

July 24, 2017

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Sent Via Email to mnedd@blm.gov; kbail@blm.gov; blm_wo_streamlining@blm.gov

Re: Comments on the BLM Streamlining Planning and NEPA process

Dear Director Nedd and Assistant Director Bail:

We the undersigned, on behalf of our members and the public, submit this letter **on the “Streamlining BLM Planning and NEPA” process currently underway.** We are all inspired by the truly American legacy of our public lands and the opportunities they provide for clean air and water, wildlife habitat and connectivity, outdoor recreation, scientific discovery, spiritual renewal and other uses as appropriate. We also have significant experience and expertise in engaging in both BLM land use planning and NEPA efforts. Please accept and fully consider the following comments and recommendations on ways to improve these processes going forward, making them more transparent, more efficient, less contentious and thereby less costly.

These comments follow the format that the BLM set out for this process. While separate comments were filed through the BLM’s online form, the following comments provide more context, information and citations relating to the governing legal framework for the BLM’s reference than could be provided through the online forum.

We note at the outset that we are concerned that BLM’s format—coupled with repeated public pronouncements from the Trump administration and Secretary Ryan Zinke regarding “energy dominance” and “unnecessary regulatory burdens” has fundamentally misdiagnosed the problem in search of solutions that would undermine science-based planning and management of our public lands, fail to account for intensifying threats to public lands such as from climate change, and subordinate the public’s voice to the energy industry. Nonetheless, we constructively offer these comments in the hopes of shaping BLM’s thinking and action.

I. FOCUSED ANALYSIS: HOW CAN THE BLM REDUCE DUPLICATIVE AND DISPROPORTIONATE ANALYSES?

Due to the complex nature and scale of many of the decisions the agency makes, the BLM land use planning process and NEPA processes are often complex, interdisciplinary processes and not for the faint-hearted. Some efforts will naturally take longer or require more information than others. This is as it should be; the true test of an effective plan is not how long it takes to complete, but how well it resolves on-the-ground management issues and builds trust, respect, and credibility across the range of multiple use stakeholders. However, there are several practices that may lead the agency to a more focused and

effective approach. The following recommendations provide insight on ways that the BLM can focus its planning and NEPA analyses to create a more efficient process:

A. Front-loading Planning and NEPA

BLM can make gains in efficiency by building more opportunity for change and input into planning or NEPA analyses up front. This has been tested and proven to work when done appropriately, building trust, credibility, and respect with public lands stakeholders. The following are comments with real-world examples and recommendations for successful implementation of strategies where earlier involvement in the process up front led to more efficiencies going forward.

1. The range of alternatives in the RMP should be broad enough to cover reasonable scenarios of change in the future so a certain amount of tiering can occur.

Under NEPA, agencies can draft programmatic reviews that allow for future decisions to tier to the broader NEPA analysis provided earlier.¹ This is true for both future site-specific projects as well as subsequent changes to planning decisions based on monitoring and triggering events. Tiering can function to improve decision-making certainty and increase the public's understanding of how plans, once completed, will be implemented. The Council on Environmental Quality's (CEQ) guidance on programmatic NEPA reviews provides:

A well-crafted programmatic NEPA review provides the basis for decisions to approve such broad or high-level decisions such as identifying geographically bounded areas within which future proposed activities can be taken or identifying broad mitigation and conservation measures that can be applied to subsequent tiered reviews.²

The regulations implementing NEPA provide additional detail for considering adaptive management in NEPA evaluations:

Bureaus should use adaptive management, as appropriate, particularly in circumstances where long-term impacts may be uncertain and future monitoring will be needed to make adjustments in subsequent implementation decisions. The NEPA analysis conducted in the context of an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring and should analyze the effects of such options. The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis.³

By analyzing a range of management options up front, the agency can set up a more efficient adaptive management process during implementation of the plan by tiering future analysis to the broader, programmatic analysis in the plan. The DOI Adaptive Management Technical Guide provides the following:

Alternatively, another approach to NEPA compliance that has proven successful for adaptive management programs is to prepare a "programmatic" EIS at the start, which broadly covers the likely range of actions that may be taken under the particular adaptive management program.

¹ 40 CFR 1508.28; 40 CFR 1502.20

² CEQ Guidance on Effective Use of Programmatic NEPA Reviews. Available at: https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Effective_Use_of_Programmatic_NEPA_Reviews_Final_Dec2014_searchable.pdf

³ 43 C.F.R. § 46.145.

Later, any NEPA compliance needed for subsequent shifts in the management actions as a result of the adaptive management process can then “tier” off of the initial programmatic EIS, saving considerable time and work.⁴

BLM should provide guidance regarding analyzing a range of alternatives for future scenarios that could then inform and streamline future NEPA analyses. Acknowledging that the agency cannot foresee all future outcomes or options for management, the agency could establish a team and/or process that allows for additional input to provide advice on adjusting management in the future that were not covered under the range of alternatives.

As an example of setting a range of alternatives that contemplates future shifts in management, the *Pinedale RMP* incorporates an approach that analyzes several options for management changes without requiring an amendment to the RMP by articulating defined criteria for when those changes may apply.

The *Pinedale RMP* created 3 types of areas for oil and gas leasing: intensively developed fields, traditional leasing areas and unavailable areas, with the following framework for developable fields:

In Intensively Developed Fields, lands are available for lease and are managed for intensive oil and gas leasing, exploration, development, and production. Exceptions to stipulations are also available to accommodate year-round drilling. In addition, accelerated reclamation will be implemented to reestablish habitats.

In Traditional Leasing Areas, some lands and mineral estate are available for oil and gas leasing and exploration, but in concert with maintaining the viability of non-oil and gas resource values and land uses, including designing operations to mitigate impacts on wildlife and incorporating mitigation measures.

The *Pinedale RMP* incorporates flexibility in management by providing that *Traditional Leasing Areas* can be converted to *Intensively Developed Fields* when bottom-hole well density exceeds one well per 160 acres and a surface density of four well pads per 640-acre section and that this conversion will be analyzed based on: (1) a geology and reservoir analysis determination that additional well density is needed to efficiently and adequately produce the gas or oil resource; (2) that surface resources can be satisfactorily mitigated; and (3) that a project-specific environmental documentation is prepared to analyze impacts and to determine operating methods, mitigation, and BMPs to be used in the efficient and comprehensive development of the field.

Importantly, an amendment to the RMP is not required to make this conversion if the areas are adjacent to the current *Intensively Developed Fields*.

2. BLM should set specific, measurable and enforceable indicators and thresholds for when a document needs adjustment.

BLM should set indicators and thresholds for change in land use plans or NEPA documents that describe and analyze when those documents should be adjusted. This will create more efficiency in addressing future adjustments to management plans since the agency should be allowed to tier to the analysis already completed. To be meaningful, these triggers should be specific, measurable and enforceable for when a change in management may be necessary.

⁴ Williams, B. K., R. C. Szaro, and C. D. Shapiro. 2009. Adaptive Management: The U.S. Department of the Interior Technical Guide. Adaptive Management Working Group, U.S. Department of the Interior, Washington, DC.

Triggers do not need to be a single red line that must not be crossed; instead, triggers can be a continuum used to prevent the crossing of ecological and regulatory thresholds.⁵ The key is pre-negotiating specific, measurable triggers that can be enforced, including without amending plans or NEPA documents.

As an example, most of the statewide plan amendments for the greater sage grouse⁶ contain an adaptive management framework with both soft and hard triggers. Soft triggers require immediate monitoring and surveillance and may require curtailment of activities. Whereas, hard triggers require deferment of discretionary authorizations for new actions within the Biologically Significant Units for a period of 90 days and an Adaptive Management Working Group must convene within 14 days to develop an interim response strategy to be implemented within 90 days.

Another example of a comprehensive monitoring approach can be found in the *Jack Morrow Hills Coordinated Activity Plan*, Appendix 2 – “Implementation, Monitoring, and Evaluation Process.” The management strategy discusses how the various surface use activities and their interactions with other planning area resources will be monitored, and how data collected in the planning area will be used to measure progress toward the goals adopted for the planning area, evaluate the effectiveness of specific practices or policies, and support decision changes.

The strategy includes objectives for individual resources; resource management indicators and possible measurements, including detailed indicator and measurement tables; and a flowchart management process that shows how monitoring could lead to management changes. The management process ensures that indicator data is appropriately used to inform management decisions, and helps BLM determine when a plan amendment would be necessary.

The following is a proposed framework for an adaptive management strategy to allow the agency to be more flexible and efficient in the future. The agency should consider providing guidance that includes all of the following components in order to make such a strategy meaningful and enforceable:

- Set specific management goals and objectives, such as biological goals and objectives to show the targeted management.
- Identify potential threats to management goals and objectives as well as potential stressors to the system.
- Set specific, enforceable and measurable indicators to gauge progress towards goals with timelines for implementation. Adjust management as appropriate when triggers are hit.
- Develop a monitoring plan with monitoring protocols, timelines for completing monitoring, and reports on the findings and conclusions.
- Provide a range of alternative management scenarios as well as a comprehensive process for additional consultation on adaptive management options when triggers are hit.
- Provide for public input, including providing information during data collection, setting triggers, and when change might be necessary to respond to triggers being hit or other unforeseeable factors.

⁵ Nie, Martin A. & Schultz, Courtney A. *Decision-Making Triggers in Adaptive Management*, at 26. Conservation Bio. 1137 (April 2012).

⁶ Available at: <http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html>

B. Planning and NEPA at the appropriate scale

Even the most complex processes and associated analyses can be focused by addressing management issues at the most appropriate scale. This scale may be defined geographically as more than one field office, more than one state, or a smaller portion of a field office. This scale may also be defined by the breadth of issues to be addressed. Programmatic NEPA and the flexibility for defining planning areas in FLPMA and BLM guidance support this approach.

Completing an initial analysis that is as thorough as possible and appropriate to the scale of the decisions is most consistent with NEPA's directive to complete analysis at the earliest possible point (40 C.F.R. § 1501.2) and can be conducted to support more streamlined decision-making down the road. Initial analysis should include a broad range of alternatives and explicitly analyze potential changes in management to best support related decision-making.

C. Suggested timelines for different types of amendments

BLM should recognize that not all amendments are created equal—different types of amendments require varying levels of time to complete. BLM should set suggested guidelines for completing amendments by each type of amendment. Below are our recommended timelines based on examples of actual amendments:

1) 6 to 12 months for a project-level amendment

Example: The Blanca Wetlands in southern Colorado's San Luis Valley was designated an Area of Critical Environmental Concern (ACEC) specifically for its recreation and wetland values, including playa and marsh habitats containing large populations of water birds, amphibians, macroinvertebrates, and 18 threatened, endangered and sensitive species. The Blanca Wetlands ACEC was designated at 9,714 acres in the 1991 San Luis Valley RMP. BLM recently completed an environmental assessment (EA) to analyze the potential impacts of enlarging the Blanca Wetlands ACEC. The EA evaluated several alternatives, including two alternatives to vastly increase the size of the ACEC and a no action alternative. The proposed boundary would enlarge the ACEC from 9,714 acres to 122,762 acres, and this boundary was adopted in the Decision Record.

Scoping for the RMP Amendment began October 11, 2011. The Draft RMP Amendment and EA were released on November 20, 2013, for a 60-day public comment period. The FONSI was signed February 14, 2014. BLM found that the expansion would address the Resource Condition Objective Decision under Wildlife and Fish Habitat Management (1-12) of the San Luis Valley RMP, which states "Provide special management to improve the present acres of wetlands in the Mishak Lakes and Dry Lakes areas to the historical acres of wetlands," and thus would be an appropriate amendment to the RMP.

2) 2 to 4 years for a programmatic amendment that amends multiple plans

Example: The Solar Programmatic EIS (PEIS) was a huge undertaking. This PEIS amended around 90 RMPs to address solar development on public lands. After multiple comment period extensions, various public agencies involved and several public meetings throughout the process, the entire process only took around four years from scoping until the ROD was published. We recommend setting a suggested timeline for other such programmatic EISs based on this and other models.

3) 3 to 5 years for an RMP revision

Example: The RMP for the Grand Staircase-Escalante National Monument (GSENM) is a prime example of BLM being able to complete a comprehensive RMP revision within around 3 years. As BLM's first national monument RMP, the GSENM plan was new territory, highly controversial and involved an almost 2 million-acre landscape. It is also one of the best conservation management plans that BLM has ever issued.

II. USER-FRIENDLY PLANNING: HOW CAN THE BLM HELP STATE AND LOCAL GOVERNMENTS, TRIBAL PARTNERS, AND OTHER STAKEHOLDERS UNDERSTAND AND PARTICIPATE IN THE PLANNING PROCESS?

Land use planning is often a long and arduous process. Even with built-in comment periods and public meetings, stakeholders and the public often feel in the dark or intimidated by this massive undertaking. The following are guidelines that the BLM can follow to make the planning process more user-friendly and create more buy-in for the resulting land use plan:

- BLM should focus on maximizing opportunities for public input, which ensures that stakeholders trust the process and outcomes. BLM should also engage in regular public outreach whether there is an official opportunity to provide input or not to inform the public and stakeholders of the current and next steps in the planning process.
- BLM should encourage use of informal meetings that provide space for asking questions, learning and providing feedback. Discussion-style meetings are not inconsistent with NEPA or FLPMA and not only helps the public to better understand the process but also informs the agency about issues the public and stakeholders care about most.
- BLM should provide for a variety of ways to give input, including formal comments at meetings (in addition to the more traditional information-sharing stations), written comments that can be provided at meetings and interactive internet-based tools. It is important that BLM build in time and opportunities for stakeholders that may not have easy access to high speed internet and software.
- As displayed in Appendix F of the Land Use Planning Handbook, there are many decisions that are made prior to the official scoping notice being issued. This includes an attempt to anticipate planning issues and management concerns, setting preliminary planning criteria, evaluating data and inventory needs and preparing a public participation plan. BLM could benefit greatly by involving the public in some of these decisions from the very beginning of planning. For example, BLM could make data calls to the public and institutions to help with collection of data where or inventory information where there are gaps. BLM could also better anticipate the concerns or management issues that may come up during scoping and will be in a better position to address those issues throughout the process.

III. TRANSPARENCY: HOW CAN THE BLM FOSTER GREATER TRANSPARENCY IN THE NEPA PROCESS?

As you stated in the BLM's press release announcing this process, "we need and want input from our state and local partners as well as from the general public in this effort." As a preliminary matter, BLM should provide the public and stakeholders with ample opportunities to provide input on this process going forward, regardless of whether there are ultimately formal rulemaking processes. So far, the BLM has offered a 21-day comment period with a web format that is not user-friendly and limited to 700 characters per answer. This is inadequate for outreach to the public on such an important matter. We strongly urge you to do all that is necessary to reach out to as many members of the public as possible on these significant issues.

Regarding the overarching process for providing greater transparency in the NEPA process overall, we provide the following recommendations **be incorporated in BLM's directives**:

- Provide ongoing opportunities for input, such as pre-scoping and preliminary alternatives, and make information submitted available for review. These processes do not need to be formal NEPA processes, but will support BLM's decision-making and public trust in the NEPA process.
 - o Involving the public during pre-scoping planning also comports with the CEQ regulations **implementing NEPA which state that "[a]gencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts." BLM should** provide guidance about specifically and actively engaging the public prior to scoping in the planning process in order to better meet the goals of planning and create a more efficient planning process throughout.
 - o Providing an opportunity for the public to review preliminary alternatives can also foster greater transparency in the NEPA process. For instance, the Arizona Strip BLM Office provided preliminary management alternatives, giving the public a chance to submit comments and giving the BLM valuable insight into their management approaches. The Las Cruces Field Office also held workshops and solicited public comments on preliminary alternatives for the Tri-County RMP. Most recently, the Moab BLM released preliminary alternatives and provided opportunities for public involvement as part of the Moab MLP process. We encourage the BLM to provide for public input into the management situation analysis and identification of planning issues, and on a preliminary range of alternatives prior to preparing draft RMPs. This allows for BLM to refine its approach prior to the next formal step in the planning process.
- Make underlying data available to stakeholders from the start of the process and throughout. It should be made clear that stakeholders should not be required to submit formal Freedom of Information Act Requests to obtain inventory data, including GIS files, or to review comments submitted, as they are sometimes required to do by the agency now. BLM can and should make this information available – as many offices already do. Provide ongoing updates on where the agency is in NEPA processes, including newsletters and posting information.
- Provide specific responses to comments on draft documents, whether environmental assessments or environmental impact statements, and make those available before final documents are issued or decisions are made.
- Provide an opportunity to receive notices of NEPA processes by notifying the BLM of areas of interest. Expecting stakeholders to hunt for updated NEPA documents in different field offices in global listings on e-planning interferes with and undermines transparency.

IV. **BEING GOOD NEIGHBORS: HOW CAN THE BLM BUILD TRUST AND BETTER INTEGRATE THE NEEDS OF STATE AND LOCAL GOVERNMENTS, TRIBAL PARTNERS, AND OTHER STAKEHOLDERS?**

Outreach and continuous communication should be emphasized. Stakeholders and the public want to hear from the agency on a regular basis. The following are recommendations on how to better integrate the needs of stakeholders and the public:

- Issue clarification that the agency will work throughout its planning and NEPA processes to consider state and local objectives, try to seek consistency with state and local plans and policies, and hopefully avoid the need for a formal consistency review and/or appeal in the end.
- **Ensure that these efforts do not undermine BLM's role as the final decision-making authority and its obligation to manage in accordance with the multiple use mandate.** While it is important for

BLM to seek to evaluate state and local government input, these decisions are ultimately to be made by the BLM and to be focused on meeting the interests and needs of the American people.

- Maintain and support the updated manual (MS-1780, 2016) and handbook (H-1780-1) on engaging tribal governments.
- Where local governments do not have expertise in planning or NEPA, provide more robust support and liaisons to assist in engagement.
- Consider how best to support state and local priorities that cross jurisdictions, such as managing wildlife migration corridors, backcountry recreation, cultural and historic resources and wildlands. Balancing other uses with energy development is vital for addressing the vitality of affected communities.

V. REDUCING LITIGATION: HOW CAN THE BLM CREATE LEGALLY DEFENSIBLE DOCUMENTS AND AVOID THE DELAYS ASSOCIATED WITH LEGAL CHALLENGES?

Ensuring that the public is informed and the planning and NEPA process is open and transparent will not only create a better outcome but will reduce conflict in the end. It is incumbent on the BLM, both legally (under NEPA and FLPMA) and as steward of our public lands, to ensure there are ongoing, meaningful opportunities for public input into the agency's decisions on the use and management of our public lands. Rather than seeking to change these fundamental laws through congressional intervention or undermining them in new directives, BLM can support their intent by clarifying the agency's commitment to multiple use management and its nation of stakeholders through regulations, policies and guidance.

“Public scrutiny” is considered “essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). Similarly, FLPMA is clear that during the land use planning process, there must be “an opportunity for public involvement,” including “adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.” 43 U.S.C. § 1712(f).

“Streamlining” is not an end in and of itself, especially if it cuts out the public and consideration of environmental harms. Ensuring the BLM fully considers what could happen before turning public lands over to potential harm and giving the public a chance to weigh in is not only the law, it is also the best thing for our public lands.

The clearest way to reduce litigation in these processes is to ensure that all of the mandates of FLPMA, NEPA and other applicable law are fully complied with and to actively build trust, credibility, and respect with public lands stakeholders. Cutting corners on key aspects of NEPA such as relying on quality data, considering a reasonable range of alternatives, and responding to substantive comments are the biggest risks for drawing legal challenges and delays from those challenges being successful. Moreover, we emphasize that signaling, through an emphasis on “energy dominance,” that fossil fuels development will be prioritized over other multiple uses, and conceiving of core planning, environmental review, and conservation safeguards as “burdens,” does little to engender the expansive trust, credibility, and respect with stakeholders essential to moderate public lands conflicts and the risk of litigation.

VI. “RIGHT-SIZED” ENVIRONMENTAL ANALYSIS: HOW CAN THE BLM MORE CLOSELY MATCH THE LEVEL OF NEPA ANALYSIS TO THE SCALE OF THE ACTION BEING ANALYZED?

The purpose of NEPA is to ensure that agency decisions are informed as to the environmental consequences of decisions and made with the benefit of public input. These should remain the guiding principles for NEPA processes.

Without setting specific limits on pages or range of analyses, BLM can define the right amount of analysis to match the scope of decision-making. This scope and scale may be defined geographically as more than one field office, more than one state, or a smaller portion of a field office. This scale may also be defined by the breadth of issues to be addressed. Programmatic NEPA and the flexibility for defining planning areas in FLPMA and BLM guidance support this approach.

Categorical exclusions are reserved for extreme circumstances where it is unequivocal that an environmental analysis is unnecessary. Focusing this process on creating more categorical exclusions is not necessary and not consistent with NEPA. The use of categorical exclusions should include thorough consideration of extraordinary circumstances that indicate NEPA analysis is required. Using categorical exclusions to permit drilling should be subject to heightened scrutiny given the potential for impacts.

Additionally, the use of Determinations of NEPA Adequacy (DNA) should be discouraged. Where a categorical exclusion is not appropriate, a focused environmental assessment that shows the BLM is evaluating potential impacts is more consistent with NEPA.

Conclusion

We appreciate the opportunity to comment on this important process and look forward to participating throughout. Please keep us informed of updates on this and related processes from the agency.

Sincerely,

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