcast (Sept. 19, 2013)
- Program policy updates
- Solar / Wind Regulations – Proposed Rule
- Transmission ROW policy / Sec 368 Corridor settlement

## Regional Land Use Planning/Strategies



- SEZ Mitigation Strategy / Off-site Mitigation Locations
- (Dry Lake SEZ Technical Note)

## Local Land Use Planning/Project Planning

## Monitoring and Adaptive Management

- AIM Strategy (IB 2012-080)
- Solar EIS Monitoring Framework

## Project Implementation

- Fund Management
- Project NEPA (EIS, EA, Mitigated FONSI)
  - Solar Project Mitigation
  - Transmission Project Mitigation
  - Oil and Gas Field Mitigation



# Thanks for Listening! Discuss.

## BLM contacts at Nevada State Office

David Pritchett

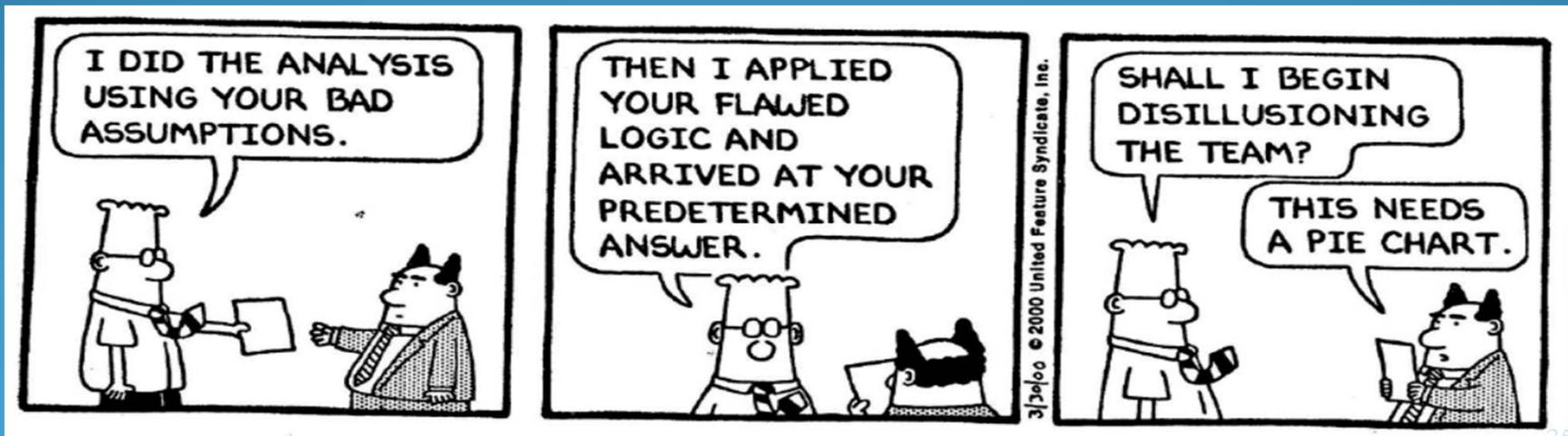
[dpritchett@blm.gov](mailto:dpritchett@blm.gov)

*Planning & Environmental Coordinator (P&EC)*

Marguerite Adams

[maadams@blm.gov](mailto:maadams@blm.gov)

*NEPA Coordinator*



# NEPA: California Federal Court Requires Full Environmental Impact Statement for BLM Leases Involving Hydraulic Fracturing

May 6, 2013

In the first federal court decision to directly examine an agency's review of the potential environmental impacts of hydraulic fracturing, a federal magistrate judge<sup>[1]</sup> in the Northern District of California ruled that the U.S. Bureau of Land Management (BLM) violated the National Environmental Policy Act (NEPA) when the agency failed to prepare an Environmental Impact Statement (EIS) prior to entering into two oil and gas leases with companies seeking to conduct hydraulic fracturing (commonly called "fracking"). **Order Re Cross-Motions for Summary Judgment, *Center for Biological Diversity v. Bureau of Land Management***, No. 11-06174 (N.D. Cal. filed Dec. 8, 2011). The March 31, 2013 decision turned directly on a finding that increasing interest in hydraulic fracturing has rendered prior development forecasts in older Resource Management Plans (RMPs) and accompanying environmental reviews obsolete. The decision, if upheld, may cause BLM to require greater environmental scrutiny of hydraulic fracturing proposals on public lands, including preparation of an EIS.

However, two of the leases were "non-NSO" leases, meaning they lacked the NSO stipulation. Because such leases do not "reserve[] to the agenc[y] the 'absolute right to deny exploitation of ... resources,'" the sale of non-NSO leases triggers NEPA's environmental review requirements.<sup>[10]</sup> For the non-NSO leases, therefore, BLM initiated environmental review.<sup>[11]</sup> However, rather than immediately prepare an EIS, BLM prepared an Environmental Assessment (EA), tiered to the 2007 HFO RMP/FEIS, to determine whether the non-NSO leases would have any "significant" impacts to the environment, thus triggering the need for an EIS.<sup>[12]</sup> BLM concluded that the leases would not have any significant impacts, issued a Finding of No Significant Impact (FONSI) to that effect (meaning no EIS was prepared), and emphasized that further environmental review would occur when lessees submitted APDs.<sup>[13]</sup>



BLM's FONSI was based largely on BLM's tiering to the HFO RMP/FEIS's earlier buildout predictions, which BLM extrapolated to conclude that, at most, the non-NSO leases would result in a single well being drilled in the leased area.[14] BLM acknowledged that the emergence of widespread hydraulic fracturing had resulted in a nationwide increase in oil and gas production, specifically noting an EPA study that predicted that by 2020 shale gas would comprise over 20% of the U.S. gas supply and a 2010 U.S. House of Representatives committee's call for further study of hydraulic fracturing.[15] However, BLM concluded that these facts were "not relevant to the analysis of impacts ..." and in any event were "outside the scope of [the] EA because they are not under the authority or within the jurisdiction of the BLM."[16] Environmental groups challenged the agency's decision not to prepare an EIS, claiming that BLM failed to account for the increased development potential opened up by modern hydraulic fracturing techniques.[17]