

Planning Nuts and Bolts: Proposed Plan, Final EIS, and ROD

In previous segments, we talked about putting together a draft EIS, going to a final EIS, taking a preferred plan to a proposed plan, and then approving the plan. Well now, we're going to talk about implementing the plan and the kind of decision making that goes on related to that. You've got an approved plan and you're looking at, do we have enough environmental analysis. Do we need more environmental analysis in order to make these implementation decisions consistent with the plan?

So we're going to be talking about how you examine those plans to say, are they consistent with the R&P that we've set up and what kind of decision making needs to be made in terms of the subsequent management actions and compliance with the National Environmental Policy Act.

So first, what do you use a plan for? Well, you've heard in the preliminary segments of these presentations, the plan is a framework for setting up the subsequent decision making. It's going to be anticipating, here are the kinds of uses we want to see within our plan area. These are the kind of resource needs that are there, these are the kinds of protections we want to set up. It sets up that direction for BLM to manage these uses, to manage these areas and to coordinate with the state, local, all of those participants. How are they all going to work together related to these kinds of issues? It's going to establish the priorities for these implementation actions; possible funding issues for these implementation actions, those considerations related to budget requests, for instance, for BLM. It's also going to involve the public again. You're considering the plan, you've worked with those members of the public and your collaborators and you're going to be getting their support, it's going to address their needs. Again, you're thinking about this in terms of multiple use and sustained yield.

Well, these multiple users are going to be engaging in the process and you're going to get them involved in helping develop the plan. Well, that's going to get them to support those BLM actions. That's going to get them to be involved, possibly, in these BLM actions. And it's going to basically be the hand off to the future generations of the BLM managers and BLM staff to say, here's the considerations that we did within development of this plan. These are anticipations that we had related to the kind of uses that we see occurring and it's that record that you're creating from that programmatic view of the kind of considerations, the impacts, the monitoring, the measures that are necessary related to the certain resource issues. All of that you're now handing down for future generations to be able to say, okay, we see how these were set up and now we're going to take that and go to the next level.

So the legal effect of the plan. Well, really, it's going to replace the old R&P or MFP, if one even exists within your plan area. Certain decisions from an implementation stand point of that plan, as we talked about, might already be final. It is certainly going to reflect the policies of the state office consistent with the Washington office. And then, of course, on the field office level it's going to be that direction related to those issues. Of course, the plan decisions within the R&P are no longer protestable. That was prior to the signing of the ROD and the protest period process. Once the

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ROD is signed, the protests were resolved, there were no protests, that plan becomes final and it's no longer protestable.

And as we mentioned, there might be subsequent decisions. So you'll have the plan decisions setting up the general framework for management and then you have implementation decisions that are going to be made at a later date, after the plan has been approved and the ROD is signed, that are basically going to be implementing the program that's set up within the plan. They're going to be implementing particular actions that were set up by this resource management plan and the land uses that it basically directs. These type of decisions that are going to be happening on a later basis from implementation of the plan, they are appealable, just like some of the implementation decisions within the plan were appealable, these are also appealable and we've already talked about in another segment, the IBLA process for which folks who don't agree with some of those approvals can possibly appeal.

There is a new guidance out, the instructional memorandum from 2008, which talks about how the strategies for actually implementing land use management plans, these R&Ps, should be made. So there is a process that needs to happen after the plan has been finalized, after there's been an approved plan and the ROD has been signed. BLM actually still has a little bit of work ahead of them related to, well what happens now as far as priorities for implementing this resource management plan. And so you have, basically, a four-step process in charting out the priorities and basically estimating budgets and possible financial funding issues related to what kind of implementation actions and what kind of staffing is necessary. All of those issues that you see as far as this plan implementation within this year, how they're going to happen. You're going to be submitting that and it's going to help eventually build upon the five year review process, evaluation process, is going to happen with the resource management plan. We'll talk about evaluation of resource management plans in another segment.

Again, these implementation decisions are decisions to consistent with the resource management plan that are going to be those specific actions that, hopefully, are consistent with the plan and this is what we're going to be talking about is trying to evaluate, are they in fact consistent with the plan. Are there other things that need to happen to make sure they stay consistent with the plan? And then what kind of NEPA review is necessary? So, you're going basically two different types of review. Is it consistent with the resource management plan and then is it also consistent with the environmental analysis that was in the EIS? Is there additional environmental analysis necessary? It's both of those things that need to be considered before the field office manager will sign off on that implementation decision.

There's actually a good figure that you see on your screen related to screening different land use implementation decisions, seeing how they conform with the land use plan. You can follow that on your own, but it's a good flow chart decision process of deciding if it's consistent, how you might move forward. If it's not consistent, there are different options related to that.

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So how do you use the plan in order to judge your implementation decision and if it's consistent? You're going to say, does it conform with the plan? Does it --- is it consistent with the designations that were set up in the resource management plan? Again, you're also looking at it also in terms environmental analysis. Was there adequate environmental analysis where you say, you know, with approving this proposed action as part of implementation of the plan, the environmental analysis within the EIS that we did for our plan. It covers it; it covers the environmental impacts adequate lead. There's no new information; there's no changes. We don't need to elaborate on those kind of issues related to the environmental effects on the human environment.

So, we can go forward and say, yes, a DNA determination that the NEPA documentation already prepared is adequate. We may be considering if it fits within the categorical exclusion that BLM has listed. NEPA basically provides for three avenues of compliance for any proposed action in front of the federal agency. You can have a list of categorical exclusions where the federal agency says these typically have no significant impacts on the human environment; therefore it fits within this category. You might also prepare an environmental assessment, EA, which would document that either there are significant impacts and that would lead you to prepare an EIS, or if you document within the EA that there are no significant impacts, you'd prepared what's called a finding of no significant impact or a FONSI.

If you have to prepare an EIS, it's a longer process consistent with the process we've already discussed in other segments. You do a draft, look at alternatives, respond to comments, issue a final, and eventually sign the record of decision. One of these four options might be appropriate when BLM is deciding, do we approve this action implementing a certain aspect of the resource management plan that we've set up.

One of the things you're going to use, the final EIS with the approved plan, you're going to use that in terms of tiering. NEPA sets out a process to create a more efficient environmental analysis where first on a programmatic level you're looking at large program wide impacts related to different resources. You're looking at the broader considerations related to interactions between different activities within BLM's planned area and possibly outside of BLM's planned area from other federal agencies, state agencies, local agencies, as well as tribal activities.

And all of these considerations, hopefully, were included within your final EIS on your approved plan and those kind of considerations addressed it again in that big picture way. There may have been certain environmental analysis that wasn't yet ripe for analysis because you didn't have the detail; you didn't have the specifics in order to dial down to the level of acres of impact that might happen to a certain species. You might have only looked at in a more qualitative analysis. So you might take that programmatic analysis and say, well, based on that basic general effect, now let's tier from that and talk about specifics of an implementation decision and what kind of environmental analysis is necessary based on that larger programmatic approach.

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So the tiering basically says once you've analyzed the big picture issues, NEPA allows you to incorporate that by reference within your later NEPA analysis and not have to repeat any of it. It allows you to basically say we've already looked at that. We've already looked the big picture issues related to those impacts. We've already looked at the big picture issues related to alternatives and now we're focusing just on these sites specific things or these things that were not within the scope of the program analysis that was done within the EIS and the R&P.

You have a graphic representation here on the slide of thinking about it in terms of you have the large program area, the planning area where you're looking at the resource management plan and the effects associated with it. And then now, you might be looking at just one specific action within that plan area, hopefully looking both again, is it consistent within the resource management plan and then separately, also, looking to say, what kind of additional environmental analysis is necessary. You're going to list that out, again, making this a transparent process where folks will be able to see the road map in going from the programmatic analysis that was done to the site specific analysis. Why aren't you looking at the cumulative for the site specific analysis? Well, we're tiering from this program that already looked at it. NEPA says we don't have to do it again. And that's one of the efficiencies related to the NEPA process within this concept of tiering.

When you're doing tiering, you're looking now, well, what needs to be included in this environmental analysis? So your parameters for a later analysis can be as detailed as an EIS, possibly, focused on those sites specific particulars. Or it can be a documentation of NEPA adequacies saying, you know, there is nothing new. Everything really was addressed in that programmatic EIS. There's nothing else that needs to be analyzed. So you're trying to decide do I have sufficient information; do I need more analysis? So first, when do you need to do an EIS, tiering from that programmatic EIS?

Well, it's when there's a significant impact that wasn't adequately addressed in the prior EIS occurs. You might not have anticipated a particular issue once you dialed down to that site specific impact study. And so you're going to do your surveys, you're going to quantify in more detail the kind of impacts, if the programmatic EIS didn't address it or only addressed it qualitatively and now you have more specifics and you decide after looking at CEQ's definition of the word significantly, which is in their NEPA regulations in 40 CFR 1508.27, you look at those 10 criteria related to the intensity of the effect, deciding are there unique characteristics that weren't fully addressed or weren't addressed in the program EIS.

Is there a unique or unknown risk associated with this action that weren't address in the program EIS? Are there cumulative impacts that weren't addressed in the program EIS? Or are there specific resources related to cultural or endangered species or, again, possible consistency issues with state or local or other federal environmental protections that weren't addressed in the program EIS. All of these considerations

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would feed into, do we do an EIS tiering again as much as you can from the larger programmatic EIS, but do we do a more focused EIS on this particular implementation action? If not, you might be doing, as we've talked about, an environmental assessment that would support the FONSI, so you do an analysis saying, well let's take a look at these potentially significant impacts and decide are they in fact something that would trigger an EIS or are there measures that we can incorporate into the action and approval process that would ensure that it doesn't have impacts that would trigger the need for an EIS. Does it, in fact, fit under one of the categories listed for the categorical exclusions by the BLM and the Department of Interior?

All of those considerations are important to decide if we don't need to do an EIS, what other level of NEPA compliance is necessary.