

Understanding the Differences Between Programmatic and Project-level NEPA

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Programmatic versus site-specific NEPA documents

“Programmatic NEPA analyses and tiering can reduce or eliminate redundant and duplicative analyses and effectively address cumulative effects.”

“Modernizing NEPA Implementation: The NEPA Task Force Report to the Council on Environmental Quality” (Sept. 2003) p. 35.



Programmatic versus site-specific NEPA documents

“Agencies rely on programmatic or broad-scale analyses to focus the scope of alternatives, environmental effects analysis, and mitigation in subsequent tiered levels of documentation.”

“Modernizing NEPA Implementation: The NEPA Task Force Report to the Council on Environmental Quality” (Sept. 2003) p. 38.

Programmatic versus site-specific NEPA documents

Programmatic analyses might address a

- (a) policy or strategy (e.g., Range Reform)
- (b) land use plan (e.g., RMP)
- (c) program (e.g., Wind Energy).

Differences between Programmatic EIS and Project-Level NEPA Documents

	Programmatic EIS	Project-level NEPA document
Tier	First-tier	Second-tier
Proposed Action	RMP	Specific facility or activity
Alternatives	Built into plan; have different objectives	Different ways to meet same objective
Affected Environment	Broad geographic area	Individual site
Impact focus	Cumulative	Direct and indirect
Mitigation	Generic and built into plan	Specific and added to proposal

Program v. Project Contents

NEPA Compliance

Affected Environment

Project-Level NEPA

Emphasis on project site and immediate surroundings

Programmatic NEPA

Regional in scope; often crossing political boundaries and covering numerous ecosystems



Programmatic Affected Environment



“This chapter describes the natural and socioeconomic environment of public lands in the western U.S., including Alaska, which would be affected by the alternatives under consideration.”

Vegetation Management PEIS,
p. 3-1.

Programmatic Affected Environment

- The broad geographic scope of most programmatic analyses requires different data sources than project-level analysis



Program v. Project Contents

(Cont.)

NEPA Compliance

**Alternatives,
including
Proposed
Action**

Project-Level NEPA

Typically a well-defined proposal with a known location; Range of alternatives includes different ways to meet a common objective

Programmatic NEPA

Typically a set of policies and maps of possible future uses, the specifics of which are not yet known; Range of alternatives includes future land use scenarios, often with differing objectives

Programmatic Alternatives



The Wind Energy programmatic EIS analyzed two action alternatives:

- implement a Wind Energy Development Program
- limited wind energy development alternative.

Program v. Project Contents

(Cont.)

NEPA Compliance

**Environmental
Consequences**

Project-Level NEPA

Emphasis on direct
and indirect effects
of a single activity

Programmatic NEPA

Emphasis on cumulative
effects of multiple future
activities



Programmatic Environmental Consequences



“Any future development of geothermal resources, if and when it does take place, would result in effects. It is reasonable, therefore, to foresee that on-the-ground impacts would occur if the BLM issues geothermal leases. Those impacts would not occur, however, until some point in the future and following several decision stages ...”

Geothermal PEIS, p. 4-3

Programmatic Environmental Consequences



“... The following analysis, therefore, focuses primarily on both direct and indirect impacts of future development of geothermal resources based on the foreseeable on-the-ground actions.”

Geothermal PEIS, p. 4-3

Programmatic Environmental Consequences

How do you analyze effects of foreseeable 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

Programmatic Environmental Consequences

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

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



“... it is estimated that development of the number of geothermal power plants estimated in the RFD scenario would result in emissions of approximately 554 tons of carbon dioxide per hour in 2015, and 1,216 tons of carbon dioxide per hour in 2025.”

Geothermal FPEIS, p. 4-54

Programmatic Environmental Consequences

How do you analyze effects of foreseeable 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 watersThe application rate of the inert/adjuvant compound was fixed at 1 lb a.i./acre.”

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

Program v. Project Contents

(Cont.)

NEPA Compliance

Mitigation Measures

Project-Level NEPA

Emphasis on minimizing impacts on a proposed action that is defined by context and intensity

Programmatic NEPA

Emphasis on developing broad environmental policies, programs, or plans that would apply to many future projects, the details and location of which are not yet known



Programmatic Mitigation Measures



“... with respect to potential environmental impacts, the proposed requirement for the BLM and operators to adopt adaptive management strategies would further ensure that potential environmental impacts would be kept to a minimum...”

Wind PEIS, p. ES-7

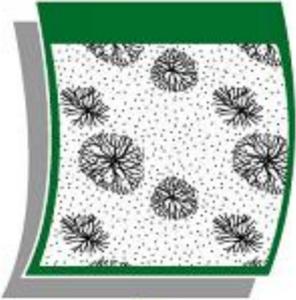
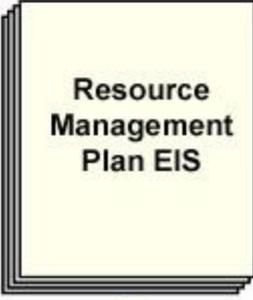
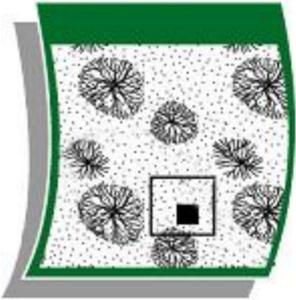
Programmatic Mitigation Measures



“This includes requirements for periodic review and revision of programmatic policies and BMPs; comprehensive site monitoring programs, including metrics for measuring impacts; and protocols for incorporating monitoring observations and new mitigation measures into standard operating procedures and project-specific BMPs.”

Wind PEIS, p. ES-7

Tiering: The Bridge Between Programmatic and project-level NEPA

Tier	Study Area	Document	Focus of Document
Tier 1 Plan Area			<ul style="list-style-type: none"> • Jurisdiction-wide affected environment • Jurisdiction cumulative impacts • Jurisdiction-wide mitigation measures (policies and programs)
Tier 2 Action Area within the Plan Area			<ul style="list-style-type: none"> • Incorporation by reference • Project site setting • Project site impacts • Project-specific mitigation measures

Tiering: Definition

“Refers to the coverage of general matters in broader EIS with subsequent narrower statements or environmental analyses (ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.”

“Tiering helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe ”

Benefits of Tiering

- Eliminate repetitive discussion of material covered in the programmatic document
- Avoid need to reanalyze alternatives rejected at the programmatic level
- Delays in project approval and permitting if mitigation strategies not tiered from programmatic EIS (and RMP)



Programmatic versus site-specific NEPA documents

Court rulings on tiering

“... when environmental effects are described in a regional EIS and discussed in a site-specific EA, a site-specific SEIS will not be required unless significant new evidence not considered in the EIS is presented.”

Headwaters v. BLM, 914 F.2d 1174, 1178 (9th Cir. 1990).

Programmatic versus site-specific NEPA documents

Court rulings on tiering

“We are convinced that such specific analysis is better done when a specific development action is to be taken, not at the programmatic level.”

Resources Ltd. v. Robertson, 8 F.3d 1394, 1401 (9th Cir. 1993).



Programmatic versus site-specific NEPA documents

Court rulings on tiering

“[The Forest Service urges] that because the final EIS for the Huckleberry Exchange is tiered to the LRMP, it sufficiently analyzed the cumulative impacts of the Exchange. ...”

“Our review of the Forest Plan and its accompanying EIS reveals that those documents do not account for the specific impacts of the Exchange and do not remedy the Forest Service’s failure to account for the impacts in the Huckleberry Exchange EIS.”

Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 810 (9th Cir. 1999).

Examples of Tiering to Programmatic Analysis

From the BLM NEPA Handbook, p. 28:

- *LUP/EIS tiered to a programmatic EIS: tiering the analysis of a proposed grazing program in an LUP to the programmatic EIS for regulations for the fundamentals of rangeland health. Tiering to the programmatic EIS would allow the LUP EIS to exclude alternatives that would establish grazing at levels that would not achieve the fundamentals of rangeland health.*
- *Activity Plan NEPA document tiered to a LUP/EIS: tiering an allotment management plan EA to the analysis in the LUP/EIS that analyzed the effects of the livestock management objectives and management actions for the area. Tiering to the LUP EIS would allow the allotment management plan EA to exclude alternatives that would set grazing levels different than those established in the LUP EIS.*
- *Project-specific NEPA document tiered to a LUP/EIS: in the absence of an allotment management plan, tiering an EA for building a fence to the general analysis of fencing in the grazing section of the LUP/EIS.*