National Environmental Policy Act
WCCA July 2019

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The views expressed in this presentation are solely my personal opinions and do not represent the position or official policy of the United States, the Department of the Interior, the Office of the Solicitor or the Bureau of Land Management.

With Appreciation to
James Voyles
Senior Counsel,
Office of the Deputy Secretary
Overview

• Role of Cooperating Agencies in BLM Planning and NEPA Processes

• DOI NEPA Streamlining
Federal Land Policy and Management Act (FLPMA)

Section 202 guides the BLM planning process:

• 202(a) requires that the DOI Secretary, “with public involvement, develop, maintain, and, when appropriate, revise land use plans which provide ... for the use of the public lands...”
• 202(e) authorizes management decisions to implement land use plans.
• 202(f) requires an opportunity for public involvement and procedures for participation.
National Environmental Policy Act (NEPA)

CEQ Regulations and DOI NEPA regulations:

• DOI regulations require invitations to “eligible government entities” to serve as Cooperating Agencies for EISs.
• BLM (and other DOI bureaus) must consider requests from a government entity to serve as a Cooperating Agency and explain reasons for any denial in the EIS.
• BLM (and other DOI bureaus) may allow Cooperating Agencies to help develop environmental assessments (EAs) and must provide for public involvement.
BLM land use planning regulations (43 CFR 1600 et seq.) provide for Cooperating Agency participation throughout the planning process as feasible, given resources and expertise.

43 CFR 1610.3-1(a)(5) directs State Directors and Field Managers to “[w]here possible and appropriate, develop [RMPs] collaboratively with Cooperating Agencies”).

Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners (2012) outlines roles for several steps of the process.
FLPMA Planning Process

**BLM Preparation Plan** for Resources Management Plans sets schedule and budget constraints.

**Scoping and Identification of Issues**

**BLM’s development of Planning Criteria**

**BLM collection and compilation of inventory data.**
Cooperating Agency Input for Planning Processes

• BLM’s analysis of baseline data and preparation of an Analysis of the Management Situation (AMS)

• BLM’s formulation of alternatives

• BLM’s estimation of alternatives’ effects

• BLM’s selection of a preferred alternative and issuance of a Draft RMP/Draft EIS
Cooperating Agency Input for Planning Processes

• BLM’s response to public comments and issuance of the Proposed RMP/Final EIS
  - 60-day Governor’s Consistency Review
  - 30-day Protest Period

• BLM’s Response to Protests and ROD Approval

• Implementation and monitoring of the Final RMP
Cooperating Agency Input for Non-Planning NEPA Processes

• DOI regulations require invitations to “eligible government entities” to serve as CAs for EISs

• BLM (and other DOI bureaus) must consider requests from a government entity to serve as a CA and state the reasons for any denial in the EIS

• BLM (and other DOI bureaus) may allow CAs to help develop environmental assessments (EAs) and must provide for public involvement
Cooperating Agency Input for Non-Planning NEPA Processes

• Identifying Issues for Disclosure and Analysis

• Collecting Data for Analysis (resource; environmental, socio-economic, institutional)

• Developing and Evaluating Alternatives

• Other Tasks as Appropriate
Considerations for Project Level EISs

• Power of NEPA Scoping
• Importance of Time Limits
• Developing and Disclosing Cooperating Agency Relationships
• Requesting Comments from Affected Local Governments and Agencies – (Within Time Limits)
BLM Cooperating Agency MOUs

- 2012 Cooperating Agency Desk Guide:
  https://www.blm.gov/sites/blm.gov/files/Services_CADRCoopeFatingAgency
  Guide.pdf

- IB 2009-106 - Cooperating Agency Template MOU:

- Wyoming IM 2015-013 Designation of State of Wyoming as Cooperating Agency on all NEPA & Planning Documents:
DOI Bureaus Working as Cooperating Agencies


“These standardized processes will help to streamline the NEPA process by reducing the need to coordinate individual MOUs and by establishing consistent expectations regarding roles and responsibilities”
NEPA Streamlining
Fixing America’s Surface Transportation (FAST-41) (Pub. L. No. 114-94) December 2015

Clarifies or Changed some NEPA Provisions:
Reduces statute of limitations from 6 years to 2 years for covered projects (under the APA)
Encourages state participation and adoption/incorporation of state reviews
Allows formation of interstate compacts
Provides direction on determination of range of alternatives and treatment of preferred alternative, etc.
Fixing America’s Surface Transportation (FAST-41) (Pub. L. No. 114-94) December 2015

Applies to large or complex infrastructure projects as part of government-wide effort to improve coordination, transparency and accountability

Established a Governance Structure and Funding Mechanisms
DOI NEPA REVIEW

• Goal of Supporting Executive Order 13807


• Secretarial Order 3355 August 31, 2017

  Ensure DOI NEPA documents achieve NEPA’s purpose.
ORDER NO. 3355


Sec. 1 Purpose. This Order is intended to: 1) immediately implement certain improvements to National Environmental Policy Act (NEPA) reviews conducted by the Department of the Interior (Department); 2) begin assessment of additional such opportunities; and 3) begin implementation of Executive Order 13807 of August 15, 2017, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects” (E.O. 13807).

Sec. 2 Authorities. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended. Other statutory authorities for this Order include, but are not limited to, NEPA, 42 U.S.C. 4321-4347.

Sec. 3 Background. The Department has broad responsibilities to manage Federal lands and resources for the public’s benefit. The NEPA applies to the execution of many of the Department’s responsibilities with the goal of ensuring that information regarding environmental impacts is available to decisionmakers and the public before decisions are made. The NEPA accomplishes this goal by requiring Federal agencies to prepare an Environmental Impact Statement (EIS) for major Federal actions significantly affecting the quality of the human environment.

Both the Department and the Council on Environmental Quality (CEQ) have issued regulations to implement NEPA. Because the purpose of NEPA’s requirements is not the generation of paperwork, but the adoption of sound decisions based on an informed understanding of environmental consequences, the regulations encourage agencies to: 1) focus on issues that truly matter rather than amazing unnecessary detail; 2) reduce paperwork, including by setting appropriate page limits; 3) discuss briefly issues that are not significant; and 4) prepare analytic (rather than encyclopedic) documents, among other measures.

In recognition of the impediments to efficient development of public and private projects that can be created by needlessly complex NEPA analysis, I am issuing this Order to enhance and modernize the Department’s NEPA processes, with immediate focus on bringing even greater discipline to the documentation of the Department’s analyses and identifying opportunities to further increase efficiencies.
BLM-NEPA: DOCUMENT CLEARANCE PROCESS

ITM-2018-016
Permanent Instruction Memorandum

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
http://www.blm.gov

In Reply: Refer To:

1541 (190)

Permanent Instruction Memorandum No. 2018-016

To: *Washington Office and Field Office Officials*
From: *Acting Deputy Director, Operations*
Subject: BLM NEPA Document Clearance Process

Purpose: “The purpose of this Instruction Memorandum (IM) is to establish a new review and approval process for all Environmental Impact Statements (EISs) and their associated Federal Register notices (FRNs). This new process ensures that the Bureau of Land Management (BLM) follows the memoranda issued by the Deputy Secretary on April 27, 2018.”

Policy/Action: “Consistent with the Deputy Secretary’s memorandum “NEPA Document Clearance Process” (Attachment 1), any proposed action that requires an EIS review must obtain prior approval and adherence to quality control procedures. This memo outlines six main steps for engaging the Departmental Review Team (Attachment 2) and also provides guidance on how to submit EIS waiver requests. This memo also clarifies that for all EISs, the originating State Office is no longer required to prepare or submit a Deputy Secretary Concurrence Memo, as originally directed in IM 2017-088. Furthermore, based on the new EIS review process outlined below, only the attachments and documents referenced in each section are required; the originating office is no longer required to prepare and submit older versions of DOI or BLM briefing papers for EISs and their associated FRNs. However, previously issued guidance and requirements still apply for all other FRNs.”

The first BLM Senior Executive Service (SES) member with line authority over the proposed action (responsible SES member) is ultimately responsible for the EIS
SECRETARIAL ORDER 3355

• Returning to the Intent of NEPA
• Fostering Excellent Decision Making
  • Understanding Environmental Consequences
• NOT Generating Paperwork (even Excellent Paperwork.)
Goals of Secretarial Order 3355

- Enhance and modernize DOI NEPA Review Processes
- Bring Focus and Greater Discipline to NEPA Documentation
- Identify Opportunities to Enhance Efficiencies in Environmental Analyses and Decision Making
Why Change?

Time for Review – CEQ Regulations at 40 CFR 1501.1(e) - appropriate time periods

- Standard EISs averaged 3 ½ Years for Review
- Complex EISs averaged 6 Years
Why Change?

Length – CEQ Regulations at 40 CFR 1502.7 call for 150 to 300 pages

- Standard EISs averaged 497 Pages
  - Minimum 137
  - Maximum 948
- Complex EISs averaged 2,111 pages
  - Minimum 355
  - Median 916
  - Maximum 32,087
How Many Pages Are Too Many?

DOI’s Review found some extreme examples:

• Project A: 3,957 pages, 9,685 pages with appendices

• Project B: 13,083 pages, 28,358 pages with appendices

• Project C: 32,087 pages, 97,120 pages with appendices
How Much Time is Too Much?

DOI’s Review 9 Notices of Intent published a decade ago:

6/5/2003 Habitat Conservation Plan
2/28/2003 Monument Management Plan
2/3/2004 Water Project
9/29/2004 Habitat Conservation Plan
1/28/2005 Resource Management Plan
3/7/2005 Habitat Conservation Plan
12/20/2005 Supplemental for Reservoir Project
6/1/2006 Resource Management Plan
9/15/2006 Habitat Conservation Plan
SO 3355 REVIEW TEAMS

• “EIS project teams include but are not limited to Departmental NEPA staff, Senior Executive Service members, subject matter experts, contractors, planners, an attorney from the Office of the Solicitor, and others who work on EISs at the field level (EIS Project Team).”

  • **Project Team appears 21 times within the 2 EIS guidance documents.**

• **EIS Team and Solicitor Assignments:**
  • “An attorney in the Office of the Solicitor, based either in the field, regionally, or in Washington, DC, shall be incorporated into each new and existing EIS Project Team, regardless of the project's phase. Bureaus shall identify the solicitor and include his/her contact information in the Database.”
ATTORNEY ROLE IN NEPA REVIEW

• “...insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the federal government.

• “...inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.

• “...focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data.

• “...Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses.
ATTORNEY ROLE

• Ensure that proponent applications are complete.
• Ensure that all team members, including contractors, stay within the project guidelines.
• Identify preliminary Purpose and Need and a Range of Reasonable Alternatives.
• Identify issues that will likely need to be addressed.
• Identify and begin collection of needed data.
• Identify and begin writing affected environment.
• Identify methodologies for analysis.
SIX KEY MILESTONES

- Initial Action Notice
- Notice of Intent
- Draft EIS Development
- Draft EIS – Notice of Availability
- Final EIS - Notice of Availability
- Record of Decision
SO 3355 Length and Timeline Waivers

• “To be considered unusually complex, each factor, taken singly or as a whole, must result in unusual complexity that a reasonable person with knowledge of the facts and the law would discern”

• Nature of Potential Impacts
  • Whether the type of action is new to a geographic area;
  • The subjective nature of the methodology or unavailability of data;
  • Newly established land designations, i.e. Areas of Critical Environmental Concern and Wilderness Study Areas;
  • The presence of endangered species or special status species;
  • Environmentally sensitive areas;
  • High likelihood of substantial weather impacts on the proposed project; or
  • High likelihood of substantial harm in the event of an incident.
SO 3355 Length and Timeline Waivers

• Projects That Are Large In Scope, Multi-Jurisdictional, or Part of a Rulemaking
• Multi-state Linear projects;
• Projects requiring state environmental compliance or permits;
• The project’s EA is an internally-selected federal action tied to rulemaking;
• Water systems;
• Multiple actions within the scope of the EA;
• For offshore activities, distance to shorelines, designated use zones, and depth;
SO 3355: IS IT WORKING?

- 36 Deputy Secretary Briefings by the end of FY 2018 (October);
  - 30 Cleared to Proceed
  - 3 Required Additional Work
  - 3 Sent back to resolve major issues;
SO 3355: IS IT FASTER?

- The average time between briefing requests and document approval is 14 days.
- Previous processes may have taken 1 to 4 months.
- Most briefings take 30 minutes or less.
- The briefing schedule is currently decreasing Department review times across a project’s life cycle by 3 to 12 months.
### SO 3355: IMPROVED CLEARANCE TIMES?

**EIS Projects - Time from Submission to Publication under OLD Process**

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Date Submitted to WO</th>
<th>Date Published in FR</th>
<th>Total Days</th>
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<tbody>
<tr>
<td>Central Coast Field Office Draft Resource Management Plan Amendment for the Oil and Gas Leasing and Development</td>
<td>9/17/2015</td>
<td>1/6/2017</td>
<td>477</td>
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<td>12/13/2016</td>
<td>3/3/2017</td>
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<td>Normally Pressured Lance Natural Gas Development Project</td>
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<td>Greater Phoenix Project</td>
<td>4/14/2017</td>
<td>9/1/2017</td>
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<td>Gold Bar Mine Project</td>
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<td>10/6/2017</td>
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**Average # of Calendar Days:** 205

**EIS Projects - Time from Submission to Publication under New Process per April 2018 Dep Sec Guidance**

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<th>Project Name</th>
<th>Date Submitted to WO</th>
<th>Date Published in FR</th>
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<td>Willow Master Development Plan EISNOI</td>
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<td>San Pedro Riparian NCA DEIS NOA</td>
<td>5/31/2018</td>
<td>6/29/2018</td>
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<td>Basin Draft RMP and EISNOA</td>
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<td>8/3/2018</td>
<td>21</td>
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<td>Desert Quartzite Solar Project DEISNOA</td>
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<td>8/10/2018</td>
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<td>Bears Ears NM NOI Draft MMP and EIS</td>
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<td>8/17/2018</td>
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<td>Grand Staircase Escalante NM NOI Draft MMP and EIS</td>
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<td>Ten West Link NOI for Draft EIS with RMPA in AZ and CA NOI</td>
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<td>8/31/2018</td>
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<td>Greater Phoenix Mine FEIS NOA</td>
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<td>Greater Moses Tooth 2 FSEISNOA</td>
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<td>9/5/2018</td>
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**Average # of Calendar Days:** 27
EIS COMPLETION BEFORE & AFTER SO 3355

FROM NOI TO ROD

Target Completion Time for EISs

Average Number of Days for EISs started before SO 3355
Average Number of Days for EISs started after SO 3355

Number of EISs

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<tr>
<th>One year</th>
<th>Within 2 years</th>
<th>More than 2 years</th>
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Target Completion Time from Notice of Intent to Record of Decision
SO 3355: IMPROVED CLEARANCE TIMES

Average Time from Submission of a Document to Publication in the Federal Register:

- Old Process -- **205 days**
- New Process -- **27 Days**
THANK YOU!

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