

Strengthening Future RMPs & Plan Amendments:

An Historical Evaluation of Protests



*BLM Land Use Planning
Conference 2009*

Theme: Focusing on Sustainable
Resource Planning & Decision-
Making



Introductions

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Agenda

- Overview of the RMP Protest Process
- Learning from Previous RMP Protests
 - Protest Themes
 - Lessons Learned (*for future RMPs*)
- Granting protests

The Protest Process

- ◉ Applies only to Land Use Plan Decisions
- ◉ Authority: 43 CFR 1610.5-2
- ◉ Purpose: The *BLM Director* determines whether the *State Director* followed established procedure, considered relevant information in reaching proposed decisions, and whether proposed decisions are consistent with *BLM policy, regulation, and statute*.

The Protest Process

Valid Protests

- **Person must have participated**
- **Issues must have been raised during the planning process**
- **Must be in writing and submitted during protest period**

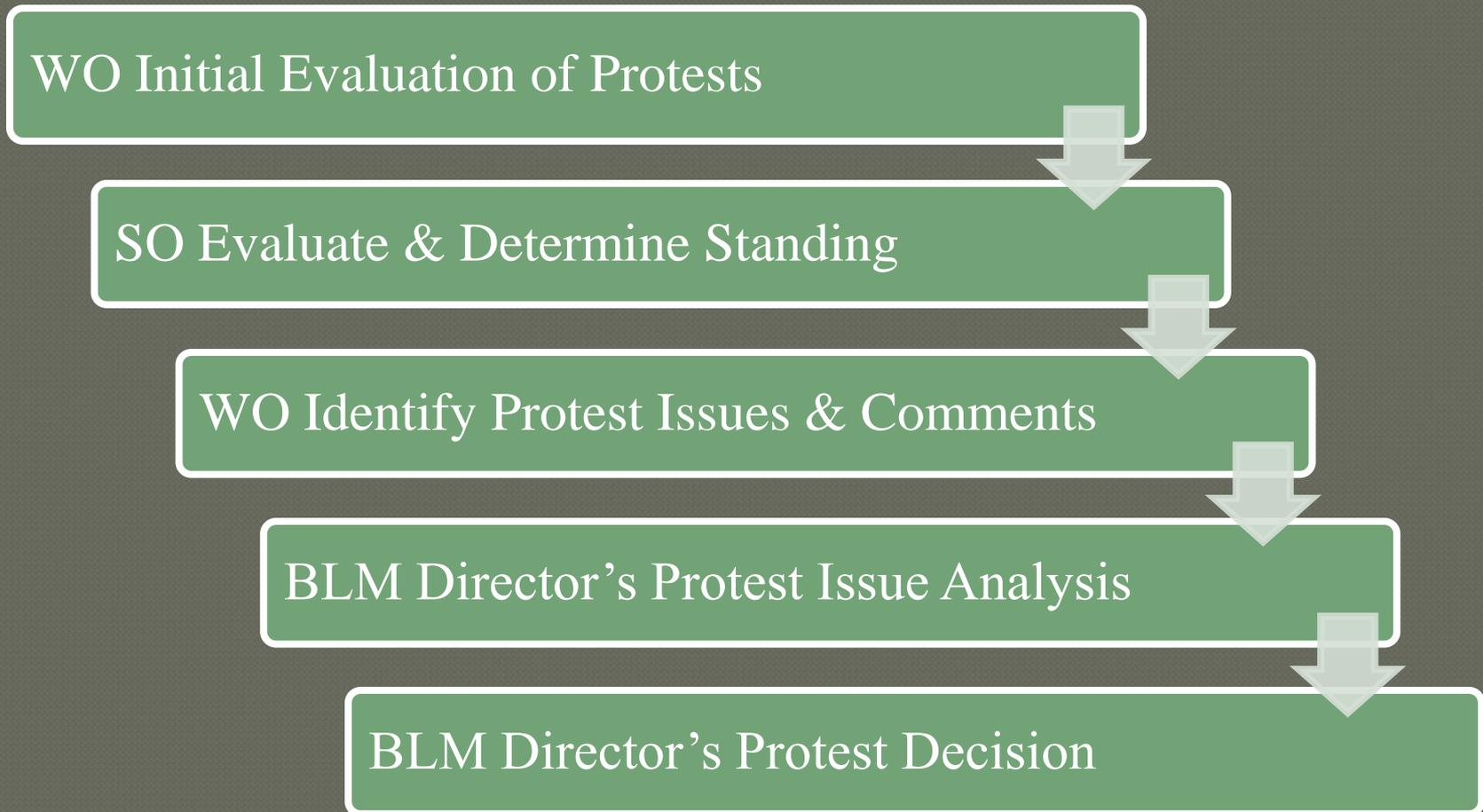
Protest must include:

- **Name, address, phone and interest of person filing**
- **A statement of the issue(s) being protested**
- **A statement of the part(s) of the plan or amendment being protested**
- **A copy of all documents addressing the issue(s)**
- **“A concise statement explaining why the State Director’s decision is believed to be wrong.”**

See 43 CFR 1610.5-2

The Protest Process

Protest Flow Chart (see WO IM-2008-186; LUP Handbook, H-1601, Appendix E)



The Protest Process

Western Oregon Plan Revision: Protest Flow Chart

State Office Anticipate Protests & Prepare Draft Responses

WO Initial Evaluation of Protests

Send SO Staff to WO

SO Evaluate & Determine Standing

Send FO Staff to SO

WO Identify Protest Issues & Comments

WO & SO exchange info via CommentWorks

BLM Director's Protest Issue Analysis

BLM Director's Protest Decision

The Protest Process

- The BLM has resolved protests for almost 80 planning efforts since 2001.
- Generally, several protests will be received per planning effort. For controversial proposals, hundreds may be received.
- All protests are treated the same, regardless of who submits them.
- Recently, the BLM began producing a *Director's Protest Resolution Report*, which creates efficiencies for the BLM and increases transparency for the public.

Recurrent Protest Themes

- ◉ Inadequate NEPA
- ◉ Data quality/inventory
- ◉ Wildlife issues
- ◉ Climate change/air quality
- ◉ Special designations
and related issues
(ACEC, VRM, WSR)
- ◉ Oil and Gas
- ◉ Others



Recurrent Protest Theme - NEPA

Inadequate Range of Alternatives

- **Issue:** RMP EIS fails to consider an adequate range of alternatives . Examples of alternatives not considered:
 - Wild and Scenic Rivers (WSRs) – Designate all eligible WSRs
 - Protect all lands with wilderness characteristics
 - Analyze a “No Grazing” alternative (livestock as well as sheep)
 - Analyze a significantly lower level of oil and gas leasing
- **Solution:** Consider alternatives with contrasting levels of analysis, or discuss why this is not practicable (fails to meet Purpose and Need)

Recurrent Protest Theme - NEPA

Inadequate Cumulative Analysis

- **Issue:** RMP EIS fails to consider cumulative effects for, e.g., grazing, OHV use, mineral leasing, habitat fragmentation
- **Solution:** Consult the new NEPA handbook; establish baselines and thresholds at the start of the EIS process; actively coordinate with adjacent planning area DOs and FOs

Recurrent Protest Theme - NEPA

Inadequate Comments Analysis

- **Issue:** Proposed RMP/FEIS fails to respond adequately to comments. Examples include:
 - Difficulty in finding responses to individual comments in text of Proposed RMP/Final EIS
 - DEIS Comments are ignored or missed; these are then resubmitted as protests.
- **Solution:** Ensure that comments analysis is thorough and well documented in the PRMP/FEIS. Include analysis in FEIS text, not in the comments appendix

Recurrent Protest Theme – NEPA

Changes between Draft RMP & Proposed RMP

- **Issue:** The BLM's Proposed RMP differs significantly from the Draft RMP/DEIS Preferred Alternative, requiring additional public comment.
- **Solution:** In the Proposed RMP/FEIS, clearly document changes made to the DEIS Preferred Alternative and ensure that analysis of such decisions falls within the scope of the analysis in the DRMP/DEIS.

Recurrent Protest Theme – Data Quality and Inventory

Lack of Inventory and Baseline Data

- **Issue:** RMP EIS analysis is missing or deficient. There is often a lack of disclosure that inadequate information is available for analysis.
- **Solution:** Clearly explain the source of baseline data and inventory information used for developing alternatives and analysis. EIS chapter 3 should include limitations (unknowns) when defining the measurements of impacts.

Recurrent Protest Theme - Wildlife

Inadequate Discussion of Migratory Birds

- **Issue:** Migratory birds are not addressed to the extent outlined in EO 13186, or analysis is not transparent to the reader. Impacts analysis is not consistent with local wildlife plans
- **Solution:** Explain inconsistencies, citing wildlife action plan. Migratory Birds analysis, as outlined in IM 2008-50 and Handbook Appendix C reference to EO 13186 is not discretionary. Make analysis transparent and consistent with regards to perceived or real impacting actions.

Recurrent Protest Theme - Wildlife

Failure to Address State Wildlife Action Plan and/or Abrogating Authority to State for Wildlife Management

- **Issue:** State wildlife action plan coordination and authority to coordinate with state not brought out in the RMP.
- **Solution:** As set forth in Appendix C in LUP handbook, BLM is directed to consult with local plans. In addition, Interior policy directs BLM to work closely with states for wildlife management. Direction and policy must be consistently brought forward in EIS in “Management common to all alternatives”. This makes clear our responsibilities, internally and externally.

Recurrent Protest Theme – Climate Change and Air Quality

Inadequate Analysis of Climate Change & Air Quality

- **Issue:** RMP EIS analysis is missing or deficient. Examples:
 - Lack of climate change analysis
 - Failure to address climate change
 - Violated Sec. Order 3226
 - No ozone analysis
 - No air quality modeling
 - No complete emission inventory
- **Solution:** Work with air quality specialists at NOC and the WO to better document what analysis is relevant to include in the RMP EIS

Recurrent Protest Theme – Wild and Scenic Rivers

Lack of Adequate Information for WSR Determinations

- **Issue:** BLM has needed to thoroughly explain in the protest report how river segments were rated as eligible and suitable
- **Solution:** RMP EIS must clearly describe the criteria used to determine WSR eligibility and suitability. The EIS should clearly state circumstances when eligible rivers would not be considered suitable.

Recurrent Protest Theme –ACECs

Failure to Evaluate All Proposals Adequately

- **Issue:** BLM has needed to thoroughly explain in the protest report why lands are not designated as ACECs or given alternate designations instead (e.g., SRMA)
- **Solution:** RMP EIS must clearly document how proposals were evaluated, both externally and internally designated proposals. EIS must discuss impacts to Relevant and Important values for each alternative.

Recurrent Protest Theme – Visual Resources Management (VRM)

VRM Inventory vs. Management Classes

- **Issue:** BLM has confused the public by not adequately explaining the distinction between the VRM inventory and VRM management classes (objectives)
- **Solution:** Train RMP ID team in VRM methodologies. Work with national VRM specialists to assure accurate explanation in the RMP EIS.

Recurrent Protest Theme – Oil and Gas Leasing

Lack of Clear Definition of purpose of the RFD and of BLM's Discretion over Leasing

- **Issues:** BLM has confused public with regard to RFD forecasts used in EIS analysis and the BLM's authority to control leasing
- **Solution:** RMP EIS must clearly describe purpose of RFD, document that leasing is discretionary, and clarify BLM's authority to impose COAs (not stipulations) on APDs on existing leases

Other Protest Themes

- ◉ Planning vs. Implementation Decisions
- ◉ NLCS Proclamations vs. BLM's Authority under FLPMA
 - ◉ National Historic Trails Viewsheds
 - ◉ Weakness in Socioeconomic Analysis
 - ◉ Impacts on sage grouse

How Protests That Are Upheld Are Resolved

- Clarification in Record of Decision for editorial and minor factual corrections
- Remand decision to State Office for more work and/or NEPA analysis but approve the rest of the PRMP
- Make significant change to PRMP and publish Notice in FR for public comment
 - Prepare Supplemental Final EIS to address major flaw(s)

ANY QUESTIONS?

