

**6.0 QUESTIONS & ANSWERS**

>> C. Humphrey: Okay. We've been doing a lot of the talking. I would even say we've been doing all of the talking. Now, it is your turn! This is our favorite part of the program. From what I understand, it is your favorite part because it is unscripted. This is where the panel will answer your questions and we're just sorry that Neil Kornze and Gordon Toevs aren't here to answer questions. So the phone number, the FAX number and the e-mail or text address are on your screen now. For those of you on the listen-only bridge, the phone number is 877-862-5346. The FAX number is 602-906-5701. And the address for e-mails and texts is blm\_tc\_telecast@blm.gov. Let's see. What I'm going to do -- we've gotten a lot of faxes and e-mails and stuff throughout the program, a lot more than we usually do at this point. So I'm going to jump right into them.

This first one is an e-mail from the Office of the Secretary and the question -- I think this question would be for Jim.

>>J. Perry: uh-oh.

>>C. Humphrey: So Jim, **what can field office and project managers do to best document the rationale for considering or requiring offsite or out-of-kind mitigation so that the BLM's analysis and decision-making can withstand litigation risk?**

>> J. Perry: Okay. Well, I like to say: NEPA, it is what we do. And NEPA is the process for documenting our rational and making certain we're not arbitrary and capricious. We need to use the NEPA document to logically and sequentially address our thought process. I encourage people to use the alternatives process. [1] Look at the proposed action. Look at the impacts from the proposed action. [2] Look at an alternative that looks at necessary and effective onsite mitigation, and evaluates the impact so that necessary effective onsite mitigation [sic]. [3] Look at an alternative that looks at addressing residual impacts from that onsite mitigation and addressing the residual impacts offsite - the unmitigated impacts offsite. Then you can look at those three alternatives and you can weigh for yourself the impact of those alternatives and hopefully the manager will be able to document in the decision why they selected the alternative that has the best management practices for onsite mitigation, and the best offsite mitigation, and document why that's necessary.

>> C. Humphrey: thanks, Jim. I hope that answers the question. The next question -- we got this from -- I think we got this from Utah and we got it before the broadcast. We got it a couple of weeks ago. This one is for Mike. So, Mike, **the groups were not comfortable that offsite mitigation in the Gold Butte ACEC were durable or additive. Can you tell us what their concerns were regarding this?**

>> M. Dwyer: Sure. I'll do my best to speak on their behalf, you might say. Their concerns were that what we had proposed and where we proposed it at Gold Butte didn't meet the tests of durability or being additive. Let me explain those. In terms of -- I'll take the additive part first. They were concerned that because Gold Butte was already an ACEC, that the Bureau of Land

Management was already obligated to protect that area and restore the areas that needed to be restored. So they didn't feel like the proposed actions in an existing ACEC were necessarily additive.

On the durability side, their concerns are that we have some unauthorized activities that are going on in the ACEC—a grazing trespass, and some unauthorized off-road vehicle use. So they're concerned that making a big mitigation investment of restoration, that it might be disturbed by trespass cattle or off-road vehicle use and might not be durable. So those were their concerns; very good concerns.

I think our response is that designation of an ACEC in some ways is a bit of an unfunded mandate that doesn't stop us from doing it, but it doesn't give us any extra money to execute the kinds of actions there. So as Gordon said in his presentation, it wasn't a unanimous decision but it was a majority decision that I think the groups ended up supporting in the end. So I think those were their concerns.

>> C. Humphrey: Okay, thanks. All right. The next one is for Kerry. And Kerry, you haven't heard this question yet. So -- this question is from the DOI Office of the Solicitor, Division of Mineral Resources. The question is: **the BLM often works out additional design features and mitigation with the project proponents during the development of the draft NEPA document. The solicitor often recommends that the original proposal appear as the proposed action and that the BLM suggestions during scoping or development of alternatives appears as a separate alternative. Does the CEQ guidance address this issue?**

>> K. Rodgers: The CEQ guidance does draw a distinction between design features which are framed as part of the proposed action and then mitigation that's considered an alternative. And this is an area that I'm glad you mentioned. It is one where I think we'll be looking at the BLM NEPA Handbook in light of the more recent CEQ guidance to make sure that they line up. So I think the CEQ guidance definitely sheds light on this question.

>> C. Humphrey: Okay. Thanks, Kerry. All right, I think this one might be for Gloria. And this one is -- it is a -- I think it is a text but it doesn't say who it is from or where but the question is **Would wash stations on non-BLM lands, but partially funded by the BLM, fit into the regional mitigation strategy for invasive species management?** Oh, yes, it does. It is from Anchorage Field Office. Sorry about that.

>> G. Tibbetts: Yeah, what's great about this new interim policy is that it's really diverse. It can be used on small scale projects, such as something like a wash station, all the way up to a huge regional project like Mike described in the case study. I think the thing to keep in mind with this is if you have several projects in an area where they all can benefit from a single wash station or a single resource like that, that's a great way to remove any duplication between all of the different projects.

You'll just need to keep in mind some of the other aspects of it to make sure that whichever projects are going to be using this in particular, aren't far enough from the project where they

would then pick up some of the invasive species on their way back to their project areas. As long as you have taken care of all of the stuff ahead of time and thought it out, that's a great application of the regional mitigation strategy.

>> C. Humphrey: Great. If these answers aren't answering your questions, you could always FAX us back and say that's not exactly what I meant. But I think we're getting them.

I think this one will go back to Kerry again. Kerry, this one is from Utah, that we got before. It says something about federal agencies are asking us to consider mitigation when the impact analysis doesn't indicate a need for mitigation. So **what's the BLM's responsibility to consider mitigation in these situations? [when the impact analysis doesn't indicate a need for mitigation]**

>> K. Rodgers: The BLM needs to make sure that mitigation is necessary and effective and if the BLM feels that mitigation is not necessary, the authorized officer is not obligated to include that in the decision document. However, it is important to document and explain the rationale for the decision.

Also, in working with other agencies and other stakeholders, it is helpful during the process to make sure that it is clear what their concerns and interests are and try to explain that and talk with them as well as with the project proponents. In addition, if there are the same types of requests coming up frequently across projects with similar resources or landscapes, it may be worth exploring whether an agreement with the other agency or agencies, such as an MOU, would be useful to outline a common approach to mitigation, again, where differences in approach come up again and again.

>> C. Humphrey: Okay, thanks, Kerry. I just want to remind you that you can always call in, too. Then we could have a dialogue. Make sure we answer your question. The phone number is 877-862-5346.

So this question is from Boise. And this might be for Jim and Mike both. **How will the regional mitigation strategy interface with the National Historic Preservation Act?**

>> M. Dwyer: Hmm. Okay. Go, Jim.

>> J. Perry: The National Historic Preservation Act protects a lot of resources that we consider to be important resources. And as such, there may be some cultural resources or Natural Historic Trails that we should be protecting with offsite mitigation if we're going to impact them onsite and we can't adequately address those impacts onsite. Now we did not write program-specific guidance into the Regional Mitigation Manual because then it would be 100 times bigger than it is. We put a lot of examples in there. If you can think of more examples of how resources could benefit from offsite mitigation (regional mitigation) feel free to send those into us when you send in your edits and comments by January 17<sup>th</sup> (on the manual).

>> C. Humphrey: That would be great. And then there is another part to this question about **how**

**do you balance resources when a proposed mitigation site provides acres of sage-grouse habitat but has an adverse effect on a National Historic Trail, archaeological site, traditional cultural property or cultural landscape of significance to a tribe?**

>> J. Perry: The offsite area where you're improving sage-grouse habitat would have all of that?

>> C. Humphrey: I think so. I think so, yeah.

>> J. Perry: Well, I mean those are all important resources that we have to be aware of. Maybe that's not the best place to improve sage-grouse habitat or when we do approve sage-grouse habitat, at that offsite location, we do it while taking into account all of the other resource values, making sure we identify and mitigate the resource values also with our mitigation. I mean when we analyze mitigation in the NEPA process, we also have to analyze the impacts of implementing the mitigation. If it would have impacts on cultural resources, we need to address that, too.

>> C. Humphrey: Okay, great. All right, this one might be for everybody. This one is regarding outside BLM's authority. It's from the Public Lands Advocacy. So **is BLM required to discuss the projected impacts in detail which need to be mitigated and the expected improvement specifically? Please explain mitigation on private lands compared to federal lands and the BLM's authority to require it.**

>> G. Tibbetts: Maybe I can tackle this one first, Cathy.

>> C. Humphrey: Okay.

>> G. Tibbetts: So when we're talking about implementing mitigation, it is important to address the impacts in the NEPA document because you want to make sure that you can adequately determine the effectiveness of that mitigation in compliance with the CEQ Regulations. However, it is not an obligation necessarily to disclose all of the impacts or do a full NEPA analysis in the NEPA document that is actually implementing the project. However, before you could implement that mitigation, that NEPA analysis would need to take place. While it doesn't have to occur in the original document, it would have to take place.

>> C. Humphrey: Okay.

>> J. Perry: I would like to address the private land issue. I think there might be some concern with folks when they hear okay, we're going to perform this mitigation to benefit private lands. When we talk about this, it is always with a willing private landowner. The private landowner has to have bought into this. And a lot of times, there's money involved—conservation easements, tax breaks. There's special assistance for planting and restoring habitats on a person's property. It is for altruistic purposes, reasons why a private surface owner would want to participate in this, too.

But generally, it is not the BLM doing these actions on the private surface. It's this requirement for a project that creates impacts on BLM. Those impacts would be mitigated offsite. A mitigation

management team would be identifying on a regional basis where is the best value to perform these offsite mitigation measures. In a lot of cases, believe it or not, it is on private lands. Lands that may have been degraded or used for other purposes and that if we have a conservation easement there, those are the lands where we can really do the best job of restoring the habitat, particularly if we're talking about connectivity corridors that connect to BLM habitats that need to all be connected.

>> C. Humphrey: This regional mitigation team, that's not just BLMers, is it?

>> J. Perry: No. It is made up of all sorts of folks: NGOs, other government organizations, local State Fish and Game people. It would be a team that would decide what, where, when; they would also help manage the funding and such.

>> C. Humphrey: Okay. I think that clarifies a little bit. Hopefully that does for our viewers. All right, we only have about five to seven more minutes. We have a couple more questions here I think. This one is for Gloria again. This one is from Anchorage District also, from a different person. **The CEQ Regulations require that we identify all potential mitigation measures regardless of jurisdiction. However, it is often viewed as the BLM overstepping of authority, federal overreach. Even though as Kerry noted, these are not commitments we can actually require in our decisions. Have you encountered this or similar perceptions and what suggestions can you offer on how to deal with this?**

>> G. Tibbetts: I haven't necessarily dealt with the federal overreach perception. However, I am aware that that's a definite possibility. I have, through a couple of the NEPA documents that we've worked on, discussed the potential for mitigation outside the BLM's jurisdiction. And a couple of things are important to note:

First, it is important for us to identify any feasible mitigation even if it is outside our jurisdiction because NEPA is important as a decision-making tool and also as a disclosure tool for the public. Of course if there is potential mitigation out there, that would improve the project, it is important for us to identify that and disclose it. However, the best-case scenario would be to work with whatever agency would be responsible for implementing something like that and make sure it is feasible for them. So we're not just throwing out a bunch of possibilities that really could never occur.

Another important note I should mention is to separate those measures in your NEPA document from the ones that the BLM would commit to in the final decision. It makes for a much cleaner decision in the end when you can reference a specific section in the NEPA document of what is being committed to and separate those measures that are not in the BLM's jurisdiction so that it is clear the decision-maker is including one set and not the other set. It is also helpful in the NEPA document to even identify those measures as suggested and outside the BLM's jurisdiction so that the public is aware from the outset.

>> C. Humphrey: That's a good point. All right, we have a call and it is about the Draft Manual so it is probably for Jim. I didn't quite catch where -- go ahead. Are you there, Sky?

>> Caller: Yeah, I'm here.

>> C. Humphrey: What's your question?

>> Caller: Hi. Thanks for taking the call.

>> C. Humphrey: Sure.

>> Caller: I'm here.

>> C. Humphrey: What's your question?

>> Caller: Okay. So just wondering if the -- **if the Draft Manual actually identifies the need for RMP amendments to support offsite mitigation.** In particular, we have threatened and endangered species and **there is a question whether withdrawal of minerals is needed to ensure protection of those species.**

>> C. Humphrey: Okay. Jim, do you want to --

>> J. Perry: Um -- well, regional mitigation doesn't necessarily have to be supported in the land use plan. It could be a project-based decision or multiple projects; oil and gas development coming your way; solar, wind coming your way; that sort of thing. Dry Lake wasn't necessarily supported in the Resource Management Plan. They did this separate mitigation strategy, actually outside of the NEPA process, an umbrella EIS. They followed up with a mitigation strategy. When they actually get into project work, that's when they will be running their regional mitigation strategy through actual NEPA analysis for that project.

For greater sage-grouse, we are revising our plans and we have a number of sage-grouse plan amendments. And there, our plan is to incorporate a mitigation strategy through the plan amendments so that will be supported in the planning process. So we wrote the manual with the flexibility to go either way.

>> C. Humphrey: Okay, great. The caller hung up, so I hope that answers his question. All right, this next one is from Mike. We only have a couple more minutes. If we're requiring -- this one is in Nevada. **If we're requiring reclamation at the end of a lease, why would we require offsite mitigation at all?**

>> M. Dwyer: That's a great question because it seems like we're getting two for one there. At least in the case of the Dry Lake Solar Energy Zone, it is in the Mojave Desert. While it may look like wasteland to some people, it is a viable ecosystem that takes a very long time to recover. Centuries, actually, if left to its own devices. So really for all practical purposes, something that involves very large and very extensive disturbances will take hundreds of years to come back. And so it is a way of achieving our ambition of allowing for multiple uses of the public lands without

permanent impairment of the land by compensating for the loss of those ecological services.

>> C. Humphrey: Okay, great.

>> J. Perry: Absolutely. I would like to add to that in that we're having impacts right now. In a lot of cases, we need to address the impacts right now. If you go into an area and develop, and species are going to be declining, we need to be offsite, improving that habitat for those important species so that we have essentially a "no net loss" if that's what our plans call for.

>> C. Humphrey: Okay, this next one is going back to you, Kerry. **How do we know whether we have enough analysis in our NEPA document to be able to demonstrate the effectiveness of the proposed mitigation?**

>> K. Rodgers: Well, the BLM is required to analyze and disclose the potential impact of the proposed mitigation in the NEPA document in order to support the resulting decision. The same standards that apply to the rest of the NEPA analysis generally apply to the analysis of the environmental consequences.

The 2011 CEQ Guidance provides that in developing mitigation, federal agencies may rely on the federal expertise of their own staff as well as the expertise of neutral outside experts or resources, providing that the outsiders have no financial interest in either the implementation or the monitoring of the mitigation.

In addition, providing for back-up mitigation measures to be implemented if the initial [measures] don't achieve the environmental outcome, and providing for effectiveness monitoring of mitigation that's selected over time, are two additional ways to strengthen the effectiveness discussion in the NEPA document and the demonstration that mitigation actually will be effective.

>> C. Humphrey: Okay, thanks, Kerry. We've got a, something faxed, e-mail, whatever it is, from Elko District from Victoria. I'm not sure who this would go to. **How would a district explain a possible inability to perform residual mitigation and monitoring over time when knowing budget cuts can reduce our ability to make the efforts?** Anybody want to --

>> M. Dwyer: Well, if I understand the question correctly, I would say that as we were working toward a mitigation fee, we actually included costs of monitoring. So that theoretically would not be appropriated dollars. They would be coming from an account that would be used for offsite mitigation, so at least that's one way to hopefully be able to carry out that obligation, even if budgets go up and down a bit.

>> C. Humphrey: Or maybe like if -- would you be able to use your partnerships to help fund some of that too?

>>M. Dwyer: Absolutely.

>> C. Humphrey: All right, we only have -- were you going to add to that?

>> J. Perry: Even as Gloria had mentioned, some of the big super projects, maybe we should be requiring third party contractors to do the monitoring for us--funded by the company, by the project.

>> C. Humphrey: We only have time for one more question and we have about two or three or four other questions that we won't have time to get to. I think we'll post the answers on the KRC website. So this last question for the group, from Anchorage, **please provide an example of offsite VRM mitigation** (visual resource management mitigation). Anybody have one?

>> M. Dwyer: I'll take a stab. We actually determined there were visual resource impacts in Dry Lake, obviously, if you're going to—especially right next to an interstate highway—cover nine square miles with solar panels, there will be a visual impact. And so our response to that was we ended up—and you heard it in Gordon's response, a little bit in mine—that the vegetative community that we're going to try to restore in the Golden Butte ACEC became a proxy for biological resources. If we restore the vegetation, we get habitat and soils and you know, other benefits, ecologically and visually. So we kind of lumped that in. Said right now, you can see the burn scar. You can see the extra road or braided road pattern. By doing the restoration, having successful reintroduction of native vegetation, having that come back, you get multiple benefits, including visual resources. So that's how we treated it in Dry Lake anyway.

>> C. Humphrey: All right. So that's about all of the time we have left for questions. I'm sorry we couldn't get to everybody. We'll answer them online. I want to thank you for your participation. Don't go away yet. We have some fun things to do in the next five or ten minutes.