

How about, Ted, let's go back to you. Talk to us about issues. How have the issues changed in the new handbook.

>> T. Milesnick: Thanks, Cathy. We think that the identification of issues is one area we can really improve on and use that process to focus our NEPA analysis, and as Jolie said in our opening remarks, CEQ directs us to focus our efforts significant to the action being taken. The old handbook didn't really address how to do that. So the new handbook goes into some more detail on that. I would just like to tie light a -- highlight a couple of those points. We need to analyze issues if it meets two tests and the first test is whether or not it's necessary to make a reasoned choice among alternatives. That is, you know, does it relate to how the proposed action and alternatives meet the purpose and need for the action being action -- for the action being considered. The second test is whether or not it's associated with a significant issue, and an issue is significant if it's associated with a direct, indirect or cumulative impact. So those are the two kind of primary tests for significance. And we'll have some more discussion on significance later in the broadcast. Preliminary issues are commonly identified during internal and external scoping. One thing on issues is we suggest that you don't use kind of broad program categories to describe issues, such as wildlife, and also we think it's better to pose issues as questions such as: what's the impact of an action on sage grouse nesting areas, as a much more effective way to kind of frame the issues that we're addressing. Concerns that are raised during the process, concerns that are raised but don't really meet the two criteria, that is, whether or not it's necessary to make an informed decision on the alternative selection or whether it's re delighted a significant impact, those concerns aren't really necessary to be addressed as

issues and don't have to be treated that way. We recognize -- or recommend that you document in the NEPA analysis or the administrative record how those concerns were addressed, and if you didn't elevate something to an issue, that you explain why that would be. For internally developed issues, there's a little bit more discretion on the documentation required and often it's not necessary to do that in the NEPA document. So I think those are some of the highlights of the issues that we addressed in the handbook.

>> M. Conry: And I think the issues section is truly what Ted said, an opportunity to gain a lot of efficiency in our NEPA process, recognize that we tend to fall into the habit of addressing broad resource categories in each NEPA document, and tend to fall into the mind set, well, if we've addressed it before we will address it again, and in line with the goal of critical thinking, the new handbook is really pushing you to apply that two-pronged test and determine whether or not this is an issue for the decision maker to really be evaluating or is it related to a significant impact, and talk about those specific issues in your NEPA document and don't talk about those other resources that may be affected but those effects aren't really important to be talked about.

>> C. Humphrey: And so you're not saying -- you're not talking about don't consider them at all, you're just saying consider them but maybe document them somewhere else?

>> T. Milesnick: Right. You would need to consider those concerns that were raised in determining if they are elevated to the -- kind of to the status of meeting one of the two tests for an issue, if they're an issue, then you document it and address it in the NEPA analysis. If they're not, you would either say why they're not in the NEPA

document or administrative record.

>> C. Humphrey: It might help to talk about an example. Can you think of an example?

>> R. Hardt: Well, let's -- in many of the kinds of actions we take a lot of different wildlife species are going to be effected. Let's say something simple like our example of a right-of-way before. We're constructing a road. Let's say that road is going to go through rearing habitat for sage grouse and it's also going to affect some habitat for mule deer but it's not critical winter range for mule deer. Well, clearly in that case I think the effect of road construction on sage grouse rearing habitat is an issue. It's a listed species. It could be a significant impact. But in many cases I think we'd conclude that the effects on mule deer are not potentially significant and, therefore, they probably aren't an issue. And with both of those, they're not really related to your purpose and need, so it's not something you need to know to make a reasoned choice.

>> C. Humphrey: So would you talk about the effects on the mule deer habitat?

>> R. Hardt: I think it would depend. You might not document in that your NEPA document why you didn't address effects on mule deer habitat. The danger is that you want to always document everything that will be affected by an action, but everything is affected by everything at a certain point. That doesn't become a very productive way to produce a document to support decision making. It clutters up the document with things that aren't as important. I would really want to know what it's going to do to the sage grouse rearing habitat. But the more that you put in there that's extraneous, the less clear it is, the less focused that is.

>> C. Humphrey: So the manager might not change their decision regardless of what it does to the deer habitat because it's not critical winter range -- regard.

>> R. Hardt: They would need to know what it's going to do to the sage grouse to make a decision.

Question:

>> Participant: Yes, could you reiterate again what the two pronged issues are.

>> T. Milesnick: I would be glad to. The first test is whether or not it's needed to make a decision among the alternatives that are being considered. So if the manager is using that as a factor, an issue point as a factor in selecting the decision versus another alternative, that's one of the tests. Then the second test is whether or not it's -- the issue is tied to a significant impact or else that you need to do the analysis to determine if it's tied to a significant impact. So those are the two tests that you would use to determine issues that you would address in the NEPA document.

>> C. Humphrey: And that's in section 6.4.1, right? Does that answer your question, Lynn? Does that help?

>> Participant: Yes, thank you.

Question:

>> Participant: Yes. This is Bob again. Just had another question on the right-of-way example and the mule deer versus the sage grouse analysis. In the past we've always shown that we've taken a hard look at some of these species or issues that we're writing off

as very minor just to offset any questions from the public or down the road concerns that, hey, you guys missed the boat and didn't look at this, and then we have to go in and document why it's not significant. So what I'm hearing, though, is now we just -- we can just not even document something if our team determines that it's probably not going to be significant? Or approach significance, I guess?

>> C. Humphrey: I was waiting for that question.

>> R. Hardt: Well, I think that if you are getting a concern raised by the public, as Ted was explaining, I think -- if you get a concern raised by the public and you do not deem it an issue based on the two-pronged test we talked about, then you should document why you did not believe it was an issue and why you didn't analyze it. Ted was saying we have more flexibility if it's something that let's say, comes up in I.D. team brainstorming and you decide it's not an issue and we're not going to carry it forward. I think the important thing for us to get away from is saying why each of the things we don't believe is an issue isn't an issue. Everything gets affected. Are we going to say everything that isn't affected? Then it's very hard to see the focus in the NEPA document about what is really important.

>> Participant: Okay. Thank you. So there is some room there for judgment on what you expect the public will be concerned about, even if you haven't had a formal broad-based scoping?

>> R. Hardt: Yeah -- well, I don't think -- I think we need to use that discretion in terms of what we're documenting in the NEPA analysis as an issue that was considered but not analyzed. As opposed to saying we'll treat

this as an issue and give it full analysis because we think people care about it. People caring bit is not the same as it being something needed to make a reasoned choice or something related to an impact that is or could be significant.

>> Participant: Okay. Thank you.

>> C. Humphrey: So one of the things you could do is say what those two criteria to make something an issue -- you could have that in your EA and say these are the criteria we considered and therefore these are our issues or, therefore, these things weren't our issues. Just show your work. Explain what you're doing. It is going to be a little rough for people to get used to some of this stuff for a while.

Question:

>> R. Hardt: We have a fax from the Tucson Field Office about something we were just talking about. We are confused about the use of significant impact as part of the -- part two of the two pronged test for issues. We have been taught any proposed action which would have significant actions would require and EIS analysis. Has this changed? No, absolutely not. The second part of the two-pronged test is if the effect would be significant or you need analysis to determine whether it would be significant, as Ted was saying, or as I think I said it, if it's significant or potentially significant. If you look at that effect and you know without doing analysis it doesn't have the opportunity to rise to the level of significance, you would say it fails that test. Any time you determine you have a significant impact you need to do an EIS.