

## <INTRODUCTION>

>> The Bureau of Land Management presents live from the BLM National Training Center in Phoenix, Arizona, a Planning/NEPA Forum on Purpose and Need.

And now the host of your program, Cathy Humphrey.

>> C. Humphrey: Good morning. Welcome to our latest Planning/NEPA Forum. They are about topics in the BLM's NEPA Handbook. Today's topic is the purpose and need.

Similar to connected actions that we talked about back in November, we are going to encourage you to ask questions throughout the broadcast. We have four or five times for you to ask questions. Our intent is to promote dialogue, get you thinking and we want to help you improve your NEPA skills.

Over the next 90 minutes our panel is going to review what the Council on Environmental Quality (CEQ) regulations, the Department of the Interior regulations and the BLM NEPA Handbook say about purpose and need. Also they're going to discuss examples and the legal perspective so that you can better understand the guidance. We are going to give you several opportunities to ask questions, as I mentioned, four or five opportunities.

Speaking of questions, we'd like to thank everyone who sent in responses to the prework. We probably got, I think, 55 or 60 responses and that's pretty good. It helps us gauge your level of understanding, your experience and it helps us understand where your trouble spots are, and I feel like we're going to address those questions that you've got.

If you want to interact with our panel, there's several ways you can do it. You can use the push-to-talk microphone like you were just practicing with Chip. Don't forget, as Chip mentioned, you push the button, say your name, where you're calling from, and when you're pushing the button, you can't hear if other people are calling in, so if you see me do this time-out, then release your mic and wait for me. I'll call on the first person I heard.

If you're a little bit shy about the push-to-talk, you can phone us, you can fax us, you can e-mail us your questions and we've got the numbers and the e-mail address on your screen. Before I introduce our panel, I would like to say a special hello to our friends upstairs. They're in the middle of an EA class and watching the show and we will be counting you to ask us a question or two.

Now our panel... On my right we have Richard Hardt, an ecologist with the Eugene District Office in Oregon. He was on the BLM NEPA Handbook team. Many of you know him, he has been a frequent guest. Welcome back.

>> R. Hardt: It's great to be here. Thanks, Cathy.

>> C. Humphrey: Edy Seehafer is a planner in the Barstow Field Office in Barstow, California. She has been working in NEPA compliance for BLM for more than 15 years. Usually Edy is on the other side. She asks us a lot of questions on these previous broadcasts. It's nice to see you on this side of the

camera. Welcome.

>> E. Seehafer: Thanks, Cathy. It's a pleasure to be here with you and Richard.

>> C. Humphrey: And we have two additional panel members joining us live via videoconference from Washington D.C., Peg Sorensen is the BLM's national NEPA coordinator. She works in the Division of Decision Support, Planning and NEPA. Peg participated in the revision to the Departmental manual and the NEPA Handbook. How are you doing, Peg? How is the weather?

>> P. Sorensen: The weather is not bad. It's trying to be sunny although the clouds are hanging around.

>> C. Humphrey: Finally we have Elizabeth Carls. She's an Attorney-Advisor from the Office of the Solicitor, Division of Land and Water Resources. She's back there sitting next to Peg. Elizabeth provided assistance and advice during development of the BLM's NEPA Handbook. She has been with the solicitor's office for five years. You might recognize her. Hi, Elizabeth.

>> E. Carls: Hi, happy to be here.

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#### <DIFFERENTIATING PURPOSE FROM NEED>

>> C. Humphrey: That's our panel. Now, let's get started. Richard, start us off. I'm sure everyone read the prework, but remind us a little bit about what the CEQ regulations say about purpose and need.

>> R. Hardt: Cathy, the CEQ regulations direct that an environmental impact statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives, including the proposed action. The CEQ regulations also direct an environmental assessment shall include brief discussions of the need for the proposal. That's all that the CEQ regulations tell us about purpose and need.

>> C. Humphrey: That's certainly not very explicit, but fortunately the new-ish DOI regulations have more. Tell us about them.

>> R. Hardt: The departmental regulations help explain a few points. First, they explain that we can describe the purpose and need as distinct aspects. In this formulation, the need for the action can be described as the underlying problem, issue or opportunity to which the agency is responding with the action. The purpose may refer to the goal or the objective that the Bureau is trying to achieve.

>> C. Humphrey: The regulations don't require us to present purpose and need as separate entities, but what are your thoughts about separating out the purpose from the need?

>> R. Hardt: I think that describing the purpose and need separately can help us articulate why we intend to take action. The need can be thought of describing where we are right now and the purpose is where we want to be. Both concepts are necessary to help understand why we should take action.

>> C. Humphrey: That's a good way to look at it. A lot of the comments we got before the broadcast, this is one of the biggest problems people had, is differentiating what's the purpose, what's the need, what's difference. So let's see, if they try and describe the problem or the opportunity, that's where we are now, that's the need, and then they describe the goal or objective that we're trying to achieve, that's where we want to be, then that's the purpose. Yeah, that's a good way to think about it. Peg, do you have any thoughts about this?

>> P. Sorensen: In the office we review lots of documents that are produced by BLM and other agencies. In those documents, a lot of them separate out these two thoughts. They clearly make the distinction between the two. It makes the document easier to read for us on the reviewing end of it. I think it makes it easier to understand, and I get the sense from those that are writing, other agency folks, it's easier to write as well. So we just have to learn through practice how to write these things.

>> C. Humphrey: Thanks, Peg. Speaking of practice, we have an online course on purpose and need. It recommends writing the purpose and need as separate concepts. If you want to try that course out, it's course number 1620-28, and you can find it through DOI Learn. You need to register for it online.

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<DIFFERENTIATING AGENCY FROM APPLICANT PURPOSE AND NEED>

>> C. Humphrey: You know, Richard, another source of confusion for many of our participants is differentiating between the BLM's purpose and need and the applicant's purpose and need. What do the Department regs say about that?

>> R. Hardt: The Departmental regulations explain that for an externally generated proposal we must describe the agency's purpose and need as the purpose and need for action. Of course, we should consider the needs and goals of the applicant as well as the public interest, which may be described as background information.

>> C. Humphrey: Now, wait a minute. Background information. I don't know, help me understand that. Lots of people don't like that concept. If you just have their information as background information, then, you know, help me out, it doesn't give them (applicants) consideration.

>> R. Hardt: Of course, we have to consider the applicant's needs as we describe the agency's purpose and need. The applicant is asking BLM to do something. If it were not for the applicant's need, there would be nothing for BLM to do. So we have to be cognizant of their needs and should explain what they are in the NEPA document, but it is the federal action that triggers NEPA analysis. It is alternatives for federal action that we need to look at. So the purpose and need for the action as described in the NEPA document has to be the purpose and need for agency action. I think some examples might help make this clearer.

>> C. Humphrey: That's pretty helpful. If everybody was able to work on the scenarios part of the prework, this is the right time to shuffle through your papers and get the answers out. We're going to talk about the scenarios throughout the broadcast and you can compare your answers to ours.

When we post this program to the Knowledge Resource Center we are going to include a transcript and -- so don't worry about trying to capture everything you see. We're going to give you lots of examples. If you could just listen now, then when you watch it again on the KRC, then you can look at what we're saying.

Edy, the first scenario from the prework illustrates the concept. Do you want to go over that one?

>> E. Seehafer: Certainly. Thank you, Cathy. Well, the first scenario is a request for access to a patented mine. Question 1.1 asks whether it's true or false that the BLM and the applicant's purpose and need are the same. I would say the answer is false because the applicant's purpose is to continue to operate his zeolite mine and his need is to satisfy the county and state so he can continue to do so.

On the other hand, the BLM's purpose, or our goal, is to provide the applicant adequate access across public lands. To do so on Mount Ruby Trail to the patented mine. And to make sure it does not unduly impact downhill land owners or other environmental resources consistent with title 1 of FLPMA.

BLM's needs or opportunities are to bring Mount Ruby Trail into compliance with FLPMA through issuance of a right-of-way for access across public lands, which it currently is not, and to comply with current BLM and local road standards for public safety and protection of watershed values.

Question 1.2 and 1.3 ask whether the EA needs to identify alternative routes to Mount Ruby Trail for upgrade and why or why not. The answer again is false or no. The reason is because the purpose and need statement which we generated was appropriately focused to address the specific goals and issues at hand. Mount Ruby Trail is well established; it's approved under an existing plan of operations and it's unlikely that an alternative route or method of access to either meet the applicant's or the BLM's needs is identified.

So the applicant needs can indeed influence a purpose and need statement. In the above example, for instance, request for access across public lands, if the mining operation was new, if it was smaller, if it was in the exploratory phase, it may be appropriate to look at access other than Mount Ruby Trail. Applicant considerations in developing your purpose and need statement might be: why is the access needed? What are the engineering considerations? What sort of public restriction to access is required? Are there existing authorizations? What is the legal basis for consideration of the applicant's needs?

>> C. Humphrey: Elizabeth, do you have any thoughts on this from a legal perspective?

>> E. Carls: Thanks, Cathy. If I could just comment on this issue of the applicant's interests as background information, there seems to be a little bit of confusion about this point. As Richard noted earlier, it is, after all, federal agencies who are subject to NEPA. The goal of NEPA is to inform agency decision making about the environmental consequences about the actions these agencies take. Therefore, the purpose and need is the agency's purpose and need.

But when the handbook talks about the applicant's interests, I'll borrow a phrase from my mother, I like to think about these interests as the applicant's needsies and wantsies. They provide as we say background information. They provide a basis for the agency to formulate its purpose and need but they are not as a technical matter the agency's purpose and need. Now, this doesn't mean that the agency should ignore them. In fact, the Tenth Circuit has remarked when you have an external applicant proposal, agencies are precluded from completely ignoring a private applicant's objectives, and by way of comparison, the Army Corps of Engineers regulations say every application to an Army Corps of Engineers' permit has both an applicant's purpose and need and a public purpose and need.

The Department of the Interior takes a more purist approach. The purpose and need technically is always the agency's purpose and need, and in this way, the Department hopes to ensure that agencies' formulations of their purpose and need are not too narrow or focus on the wrong thing and, therefore, the range of alternatives is not too narrow or includes inappropriate alternatives.

>> C. Humphrey: That sounds pretty clear Elizabeth. Basically it boils down to this: it's the agency's purpose and need that must be informed by the applicant's purpose and need. They don't -- we don't ignore their needs but they don't drive it either. I think that makes it clearer. I know upstairs in that EA class that was a point of confusion for them.

We've been talking for a few minutes about a couple things, and we'd like to take some time to see if you need further clarification, if you have any situations you would like to run by the panel. We're going to cover other aspects of purpose and need. For now if you could focus your questions on distinguishing the purpose from the need and distinguishing the BLM's from the applicant's purpose. So you can either push-to-talk, call, fax, e-mail. You can't Twitter, you can't tweet. We don't do that. But any of the other options are good. Any questions out there? Any questions on purpose versus need, applicant's versus the agency's purpose and need? Did I hear somebody push in? I thought I heard an echo. We did have a question from before. Did any of these cover that?

>> R. Hardt: I think we have an e-mail question here.

>> C. Humphrey: Yeah, we got one from yesterday, a question from Miles City, and the question was -- actually we got it in the prework: [How do I address the need so it matches the purpose?](#) Anybody want to take that one?

>> E. Seehafer: Well, I'll start. First, I think that you'd want the purpose to match the need because, remember, that the need is where you're starting from. This is the existing situation, current conditions, the issues, the problems you're trying to resolve. So I'd say first of all that you need to flip that around. Secondly, if, for instance, you've been given a purpose statement that doesn't match your needs, then you probably need to go back and revisit that purpose statement with wherever you obtained it from, say, for instance it was your manager, and see if they can share with you some sort of why. That's how they focus the purpose statement, because it may well be that the purpose statement needs to be refocused or they may have knowledge of needs that you don't have knowledge of.

>> C. Humphrey: I don't know if Miles City is on. I didn't hear them check in. Hopefully that answers your question.

Since people are being kind of quiet, why don't you let me know if now it's very clear. Because probably I would say 60% or more of the comments that we got in the prework said that they were having some issues with purpose versus need, applicants versus agency's. Because I need to know you're all out there.

>> E. Seehafer: And that we're not alone.

>> Participant: We're here.

>> C. Humphrey: So do you understand what we're talking about?

>> Participant: I'm sorry, that was a test from Barstow.

>> Participant: Phoenix NTC here.

>> C. Humphrey: So, Phoenix NTC, is it clear to you now, purpose versus need, applicant's versus agency's?

>> Participant: I think that's clear. I did have a question about how we could present the need.

>> C. Humphrey: Tell me more. How can we present the need...

>> Participant: A project that we're working on here in Phoenix, we have made a list basically of our issues that are driving our need. [Is it inappropriate to use a bulleted list to make it more clear and concise?](#)

>> C. Humphrey: Do you want to take that one, Richard?

>> R. Hardt: Sure. I don't see any problem with using a bulletized list. What we're looking for here is an unambiguous statement about what are the problems or opportunity you're responding to. I like them to be very short. So bulletizing them certainly is not problematic for me.

>> P. Sorensen: We agree.

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**<ROLE OF PURPOSE AND NEED>**

>> C. Humphrey: If there aren't any other questions we could move on because we do have several other opportunities for you to ask questions. So we'll just move on. Now let's talk about what the NEPA Handbook tells us about the purpose and need. Richard, does it say anything different?

>> R. Hardt: Well, nothing different, Cathy. It helps out with a few clarifications and helps describe the role of the purpose and need. First, the handbook reminds us that it's the purpose and need for the action you are describing, not the purpose and need for the document.

>> C. Humphrey: I used to see that a lot, where people said, the purpose for the EA, the need for the EIS, but I'm not seeing that quite so much anymore. What do you think, do you think people are getting the concept or writing them more hidden?

>> R. Hardt: I definitely think we're making progress but I still see too many in which we're really talking about what the purpose of the process is as opposed to focusing on the action and I think it's very helpful here to think about the verb you use when you say what the purpose is. If the verb you use is something like evaluate or consider or analyze, then it probably isn't really focusing on what the purpose for the action is. The verb should be related to the action that affects the human environment, the thing that's going to trigger NEPA, and so think about that verb very carefully.

>> C. Humphrey: Probably for the internal actions, it's probably easier... build, harvest, create. But the external ones is where it gets a little tricky, I think.

>> R. Hardt: Right.

>> C. Humphrey: This is a good way to think about it, tying the verb related to an action in the human environment.

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### <LENGTH AND SPECIFICITY>

>>C. Humphrey: Another topic that has caused some confusion...in the handbook it says that the purpose and need should be brief, unambiguous, as specific as possible, yet it seems like these days people are adding more and more and more to their purpose and need statements because they want to be sure they've covered everything. I've seen purpose and need statements that are a couple pages long. That doesn't really fit with the guidance. What are your feelings about the length of a purpose and need statement?

>> R. Hardt: Cathy, no matter how long that background or explanation might need to be, I like to see a simple, definitive statement. The purpose of the action is to blank something. The need for the action is to... something. You should always be able to state the purpose and the need in at most a few sentences. But often you're going to need to explain the basis for the purpose and need to be able to show why the purpose and need statement is not arbitrary, and for complex actions, such as Resource Management Plans or national programmatic, it might take several pages to explain the basics -- I think there's a real danger in writing too much that you will create ambiguity.

I like to see that purpose and need statement be as short as possible. To help out with this, the handbook recommends to the extent possible you construct the purpose and need statement to conform to existing conditions, policies, regulation or law. And the purpose and need for an implementation action is usually going to be related to achieving the goals and objectives of the RMP.

You should try to reflect in that your purpose and need statement.

>> C. Humphrey: What you're suggesting is that the purpose and need should be, if you can, about one sentence each. The background can be longer, but it depends on the complexity of the action. As we know -- oh, and it can be general, it can be specific, but it just needs to be unambiguous as to where we are now (the need), and where we want to go (the purpose). As we all know, it's really hard, much harder to write short, concise sentences than it is to write longer ones. I like to write the big wandering paragraph and then shorten it down.

We're going to talk about the second scenario, but first of all, we have -- I heard we have a call on line 1. Let's see who this is. Do you have a question?

>> Caller: We can't hear you in chalice.

>> C. Humphrey: Can't hear us in chalice. I will pass that comment on to our Director and she can help you out. Can you hear us at all? We will take care of it later. Thank you. All right.

>>C. Humphrey: So, Peg, how about if you discuss the second scenario from the prework.

>> P. Sorensen: Okay. If you all have the second scenario in front of you to review, because it's too long to put up on the screen, we didn't want to put it up there, it is an excerpt from an RMP amendment. It is for you. Your goal or your task was to edit the purpose and need that's in that scenario so that they are each one sentence. One sentence for the purpose, one sentence for the need. Cathy, did we -- I understand we got some responses? Would you like to read one of those?

>> C. Humphrey: Sure. We got a few of them and we found one that was pretty concise. So I'll read that one. This is what they said for their purpose statement: the purpose is to define management practices that will provide sustainable habitat for the lesser prairie chicken and sand dune lizard. That's a pretty concise purpose statement.

And now the need statement: recent changes in resource demands and uses on public land and changes in rangeland health have necessitated the need to identify management practices that will better ensure conservation of these special status species and their habitats. So we thought those sounded pretty good. Peg?

>> P. Sorensen: I like the -- the purpose statement, I think it's quite well done. I really like that one. If we want to talk about the ones that we -- and compare it, you heard that one, we'll compare it to what we came up with as a panel. So on the screen, we'll show you what we came up for actually the needs statement first. And in our case the need is to address declining populations and habitats for the two species, and to respond to a citizen proposal requesting the BLM establish an ACEC for the special status species in the planning area. So remember, the needs statements are what conditions we have now, or what is currently causing the agency to propose some action, and before we come up with ways to address that need or that problem or issue, we need to state what it is. So that was our need.

Now I'll show you what the purpose is. The purpose that we came up with was to improve the habitat protection of two special status species, while allowing other resource uses and activities to continue within the planning area. So, you see here the idea is to identify what changing conditions we want to bring about. The purpose statement identifies these goals or objectives and how they relate to the problem we need to address through some action.

>> C. Humphrey: As you can tell, the purpose and need that Peg read to you are pretty different than the ones that I read to you from the person that sent it in and the other ones that we got were very different, too. So there's not necessarily a right way and a wrong way. There are many ways you can write these statements. You just think about being concise, unambiguous, getting to the point, figuring out where we are now and where you want to go.

You'll notice that Peg talked about the need first. We always say purpose and need. It helps a lot if you write your need statement first because you're talking about what the problem is, where you are now, before you talk about how you want to fix it and where you want to go.

So now it's time to have a couple more minutes for more interaction. If you have any comments about what we have talked about so far, length of specificity, purpose and need statements, we've had lots of questions and a lot of you said those are challenges to you. Is there any lingering confusion about the length, the specificity? Purpose versus need?

>> R. Hardt: Cathy, we have an e-mail question--[We wrote a need for a grazing permit and IBLA didn't like it. The need for the grazing permits was to help provide an economic return on these ranch operations while providing for proper range management. What did we do wrong?](#)

Well, I think this is -- this is a good one for talking about in the context of the applicant's need versus the agency's need. I'd argue that the economic return on the ranch operations may be very important needsies and wantsies for the ranch operator, but it is not part of the need for federal action. The federal action -- the need is related to our mandate to provide grazing opportunities on public lands. And this is, I think, a good example of how you can get in trouble with formulating the need or purpose incorrectly, is that if the need is relating to providing an economic return on these ranch operations, what are reasonable alternatives? Well, they could be -- turn it into a hazardous waste dump, build a shopping center on the ranch. It isn't linked to the BLM making a decision about whether to permit grazing. That's where our need needs to be articulated.

>> E. Seehafer: I think those are very good comments, Richard.

>> C. Humphrey: We have a question from Havre, Montana on the phone. Are you there? Maybe they're not there anymore. While we're waiting for Montana to come back, We got a question from Arizona, and they want to know, thanks good question, might be a good one for Elizabeth, [what makes a purpose and need legally defensible?](#)

>> E. Carls: Wow! Well, this is something that we were going to touch on a little bit later in the broadcast, but generally speaking, the courts will give deference, if they give deference at all, to the

agency's purpose and need. So as long as you are articulating carefully and fully what the intent of the action is as well as what the management constraints are that you are facing, then you're on the road towards legal defensibility. Now, without more about your particular situation and what circuit you're in, it's difficult for me to say more. I mean, like many things in the law, it depends. But the more particular and concrete and clear you can be, the better off you are generally speaking.

>> C. Humphrey: Does anybody have anything to add or -- she nailed it pretty well.

>> E. Seehafer: Yeah.

>> C. Humphrey: Any other push-to-talk questions out there? The person from Havre, Montana, it sounds like we lost you. If you have your question you can call us back and we'll put you on through. Let's see. I think what we'll do is we'll move on --

>> Caller: Cathy, can you hear me?

>> C. Humphrey: Yep. Go ahead.

>> Caller: This is BLM National Training Center. I actually e-mailed in a question, too. One of the concerns looking at purpose and need in some of these examples is as we define the agency purpose and need, a lot of times I see we're defining it in terms of FLPMA and responsibilities under FLPMA or Taylor Grazing Act. This relates to an e-mail comment I sent out. I don't know if you saw. [One of the concerns is, both the danger of being too broad and too narrow, by defining your purpose in terms of regular law or regulatory responsibility only.](#) You can comply with FLPMA in grazing. That allows all kinds of actions that may not relate to anything that the applicant is after. And there -- also maybe takes away a little discretion on not allowing certain things or modifications to what they're doing.

Let me give you an example. You have a pipeline project from an external applicant. Do they need a 12-inch or 30-inch pipeline? Well, doing a right-of-way -- granting a right-of-way under FLPMA says the BLM's purpose here is to respond to this and grant a right-of-way application based on the laws. That's the example in the handbook. But that tells you nothing about whether you're defining your purpose and need too narrowly or forcing just one alternative, which there is plenty of case law to say that's a bad thing or defining it so broadly that you can't focus in on the least damaging kind of alternative would that still meet the applicant's need. So that's kind of my concern as I see this, and is there a way that we can address that?

>> C. Humphrey: You know, that is a great question. Believe it or not, this person doesn't know what we're going to talk about next, but actually that is the next thing we were going to talk about. So should we just move into the discussion? We'll move into the discussion, and then at the end of the discussion, if you want to let us know if we still didn't answer your question... How does that sound?

>> Caller: That's great. Thanks.

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## <SCOPE (RANGE OF ALTERNATIVES)>

>> C. Humphrey: So we're going to talk about scope now and that's how broad or narrow and how the purpose and need relates to the alternative. What does the handbook talk about?

>> R. Hardt: Well, the handbook explains the very important role of the purpose and need statement is to dictate the range of alternatives because an alternative is not reasonable if it doesn't respond to the purpose and need for the action. So the broader the purpose and need statement, the broader the range of alternatives that must be analyzed. But this question of whether or not a broad or narrow purpose and need statement is appropriate I would say is very much at the discretion of the decision maker. The handbook explains the decision maker has tremendous flexibility in constructing the purpose and need statement.

>> C. Humphrey: So maybe the question that we shouldn't be asking -- we shouldn't be asking should the purpose or need be broad or narrow. Rather, it depends on what problem or opportunity we're trying to address, how do we reasonably want to get there?

So, Edy, our third scenario addresses this; why don't you walk us through it. It's an involved scenario, so when you're done with that, then we'll go back to the class upstairs and see if we've answered their question.

>> E. Seehafer: That sounds great. This third scenario provides an opportunity of an example of a purpose and need statement that gets progressively more narrow as a result of adding constraints.

So in the access example that I talked about before, it was a request for improved road access to a patented mine. It may trigger development of a purpose and need statement that considers very narrowly only the Mount Ruby Trail based on the existing use of the road, current mining activities, and the current level of impacts on that road.

On the other hand, in scenario 3, you were asked to consider a request to improve Mount Ruby Trail for a new communication tower. Question 3.1 asked if it would be appropriate to consider alternatives other than the Mount Ruby Trail access route. In most cases, yes, it most probably would be. The scope of the alternatives in the analysis would be based on the construction of your purpose and need statement. Considerations might include: is the location limit to Mount Ruby? Do you have flexibility on the access routes? Is there flexibility in terms of the methods for construction of the communications site? And what's the level of on-site operational and maintenance needs?

In the absence of other goals, the BLM purpose or goal could be stated as, Provide access across public lands to construct, operate and maintain a radio communications site on private land in section 16 on the top of Mount Ruby consistent with FLPMA.

The need, getting back to the concern here about using laws, would be, To meet BLM's discretionary responsibilities under FLPMA to issue rights-of-way for transmission or reception of communication systems upon or through public lands. In other words, BLM is responsible to exercise its discretion to

determine whether and how access would be granted in this particular case. Recognize that the BLM's need or opportunity is somewhat dependent on the type of communication site. So it may be different in your situation.

This purpose and need leaves open the consideration of many alternatives. Improving one or both of the existing trails in the scenario. Using existing access on one or both trails without upgrade. Identifying a helicopter landing area near the communications site.

Question 3.2 asks you to consider how the purpose and need would change if sensitive cultural and tribal values were identified through where the south access route passes. I would say the need would not change. You would still be meeting BLM's discretionary responsibilities to issue a right-of-way under FLPMA. However, the purpose, or your goals, should be more restrictive. You want to still provide for access to the communication site while continuing to maintain sensitive cultural and tribal values. In other words, you've narrowed your range of options. The south access site may no longer be reasonable because it may not address both goals or may only be considered without upgrade.

Question 3.3 asks you to consider how the purpose and need would change if the Mount Ruby Trail was designated as closed to casual use to enhance habitat for desert tortoise. Again, the need remains unchanged. You're still trying to meet your obligations under FLPMA. However, you may continue to narrow the purpose based on other key BLM goals and further constrain options. Your new purpose might be, Provide access for the communications site while maintaining sensitive cultural and tribal values and while protecting tortoise habitat consistent with the goals of the RMP. This last purpose statement is even more narrow. It may preclude upgrade of one or both roads. It may limit road use to certain times of the year. It may limit road use to nonmotorized vehicles. Or it may limit access to the use of helicopter only.

The purpose and need statement also allows the applicant to find and share ways with the BLM to still meet their needs without having these conflicts. They may actually find additional flexibility to avoid or minimize mitigation that's required. They may be able to use an access method that will expedite their review and avoid consultation or some other issues. They may be able to actually site in an area with fewer resource conflicts. Maybe this applicant can in fact establish line of site to an existing communication network on a less sensitive adjacent peak to Mount Ruby.

>> C. Humphrey: Now, we're going to ask Elizabeth for her thoughts on how narrow purpose and need can be but before we do that, I want to make sure we've addressed -- do you think we've addressed Matt's question about the pipeline and the scope? Maybe we should ask Matt. Matt, if you're still listening, this was part of our discussion on the scope of the purpose and need and how it relates to the range of alternatives. Did that get at your question or do we need to talk more about the specifics of your question before we --

>> Participant: No, I think that's a good example and answers it. I kind of come a lot from the practical standpoint is of dealing with external applicants and that's part of my concern in the first part of the discussion is to get the purpose and need defined tight enough that it's valid, not so tight it precludes alternatives but still gets to the base issue with an external applicant. It looks to me from the example

you just gave, which I thought was a very good example, that it is important to have some background on that applicant's desires and needs so you can hone that in a little more. That was my main concern when I looked at the handbook and saw the example, which was quite a bit broader than the one you just gave and didn't take as much into account, kind of what the applicant's goals are. That addresses my concerns.

I think the example is great and addresses it and I just want to drop back. It does seem apparent you want enough background on those applicant's needs to help you zone in that purpose and need that narrowly. It's much easier to do for an internal proposal because it's all your purpose and need, and with an external proposal, I'm talking with the students here, I just didn't want to get the idea that, oh, you don't even consider what the applicant is after, you just say, we're just responding under FLPMA for a right-of-way application. That doesn't help you zone in enough to define your purpose so you can get rid of alternatives that aren't useful. So having that little bit of background, like you demonstrated, that was very important, and I just want to verify, does that seem appropriate? [Is that correct to have that applicant's background to allow you to narrow this \(need\) down a little?](#)

>> R. Hardt: I think that background often is going to give you some better idea how you can focus the purpose and need statement; and I think, as these examples showed, there will often be constraints from the BLM side--other things we need to accomplish beyond just the mandate we might get from FLPMA, things that are often articulated in our RMP. For example what we wanted to accomplish at the same time constrains our ability to provide what the applicant's looking for. I think it's important to be clear in the purpose and need statement about what those constraints are. But I do want to caution that there will sometimes be a very broad purpose and need because we want to look very broadly at all the possible ways something could be accomplished. I think in this case what Edy is talking about in her examples usually is going to be more appropriate to be narrow like this and articulate those constraints. But I think that there will sometimes be a time when we want to cast our net very widely and think about all the reasonable ways something can be done and really not adding constraints to it up front.

>> C. Humphrey: Elizabeth, I would like to hear your thoughts on how narrow a purpose and need should be and our discussion that we've been talking about, Edy's example.

>> E. Carls: Yeah, I would like to speak to that. And I'd like to jump in here about it Cathy, I know you were talking beforehand about, well, if you have a more narrow purpose and need, doesn't the court complain that you've decided ahead of your NEPA, and I think that the questioner was wondering about this as well when he referenced a court complaining that your purpose and need was so narrow that only one alternative really fit.

We've been talking about the ways in which really acknowledging the constraints that the land manager has to consider is a way of narrowing your purpose and need when that needs to be narrowed. We get this question a lot about, well, aren't you -- by narrowing it this way aren't you deciding ahead of your NEPA. The answer is well, really not necessarily because when you're dealing with an external applicant in particular, they do want certain things, and BLM as responsible land managers do have to consider certain restraints. So you have the intersections of the needsies and

wantsies and real constraints facing the land manager, and crafting your purpose and need is really articulating the decision space within which this intersection takes place.

As long as you can support the constraints, you're going to get that deference that usually the courts will grant a purpose and need statement, because, after all, it is the agencies in the first instance that know best how to carry out their missions. That's why a court ordinarily will grant a certain amount of deference to that. Where you get the courts worrying about things is when you do have too few alternatives. But, as I say, if you support and explain why these constraints are narrowing your alternatives and you articulate your purpose and need to respect that, then you're generally going to be better off.

Another thing to think about is, in Edy's examples, she talks about providing access, and that's a good way of formulating the issue, because if you were to say something like, our purpose is to provide this access, then a court might be more likely to say, hey, you know, you are deciding ahead of your NEPA, but Edy's examples are nice because they talk about providing access with the following 1, 2 or 3 constraints. So the access is more general and the constraints really limit the decision space. So as you see, it's a very, very fine line to walk to characterize what BLM's purpose and need is in any given management situation, and, Peg I know you deal with this in the planning office all the time.

>> P. Sorensen: Yeah, we have -- we look at purpose and need as setting sideboards for what the public can expect the agency to actually look at. So if we -- in regards to the alternative development in an environmental document. So if you set them in a fairly narrow fashion it allows BLM to indicate things that will not be discussed or considered at all -- alternatives.

For instance, a stated purpose might to be provide for nonmotorized access and therefore you don't have to consider an alternative that calls for a trail that's modified to ATV standards. So if you've got something that way, you've already indicated you're not going to really discuss it.

Providing a clear purpose and need, whether it be broad or narrow, also from our perspective in the Washington Office, helps with the protest responses. We do have to do those. Our office has to respond to those. And we get tremendous help from the state offices in doing that. Responding to protests. There are examples which reference back to the purpose and need statement where that purpose and need statement is used to address the protest, the court review or IBLA review, because of the way the purpose and need was written. It helps us do that. As -- an alternative was considered but not carried forward because it didn't meet the purpose and need statement that BLM had outlined.

>> E. Carls: Right.

>> C. Humphrey: I never thought about that, Peg. I never thought about how a well-crafted purpose and need could help you with your protest responses. So that's a good tip.

Elizabeth, I wanted to ask you a question... you had talked about, just to clarify, you had talked about the applicant's needsies and wantsies, and just to clarify, that's the applicant's interests, right? Is that

what you mean by that?

>> E. Carls: Right.

>> C. Humphrey: Okay. All right. We've been talking for quite a while, giving you lots of information. We're going to open the bridge again and see if anybody has any questions and we're going to start. We've had somebody waiting on the phone for quite a while. I think it was Kevin from Wyoming. Kevin, are you there? Is it Kevin?

>> Caller: Yes, I'm here.

>> C. Humphrey: What is your question? Thank you for waiting so patiently.

>> Caller: I'm listening to this, listening to what Richard had to say and developing alternatives and drafting of this purpose and need, and I'm still trying to understand it. Let me give the following example: [wouldn't a purpose statement want to be as concise as possible, and the purpose of this environmental assessment is to analyze the impacts associated with BLM's proposal to build a bridge. The need would be the proposed action as necessary because BLM doesn't have a bridge. I mean, does it have to be more complicated than that?](#)

>> R. Hardt: Yes. There are a couple things there. First, you started with your purpose of the EA, and you're not interested in the purpose of the EA. You're interested in the purpose of the action. You said the purpose of the EA is to analyze. We're not trying to describe the purpose of the EA. We're not trying to describe why we are analyzing things. We're trying to describe why is BLM going to do something on the ground that's going to affect the environment. So -- and it's important that your purpose not be confused with what's your proposed action. If your proposed action is to build a bridge, presumably you're trying to accomplish some broader purpose with that. Trying to provide access to the stuff on the other side of the bridge. I mean, the need --

>> Caller: That's correct.

>> R. Hardt: So you don't want to construct the purpose as the purpose is to construct the bridge. The purpose is to provide access over here because we want to do something there that needs motorized access. Your need needs to relate to what is it over there that we have an opportunity to do that we can't accomplish without a bridge?

>> Caller: I thought the need was the existing condition. So you don't have access so you need to create an access.

>> R. Hardt: Not having access doesn't mean you need to create access. You have some opportunity to do something over there presumably, to manage something that access will allow you to manage. Presumably, your need can talk about either a problem you've got, and your problem is you don't have access to reach this area, or the old bridge washed out, or your need could be the opportunity. If we only had a bridge to this area, we could do all these wonderful things our RMP tells us to do. Does that

help a little bit and clarify -- the need can't just be because we don't have a bridge, and our purpose is to build a bridge.

>> Caller: I understand that. You know, I'm just trying to do that -- The need basically describes the existing condition where we're at now and the purpose is the goal of where we want to be, just how difficult is it to simply state those things using plain common English and how do all of these other alternatives fit into describing what the purpose and need is?

>> R. Hardt: Let me ask you, why do you need to build a bridge over there? What do you need to do over there?

>> Caller: To provide access so a rancher can feed his horses. Let's just say that.

>> E. Seehafer: There's your need.

>> R. Hardt: To provide access so somebody with a permit will be able to provide for their animals.

>> Caller: So the purpose statement needs to identify all these alternatives to provide that access?

>> R. Hardt: I don't know. There may be other constraints associated with this, like Edy's example about your RMP, about what would limit your ability to build a bridge there or reach it some other way. This is why I say, it's not -- it's not -- you can't say, well it needs to be narrow or it needs to be broad or that's too narrow or too broad. You have to look at the specifics, as Elizabeth says, it depends.

So, sometimes you're going to want to pull back a little bit and to be able to say, "well, we need to be able to provide access for this rancher to get to his horses." And it might be that a bridge is the right answer. It might be there's another way to get to that location. It might be that you know enough or existing decisions tell you enough that you know you need to build a bridge. You can articulate a rationale why a bridge is what is needed there to provide the access and then you can narrow it down. But if you don't have any of those constraints, this is when it may be appropriate to have a rather broad purpose and need and say what are the alternative ways we could provide access to this rancher.

>> E. Seehafer: And if you do have some constraints, even just saying motorized access, if you have some decisions that basically commit you to providing motorized access, that already constrains your range of alternatives. So that can help you focus down what's going to be your range of alternatives.

>> C. Humphrey: Does that help? Peg, did you have something?

>> P. Sorensen: No, I was just agreeing.

>> C. Humphrey: Okay. So, Kevin, that answers your question?

>> Caller: Yes, thank you.

>> C. Humphrey: Any other questions out there?

>> Participant: Cathy, it's Matt again. Sorry, I promise, I won't talk after this.

>> C. Humphrey: Oh, no, please.

>> Participant: One of the concerns I had is the CEQ regulations specifically say you can have reasonable alternatives outside of your jurisdiction if they meet purpose and need. One of the issues in refining and having our instruction to confine our purpose and need to our own jurisdiction is the potential that someone could come back and say you're already artificially constraining your purpose and need so cannot consider alternatives outside your jurisdiction because all of these purpose that you have defined are all strictly BLM jurisdiction.

Now, before when working on these documents, that wasn't so much of an issue because you would discuss the applicant's need and then the BLM's regulatory need associated with that, and that still seemed to give you a little wiggle room to say, okay, if we could route this pipeline or bridge on private land and avoid impacts and still accomplish purpose and need we can do that, but if our purpose and need is to respond to the applicant's application under FLPMA for right-of-way that precludes considering an alternative or asking them to do an alternative on private land, that might decrease impacts.

>> C. Humphrey: I think Richard wants to take this one.

>>R. Hardt: Matt you're absolutely right, if we define our purpose and need in such a way that an alternative that's not within our jurisdiction is reasonable, in other words, it would respond to our purpose and need, then we have to consider it. However, there is nothing that says we cannot construct our purpose and need to reflect the limits of our jurisdiction. We need to show the rationale for that. But that's a really easy thing to do. To say, we're going to do things -- we're going to look at actions that are within our ability to carry them out. And the courts have never said we can't constrain our purpose and need that way. They've just said, if you cast your purpose and need so broadly, you can't say it's not -- an alternative is not reasonable just because you can't do it or it's not within your jurisdiction entirely.

I know that the courts repeatedly say we can't construct the purpose and need so narrow as to define reasonable alternatives out of existence. They say that, but they virtually have never found that an actual purpose and need statement is too narrow. So we have -- we really do have this flexibility, I believe, and I think as Elizabeth says, the courts are going to give us tremendous discretion. So I think what we need to look at is, what do we need to define as the purpose and need, how narrow or broad, so that we can accomplish good land management.

How much do we need to pull back to really consider alternative ways of doing thing to be able to make sure we're making a good decision as opposed to defining it thinking, what do we have to do so we make sure we win in court? And I think that ends up being a slightly different question because I

think we're going to get tremendous deference from the courts in how we define our purpose and need, but that won't necessarily mean that we're really focusing on the important question for good land management.

>> E. Carls: Can I comment briefly, Cathy? I absolutely agree with everything Richard said. I'm sympathetic, though, to the caller, because often what happens is it's not that a court complains about the purpose and need. The court complains about the insufficient number of alternatives. So they get to the purpose and need question around the other way. So that's why I think the primary thing to do is to really look at why BLM's thinking of taking an action and exactly what the circumstances are.

You know, this is very fact specific. So I'm necessarily speaking in generalities, but part of crafting a purpose and need is acknowledging the situation you know, as much as you can. When you're thinking about the pipeline going somewhere else but besides not on the public lands, then that's effectively a no action alternative. So it ends up being sort of included in that way in being described in that way. Every situation is different.

>> R. Hardt: Let's get into some specifics because I think you're absolutely right. This really depends on the specifics. And so I remember one case in which an agency, not us, said the purpose of this action is to harvest X million board feet of timber because our management plan, our approved management plan says we're going to harvest that much timber. So we're only going to look at alternatives that get that much timber. The court said it's important you don't define your purpose and need statement too narrowly, but this isn't too narrow.

Then there's another one where an agency said we have to build a bridge that can handle X amount of traffic because we have this traffic impact study that says in 10 years there will be so much traffic. So we're not going to look at alternatives that have Y number of lanes. The court said it's important that your purpose and need not be too narrow, but this isn't too narrow. So whether or not that's wise for the agency in accomplishing its broader mandate is something I think we need to think about but I don't think we can say this is what the court says so that's our answer. The court is going to give us deference.

>> Participant: This is Matt again. A quick comment on that. You brought up several cases. I've got three or four cases where the court did specifically tell the agency their purpose and need was too narrow and precluded reasonable alternatives would that still meet purpose and need. I mean, it can go either way.

The only cautionary note and the reason I bring this up, in teaching this class, a lot of -- we did have an alternative of -- a private land alignment alternative which correctly could go under No Action but also you could suggest and disclose the impacts of that as an alternative so you can see those impact of going on private land and you're mandated to do if that's a viable alternative. What my concern is is that NEPA practitioners don't rely on the fact that we have to comply with NEPA -- I mean with FLPMA, and therefore this alternative doesn't relate to FLPMA so let's kick out some detailed analysis, but using purpose and need as a reason for doing that. It's not the cases you're talking about where they define the purpose and need as so many lanes but kicking out an alternative specifically because BLM

proposes to respond to the right-of-way grant under FLPMA and that's it. And we'll use that as a reason or excuse to kick out an alternative that's not related to FLPMA from reasonable consideration. [That's my concern, is using that as a way to kick out alternatives that might work.](#)

>> R. Hardt: If these alternatives relate to ones that don't involve federal action, such as the applicant doing something on private land instead of doing on it federal land, then I'd argue we don't analyze those -- that range of alternatives. We don't analyze the range of alternatives available to the applicant to accomplish their needs and wants. We analyze the range of alternatives available to the federal agency to accomplish the federal agency's purpose and need. And so that's why it does need to be grounded in what we can do.

>> Participant: One of the things, and I'm sorry for belaboring this. The issue at hand is the applicant had a certain need, to get somewhere, to get water somewhere, and there was an option for doing that that did not involve the BLM as the prime decision maker that was still out there. Now, they were not proposing that. They didn't want to do it. It was more expensive, more involved but it was possible to do this.

I've had a project in New England that's very similar to this. And the agency from looking at the CEQ regulations has a responsibility that if that option is out there and it would meet what the applicant's trying to do and reduce impacts, even though it's outside their jurisdiction, they should consider that and that is where I'm coming from, is making sure we're aware that's still an issue and under CEQ is something that should be considered.

>> R. Hardt: I guess I would argue that the way -- it depends on how we craft that purpose and need and I think what we're saying is BLM policy has been articulated through the handbook to say, as much as possible, tie that purpose and need to our legal mandates, our policies, our regulations, our existing decisions. And arguing we should construct that purpose and need so it focuses on the agency action that's available, the BLM actions that are available and I guess that's a bigger question about whether or not that is a good policy BLM is taking on, but that is our policy.

>> Participant: This is good input. Just good discussion for me from the standpoint of letting students know, okay, these are the kind of issues that are out there that you need to be aware of. So thanks very much. Sorry for taking so much time.

>> R. Hardt: I think this is very good feedback and good back and forth on it, and CEQ did evaluate this in our handbook and did review this and said this is an acceptable interpretation of what the regulations require for a way for BLM to step this down to their particular situation.

>> Participant: Thanks very much.

>> C. Humphrey: That's a good discussion. Are there any other questions? We have just a little bit more material to cover and one more opportunity for interaction, so either you can ask your questions or pose your scenarios now or wait until our final opportunity if you need some time to get yourself ready, but are there any burning questions, comments, scenarios, try and stump the panel? If not, we'll

move on. Okay.

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<TIMING>

>>C. Humphrey: Richard, the handbook also recommends developing the purpose and need statement early in the process. So tell me more about that.

>> R. Hardt: Well, Cathy, the purpose and need statement controls so much about the scope of the NEPA analysis, especially the alternatives, as you can see from the discussion we have been having, and the issues that require analysis. We think it's really valuable to develop the purpose and need statement early so you can help avoid wasting time. You don't want to end up exploring alternatives that turn out not to be reasonable or starting to analyze issues that turn out not to need analysis because they're not an issue given this purpose and need. Also having some kind of initial purpose and need statement early in the process can be very helpful in scoping. It can help focus the comments that you receive both internally and externally.

For example, if you alert external commenters in your scoping of what your initial sense of your purpose and need is, they can do a more effective job in providing comments about what would be reasonable alternatives the agency may not yet have considered.

So inherent in that is the idea that developing the purpose and need statement is usually going to be an iterative process. You may develop an initial purpose and need statement and then in your external scoping you may get suggestions about what appear to be reasonable alternatives that make you really rethink your purpose and need statement. If that's a reasonable alternative, that isn't at all what we were thinking of. Maybe we haven't articulated our purpose and need correctly, haven't articulated our purpose and need to reflect the constraints we're operating under.

Certainly many times I think we will have ID team brainstorming of alternatives that will make us want to look back and say, is this really the purpose and need that we should be stating? The determination of what alternatives are reasonable is so linked to your purpose and need that you often can't be sure you have the purpose and need statement right until you've really developed your range of alternatives.

>> C. Humphrey: Peg, didn't the national programmatic oil shale/ tar sands -- isn't that -- that dealt with this, doesn't it?

>> P. Sorensen: It's an example of what Richard speaks to. For the programmatic document, BLM received statutory direction from Congress to establish a leasing program for the oil shale tar sands, and the first purpose and need was developed with a leasing program in mind, however, it was revised during the alternative development because the technology necessary to produce these resources is still under development and it made it impossible to establish distinct alternatives for the leases as the first purpose and need would have wanted us to go. It took us down a different direction. So the agency modified the purpose and need to reflect the narrower, more realistic goals that could be addressed in our alternatives.

And the slide that should come up of the need or opportunity is that some lands could be open for the opportunity to apply for leases whereas we would have to hold some lands back, some lands could not be open and we had to identify those and allocate that within the -- in our decisions. The goal of the legislation, or the objective, was to establish a leasing program for oil shale tar sands and the purpose of this action that we took was to take the first step in identifying lands that could be open. So it shows how we have gone back and changed our purpose and need statement reflecting what we really could review and analyze in the document.

>> C. Humphrey: That's a good example. Thanks, Peg.

We've covered lots of material. Hopefully we've clarified some things for you. We've got a few questions. So you've got another opportunity. It's your last opportunity to ask us questions. And as you can tell, the question and answer periods are the ones that are probably more valuable to anybody. We have a phone call from -- I think it's from Jim in Nevada. Jim, are you there?

>> Caller: Yes, I am.

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

>> Caller: Thanks for taking my call. The most recent discussion here about considering the reasonable range of alternatives was a good one where we're facing issues. I'm going to get rid of this echo. Anyway, we're [facing issues in the southwest United States with renewable energy development, primarily in solar energy](#). A lot of things we're looking at is where proponents are coming forward to consider assisting states for helping out with their renewable portfolio standards and also reducing greenhouse gases. So that's part of their purpose and need, but as they come forward, they request that these applications be considered in developing concentrated solar and geothermal on the public lands.

The other thing that has evolved recently is as of March 11th was secretarial order 3285 addressing renewable energy development by the Department of the Interior, which seems to be promoting the idea of policy direction authorizing the development of solar energy on public lands. [How could this order be considered or given deference in BLM's developing purpose and need statements in responding to the applicant's requests for developing solar production on the public lands in a defensible manner](#) that addresses -- [ dial tone ]

>> E. Seehafer: Whoops.

>> C. Humphrey: I guess we lost him. I'm not sure how to tell him how to get rid of the echo. I usually get messages in my ear. Did you folks get enough to be able to address this question?

>> P. Sorensen: Do you want to tackle it?

>> E. Carls: I guess I'll start. It's a somewhat similar circumstance to what Peg was talking about the oil

shale tar sands. In the oil shale and tar sands we have the Congressional mandate to establish a program for developing oil shale, and in the -- Jim, I guess, in Jim's scenario, you have the states, I guess, approaching BLM as well as the secretary saying, "we want to really talk about renewable resources, development of particularly solar, you know, can this happen on the public lands? And you, BLM have to think about it." So I can see BLM possibly articulating a purpose like, oh, to provide for opportunities to develop solar resources on X, Y, Z public lands, something like that, and so eventually a proposed action might be something like to open X, Y and Z to 5, 6 or 7 solar -- what do they call them? Solar farms?

>> P. Sorensen: Something like that.

>> E. Carls: -- solar farms and that could be an eventual proposed action. But it's this "provide opportunities for the development of solar resources on X, Y, Z public lands," and that provides the kind of purpose you would be looking for. And the need would be to respond to the secretary's call for development of renewable resources -- what else we can do to expand this multiple use under our multiple-use mandate. There's variety of ways of phrasing it. Does that help a little bit?

>> R. Hardt: One thing I would like to add is we didn't quite get from him exactly what the action would be. So I'm a little bit uncertain. Are we talking about a planning action here that is going to make a land allocation related to solar development? Or are we talking about a specific application for a specific location using a specific technology? And I think those details, as always with this, the details would matter a lot about how we might phrase that, because if it were a specific application, as opposed to a planning action, we would want to make sure we're not implying that we've already -- that we've already approved this application. If we are taking a planning action, I think it's perfectly appropriate for the purpose and need to tie back to this policy statement, this secretarial order that directs us to try to further develop this resource, even -- so that we can construct alternatives that are going to look at ways in which to include solar development on public lands and exclude alternatives that would not encourage solar development on public lands.

>> P. Sorensen: Renewable resources.

>> R. Hardt: And it may be that we might make it broad and talk about renewable resources. Might be we might throw the net wide open and just talk about energy development on public lands. But, you see, that's the thing, is that how far do we want to narrow that down, I think, depends on the specifics, depends on what we're really trying to accomplish. So I think we have to be careful about exactly what is the action here when we're thinking about how to construct the purpose and need.

>> E. Carls: Right.

>> C. Humphrey: Anything to add, Elizabeth?

>> E. Carls: No, I completely agree.

>> C. Humphrey: Any other questions out there from the audience? From our field people? Any of the

NEPA gurus want to try and stump the panel? That's always kind of fun. Embarrass the folks.

>> R. Hardt: Cathy, we had an e-mail question that I thought was kind of interesting here. [How do I make my environmental assessment purpose and need competent to be for an EIS? If we write our opening statements with EIS-like appeal, won't they be more effective?](#)

>> C. Humphrey: Good question. Who wants to take that one?

>> E. Seehafer: I'll start. I'm not really sure what EIS-like appeal is, but if, for instance, you're doing an EA and new information comes out in the course of the analysis or data collection, or surveys that basically puts on constraints or kicks you to that level of significance you weren't anticipating, you may definitely need to go back and revisit the purpose and need.

On the other hand, if there's nothing unanticipated that comes up, I would have hoped that you would have constructed the purpose and need appropriately in the first place that it wouldn't matter what level of NEPA document that you would have basically identified your goals and any substantial constraints that are also goals so that it would be satisfactory in either case.

>> C. Humphrey: I think that answers it. Nobody needs to add anything? We got another question yesterday actually. Somebody in Montana was asking [if there's any phrases or wording or verbiage you should avoid in a purpose and need statement](#). Can you all think of any?

>> R. Hardt: Well, I already went on my rant about verbs.

>> C. Humphrey: The proper type of verbs to use.

>> P. Sorensen: You also -- you talked about the avoiding the statement "the purpose of this environmental assessment is to..." whatever. Or -- that kind of a phrase doesn't really fit in the purpose and need. We're not -- it's not the purpose and need for the document. It's the purpose and need of the action. So that's one phrase to avoid. Try to focus it on the action.

>> E. Seehafer: Again, we've already said to avoid the applicant or synonyms for the applicant as the subject noun for your purpose and need so it's clear it's the federal action's purpose and need.

>> C. Humphrey: Okay. And then one other one we got. This was with the prework we got. I'm not sure where this was from. [How do you develop a purpose and need for a project with multiple needs?](#)

>> E. Carls: Wow.

>> R. Hardt: We almost always have multiple needs.

>> C. Humphrey: We did talk with this a little bit about the purpose, the guy who was asking about the bulleted list.

>> R. Hardt: Let me address this question. Well, that's an interesting question, let me ask a different one. Let me extend it a little bit about thinking about a project in which you have multiple needs and you have multiple actions you're actually addressing in that one single NEPA document. That's where I think you can get a little confusing. There I think it's important to think about, are these connected actions? Or are they merely cumulative actions? Or are they just similar actions you're choosing for convenience and better analysis to bring together? If they're connected actions in that they're interrelated actions, they're dependent upon each other, then it may be appropriate to try to integrate a single purpose and need here. But that's, I think, going to be the exception.

Usually we're going to be looking at multiple actions in a single NEPA document because they have a cumulative effect or it provides for a better analysis and there I think we will have to articulate more than one need.

Maybe it will be we have needs that aren't necessarily, can't be integrated. They might not be all that related it's just the actions are taking place in the same place so we're going to analyze them in the same document. There I think we should have probably fairly separable need statements instead of trying to bring it all together.

>> E. Seehafer: I think the other thing you should consider is just make sure it's multiple needs and not multiple purposes that you're looking to accomplish, because sometimes what people actually have are multiple goals they're trying to obtain as opposed to multiple issues or conditions that they're trying to address.

>> C. Humphrey: That kind of brings to mind another question -- it wasn't really a question. It was something we got in the prework. I'm not sure whether you folks in D.C. heard about this question. There was a question in a Field Office, I think it was in New Mexico, [they had an EA, I think it was a third party that wrote this EA, and it was a programmatic EA, and it also -- there was also a site specific project in there, and I think the question was, how do you write a purpose and need for that?](#) I don't know if you two have any thoughts or -- that seemed like an interesting question.

>> P. Sorensen: How about it depends?

>> E. Carls: It depends. Although, the geothermal programmatic was a good example where they had a part A and a part B. So the programmatic part of the analysis was in part A of the EIS, and the site-specific analysis was in part B of the EIS. So there's lot of ways of constructing the document to make it useful for the decision maker and clear for the public and eventually, hopefully not, the courts.

>> P. Sorensen: Right. Another --

>> C. Humphrey: Did they have one purpose and need or two?

>> R. Hardt: They had a multiple purpose and need.

>> E. Carls: It was multiple.

>> R. Hardt: Which I think you're going to have to do if you're trying to have programmatic and site-specific decisions come out of the same NEPA document.

One of the things we say in the handbook that can be helpful in articulating your purpose and need is to include a section describing the decisions to be made, to understand what decisions are going to be made out of this NEPA document. That can provide ... and, really, have we articulated our purpose and need correctly? I think that's a very helpful thing in focusing on what's the actual agency action here. What are we actually, what do we actually do at the end of this process?

>> C. Humphrey: And that describes the decision space.

>> R. Hardt: Or the decisions to be made in it. What kind of decision are we going to produce out this document.

>> P. Sorensen: Cathy, if I can interject another example is when we do resource management plans or land use planning documents, a lot of times those documents will have fairly broad goals and they outline allocation actions, and then they also talk about in the same document some implementation actions. So you have some fairly broad things and then you get into very specific things.

>> E. Carls: You want to distinguish them carefully.

>> P. Sorensen: You want to make them very different. So your purpose and need for each of those pieces should be very different and you need to spell that out, as Richard says, in the decisions to be made: We have these decisions to make in allocating land uses; and we have these decisions to make in implementation actions.

>> R. Hardt: And I think that's rarely in an RMP process going to be clear at the beginning of the process that we need to make these implementation decisions as part of the same RMP. That's why it's important to always be looping back and saying, do I have my purpose and need statement right.

>> P. Sorensen: Correct.

>> C. Humphrey: We just have a couple more minutes for if there's any lingering questions, comments, anything like that.

>> Participant: Lynn in Winnemucca.

>> C. Humphrey: Hi, Lynn. What's your question?

>> Participant: I'd like to continue the discussion on alternative development, please.

>> C. Humphrey: Give us a little bit more what specifically would you like to hear about?

>> Participant: Regarding BLM's jurisdiction, in the CEQ regulations 1502.14c that says to include reasonable alternatives not within the jurisdiction of the lead agency. Richard had mentioned that it's BLM's policy to tie the alternatives to those within our jurisdiction. So I would like you guys to just please provide a little more information on this.

>> R. Hardt: Let me try to address that. An alternative is only reasonable if it responds to our purpose and need for action. So if we construct a very broad purpose and need, such as to solve the nation's energy crisis, then there are reasonable alternatives that are not within BLM's jurisdiction: e.g. everybody conserves more energy. That's the danger in casting your purpose and need way too broadly. So we have to be very careful about that.

So what we think is a better path to take is to construct our purpose and need that is related to our decision space that's available in most cases, to the extent possible is what we say in the handbook.

There will be times in which BLM is going to be doing NEPA in which it's going to want to analyze alternatives that are not within our jurisdiction, and in those cases we should not tie it strictly to what we can accomplish. But we have to come back to-- why are we doing NEPA? We're doing NEPA to provide a basis for federal decision making.

Now, CEQ has said it's important to look at alternatives outside your jurisdiction to alert Congress perhaps to the need for new legislation. Frankly the NEPA that most of us do in our careers is not really read by Congress and it's not really intended to alert them to the need to provide more legislation. We're doing projects to implement existing decisions, to implement existing policies and it really doesn't help us, help the decision maker, get a better decision to look at--What could somebody else do, somebody else who isn't subject to NEPA? That doesn't really help us arrive at a good decision. So as a practical matter, BLM policy is for most of these actions to the extent we can tie our purpose and need to what we can accomplish; therefore, an alternative that's not within our jurisdiction is not reasonable, and so the CEQ regulation isn't really relevant because this isn't a reasonable alternative. It doesn't meet our purpose and need.

>> E. Carls: I just want to add something. I believe the caller was referring to 1502.14, is that right?

>> C. Humphrey: Yes.

>> E. Carls: Which also specifically speaks to the jurisdiction of the lead agency, and so I read this as probably talking more to a situation where you've got cooperating agencies.

So, you know, Richard's point about federal decision making is the important one. If you have a bunch of different agencies, all of whom are interested in a particular project, then you know, if BLM is the lead agency but another one of the alternatives would best fall, say under the Forest Service's jurisdiction, if the Forest Service is a cooperator, then of course you would include that alternative. So this idea of the lead agency is somewhat important.

You know, that being said, BLM can always consider another alternative if it's useful to do so. So if,

going back to the first questioner, who was talking about the pipeline on private land, that would be our no action alternative, but if it's useful to provide a lot more information about an applicant's sort of other alternatives, then you can do that.

>> R. Hardt: Caution, though --

>> Participant: I think I'm getting a better understanding what you guys are trying to relay us to. [I think a lot of times where we get involved with this particular question is on a certain aspect of the proposal in addressing an environmental concern that a piece of the action we may need to look at happening on a different land status to address the issue.](#)

>> E. Carls: Right.

>> R. Hardt: I just want to add -- I just want to add a caution to what you're saying, Elizabeth that, yes, we can always consider an alternative that is not on the face of it reasonable, but the danger if we do that is that it then becomes hard to say, well, why are we refusing to consider this other alternative someone suggested that's not reasonable?

We need to be able to articulate a good rationale for why would we explore this alternative and not these others that are suggested. In some cases we can do that because, as you say, this will help us understand what the applicant's asking for, the applicant needs.

>> E. Carls: That's where the whole -- this alternative was considered but not carried forward for analysis. We gave it fair consideration because, you know, it is another alternative, but because it doesn't fall within our jurisdiction and doesn't meet our purpose and need we didn't carry it forward for the full analysis.

>> R. Hardt: Right. I think that's a good way to think about it.

>> P. Sorensen: And I've done that before. I've had a project where that's happened.

>> C. Humphrey: Any other questions, thoughts before we --

>> Participant: Cathy, this is Matt really quickly. [I do have a little concern with equating No Action to an alternative that involves non-BLM jurisdiction on lands.](#) I mean, No Action, strictly speaking under the BLM handbook, is not granting the application. But if you strictly call No Action not granting the application and then say, oh, things like private land alignments are included under that, then you lose the opportunity to disclose a potential alternative could that reduce impacts that would be on other lands.

I have a personal example of snow-making ponds where the lead agency determined they would be much less impactful if done on the applicant's private lands, outside their jurisdiction. But if they would have said No Action, they couldn't have gone through the disclosure process and shown the public why they were going to require that applicant to do that on private land.

>> R. Hardt: That's an excellent point.

>> E. Carls: Why could they not disclose that?

>> Participant: Because it was not a proposed alternative. They just said No Action, we won't grant the application, and then there was no disclosure in the NEPA document of the opportunity of putting those ponds on private land.

>> R. Hardt: But that's a failure to analyze the No Action alternative, what we need to do when we analyze the No Action alternative. The No Action would be to deny the permit. But then what we need to do as part of analyzing the No Action alternative is analyze our cumulative effects of the No Action alternative what is reasonable foreseeable. So we need to articulate what is reasonably foreseeable if we deny the permit. That provides our baseline for comparison to what will happen in our action alternatives.

>> Participant: Well, one of the issues where it was -- it was not reasonable -- reasonably foreseeable by doing No Action, because the applicant really didn't want to do that. There had been a disclosure to the public that this was the best way to go to induce -- I realize the end result is the same. They say we're denying the application because we are picking this alternative where we put these snow making ponds on public -- on private land and we have disclosed the impact of that, and this allows us to disclose that and it gave them the basis in case the applicant decided, I'm going to appeal this, rather than saying it's reasonably foreseeable they may do that.

>> R. Hardt: But that's the way we're saying we have to structure that. We're saying if we deny this application, what's reasonably foreseeable that the applicant will do--regardless of whether it meets their preferences or not. In this case it would be based on what we see as known opportunities or trends. What is reasonably foreseeable for them to do if they do not have the opportunity on public lands? And we need to analyze, fully analyze what the impact of that is, and that provides our basis of comparison to what happens under the proposed action. But that's the way we have to formulate that.

>> E. Carls: You also have the difference between what's required under NEPA and what you can do. You're not required to talk about what the applicant might do apart from how it appears in your cumulative impacts analysis, which is required, but you can include the description of what the better, if that's the case, environmentally sound way to go about it would be, which would be the private applicant doing it on his or her land, you can include that information in the NEPA document if it's useful for the decision maker.

>> P. Sorensen: I agree.

>> E. Carls: But you have to make clear you are doing to do that.

>> C. Humphrey: So we're at 11:30 Phoenix time, and we advertised this show as being 90 minutes. We'd like to, if there's still questions, he would like to continue to answer questions because we've got

up to half an hour more of satellite time if you all are still there, so we'll keep the bridge open for a little bit longer if you have more questions. Did I hear somebody trying to come in? Were you guys done answering that question? Edy, did you --

>> E. Seehafer: Well, I guess what I would say is just going back to that third scenario where I talked about the helicopter option, that's an option that may not involve the BLM providing a permit. That was a site on private land, and I would, if I felt at all that that was an option that the applicant would not want us to pursue, but I felt it was the best approach based on all of the parameters, and that's what the decision maker wanted to do, I would definitely analyze it as an alternative because then if it ends up in IBLA, everything is laid out. So I think that's useful to us. It may not be required, but in some circumstances it can be very useful to us if we go to the next step.

>> Participant: That's exactly the point I was getting at. You hit it right on the head. The reason you would do that is to provide documentation because, in my experience, I can guarantee if you have an applicant and you have a better way to do it and they don't want to do it, then you are going to be forced to show the documentation that that's the best way to go, and I prefer to do that as an alternative through the NEPA process rather than a potential cumulative reasonably foreseeable thing under no action in that kind of case.

>> E. Carls: It's up to you.

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<WRAP-UP>

>> C. Humphrey: Any other questions, comments, scenarios throughout? I think we've probably answered all their questions. All right- Well, I would like to take a couple minutes now to hear some closing thoughts, final thoughts from our panel members, and let's start in Washington. Peg, do you have some final thoughts you would like to share with us?

>> P. Sorensen: Boy, this has been some really good discussion, and I appreciate everybody chiming in and participating. I look at the purpose and need as a way to get started on your NEPA story, much like a news article, our NEPA documents provide information for the reader, the who, the what, the why and they begin when you get into the proposal, but later you're dealing with the when and how.

So the story takes us from where we are now, which is your need statement, and why we need to take this action, to where the we want to be, which is your purpose for action, and then you go onto the proposals and your alternative development. So I encourage you as you're trying this out, if you've had trouble in the past with your purpose and need statements, try writing some, vocalize them in your ID team meetings, write some down, share them with other folks to say, hey, does this sound good to you back and forth. Of course, you know, work with your state NEPA coordinator as you go through the process. So I do want to thank you guys all for participating and your continued involvement in the NEPA process.

>> C. Humphrey: Thanks, Peg. Elizabeth, how about you, some closing thoughts?

>> E. Carls: Yeah. I mean, I know sometimes we think of NEPA as a burden, and it is, after all, a requirement, but I encourage folks to make it useful for you, like this gentleman Matt was saying. You know, he would include these alternatives to show the decision making that's being made, and BLM really needs to take credit for the work that it does. I sometimes get calls from the field and they say, well, I thought about that, but we didn't include it. Include it. Document this decision making. Show the shape of your decision space and take credit for the thinking and the refining and the rethinking that you do.

>> C. Humphrey: Thanks, Elizabeth. In math class we call that Show Your Work. Edy, final thoughts, final advice?

>> E. Seehafer: Well, I'd agree with Elizabeth, and I guess having gone through several administrative record processes, I can second the emotion on documentation and the value of documentation. I write a lot of NEPA documents, and I'm on a lot of ID teams, and I tend to revisit the purpose and need as the alternatives are being developed and document alternatives that were not moving forward and make sure decisions that the Field Manager comes up with are basically consistent with the sidebars that we set in our NEPA documents. So if there's an analytical issue that's unresolved in terms of conflicts or impacts, that sort of turns on a bulb in my head to say, maybe I need to go back and look at the purpose and need and make sure that the purpose and need is focused correctly. But I'd say that most people are doing a pretty good job of focusing their purpose and need. It's just we need -- all need English courses.

>> C. Humphrey: Yes. And we actually have a very good technical writing course called 1620-06. We have one online also, 1620-04. It's very long technical writing course. It's excellent. And we have a face to face one. If you're interested, call me. I'll hook you up. Richard, final thoughts?

>> R. Hardt: Well, Cathy, purpose and need is one of my favorite parts of the NEPA process, frankly. Nothing else will pay such high dividends with so few sentences as your purpose and need. It controls so much of the document, and we often just don't give it the amount of attention it deserves. We need to come back to it to time and time again as we go through the process. But as we said, we get a lot of discretion in developing the purpose and need, and there needs to be a lot of judgment in constructing it about how broad or narrow we want to get. What constraints do we want to articulate. Therefore I think with this discretion comes a particular responsibility, and so I'd argue that if there's any part of the process in preparing a NEPA document that the manager involves themselves in, that you bring your manager into it, that you get them to think about early in the process, it's in that construction of the purpose and need statement.

>> C. Humphrey: Thanks panel. A couple more quick items before we sign off. Don't forget to complete the Metrics That Matter evaluation. I know I talk about this all the time. You're going to get it in the e-mail today or tomorrow. And those evaluations are very, very helpful to us. We use them a lot to help craft these broadcasts.

One of the ideas that we've been tossing around lately is whether or not we should host a blog

internally for planning and NEPA topics. I want to hear what your thoughts are on that. I'm not quite convinced one way or the other. If you have thoughts, e-mail me or include it in your MTM evaluation.

Now, our next NEPA Handbook discussion topic will be Public Involvement for EAs. We're looking at sometime this summer for doing that. So if you have thoughts about that or any other topics you'd like to hear about, let me know.

And as usual, we will post this broadcast to our Knowledge Resource Center. You can find it through going to the National Training Center website, and we're not going to be sending out DVDs anymore. We're trying to be more green. In that broadcast we have online we're going to have transcripts. So if there's something -- the panel gave you some nice tips and if you have some of those tips you want to memorize and use later, you can look at the transcripts. That's one option for you. I'll send you the link when it's up. I think it will be up sooner this time. Last time it took kind of a while.

If you have questions about classes that are scheduled or what courses are under development or if you want to schedule a class in your office--like the technical writing class--you can contact me or Mark Chamberlain. You see our e-mail addresses on the screen.

That wraps it up for our forum today. I would like to thank our panel for your insights and thanks to the audience for your time and attention, especially in the Mountain Time zone, you're probably starving by now. I hope we shed some light on how to write better purpose and need statements and I hope you're ready to take on some new challenges with confidence, so, so long from Phoenix and we'll see you next time!