

Planning Nuts and Bolts: Comments and Responses

Well, we've talked about the development of the alternatives, the development of the draft R&P EIS, and its release to the public. And now we're going to talk about evaluating comments. So, once we're done with our discussion, you should have a good understanding of the approach to organizing and responding to comments and the principles behind high-quality comments response.

So the types that you're likely to get is part of the R&P EIS. Come in the same form that you get in your other EIS's which include your written comments, your oral comments, your electronic comments, which come in the form of email and faxes; they also come in through e-Planning. They also have opportunities for special interest groups to have their members send in petitions and form letters. And on the oral comments, something we've talked about in the past is if you actually get oral comments, just part of the comment period, it's a good idea if you have people coming up to you during the public meetings, public hearings, to ask them to write down their comments, to document their comments and provide those to you in writing.

So categorizing and organizing comments. So all comments that come in should be attached to the final EIS or summarized as part of the final EIS and all the comments are going to go into the administrative record. You're going to want to keep all of the original comments, all the original correspondence for final production. You're going to want to look for, in your comments, discreet issues or concerns or questions, that each of the commenters may have. Even if they come in the form of a letters, it's really important to review the form letters because there actually could be discreet changes or differences in their comments.

Consider comments individually and collectively. If you get a high volume of comments, lots and lots of comments, you might want to collectively summarize and respond to those. If you get a sort of low volume of comments, you might want to respond to each of those individually. But you have to remember that all of the comments and all the responses are going to go into the final EIS.

Also, e-Planning; it's important to remember that and schedule in that e-Planning will likely be used as part of your process and that the comments that come in through e-Planning also have to be considered. Considerations are that you should look for the affiliations of the commenters. Be sure that you letter and number all of the comments, keeping the originals free of marks and comments. Specify where the comment --- what section of the EIS the comment is pertaining to and it's also a good idea, then, to assign, tentatively, which staff member or technical expert that's probably going to be needed to help respond to those comments. Substantive comments or policy issues, those things that are you really are going to probably need support from either your state office or your solicitor, so consider that early and often.

You're going to want, up front and before you even start receiving comments, to develop, basically, a format and numbering system that you're going to use, the key issues are flagged. You're going to want to be sure that you treat all the comments equitably regardless of the source they came in from. You're going to want to track and

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link together the redundant comments and be aware of nuances which we just mentioned.

So, before you begin to receive comments, it's a good idea to identify a team member or members that are going to be your primary sorters. So, these are going to be individuals responsible for taking the comments as they come in and sorting them by topic or by issue. If several of your team members are primary sorters, it's really important to decide up front on a uniform approach. And as you get the comments, you don't have to wait until they all come in, but as you get the comments, it's important to get those technical comments to those experts so they can begin formulating responses or deciding on changes or revisions that may need to be put into the draft EIS.

We mentioned it's not imperative to wait until the end of the comment period before you actually start to formulate responses. It is important, though, determine, as the comments come in and as you review them and begin to primarily sort them, that are there substantive changes that may be needed to the plan and it's a good idea to identify those early.

So, ways of responding. So, we've talked about organizing a team for the response, we've talked about sorting and the types of experts that might be required in getting them loaded in and ready to go. Well, what are the types of responses that you might need? Well, you might actually have to modify the proposed action; you might have to modify some of the alternatives. You might be evaluating and developing and evaluating alternatives that weren't previously considered in your EIS. You might be making factual or typographical corrections in the EIS. And you want to make sure that you explain why any comments that don't require substantive change to the document explaining why they don't warrant further agency responses.

Bobby, if I could interject right there. That's a really important issue related to the administrative record and again, showing the road map on getting the comment and then trying to do your best in connecting what responses are warranted and when a response isn't warranted. So the explanation is, again, a good tool to basically explain to the reader, explain to those that might be reviewing this in another forum, the particular considerations that went into how you're responding. The letters that you're going to get, the comments that you're going to get on the draft EIS, you're going to start to understand, okay, these are the contentious issues, these are the ones that actually might go further at the end of the process to other kinds of challenges that we'll talk about in other segments. So you want to be thinking these things through. Those kind of responses, you might actually spend a little bit more time to say why you're not including something as a response or why you are including something as a response.

Although those things are very important in terms of, again, trying to explain, show the road map of the thought process that goes into why you're doing certain things related to a particular comment. If you're going to modify the plan, if you're going to change the plan, if you're going to change how you're concluding certain impacts, the measures necessary to offset certain impacts. If you're going to do those things, this is

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the appropriate time to really be thinking about making sure you have the substantial evidence to support those decisions.

And that leads, really, to the last slide that we're going to talk about in responding to comments, is when you decide that yes, it needs a response and the response is related to altering a component to an alternative or it's altering conclusions from the draft EIS that will go into this final EIS that we'll talk about in another segment. You should be thinking about, well, some of these responses actually might trigger the need to issue a supplemental draft EIS as part of NEPA and the CEQ requirements per NEPA.

There are certain triggers that would require BLM to go back, reissue a notice of availability with a revised draft or EIS or what's called a supplemental draft EIS. When certain responses trigger the fact that there's new significant information, when there are new impacts that weren't disclosed in the original draft EIS, when you come up with a new alternative or new components of an alternative that weren't analyzed in the original draft EIS, all of those issues that could have come up; or there might be new circumstances unrelated to the BLM action itself, but there's just new information, there's an update on environmental issues that you could not have known at the time of preparing the original draft related to changes in the environment, changes in a way to analyze certain impacts. All of those things could lead to the trigger to do a supplement.

So those are the kind of considerations that you should be thinking about as you're trying to develop an adequate response to comments.