

NEPA Analysis Process: Issues

J. Pollet: Scoping helps us define the issues for analysis. Issues should be analyzed if they are related to a potentially significant effect or if they may help lead to a reasoned choice among the alternatives. Not all concerns that are raised are going to be issues that require analysis. An issue is a point of disagreement, debate or dispute about some environmental impact. An issue has a cause and effect relationship within the proposed action or alternatives. Issues are within the scope of the analysis. Issues have not been decided by law, regulation, or previous decision. And issues are those that can be analyzed scientifically.

M. Conry: Jolie, a lot of staff are more comfortable just putting all the resource concerns in a body of analysis. Can we stop and speak briefly to why putting all those resource concerns in an EA or an EIS may not be the best option?

J. Pollet: Yeah, Meagan, that's a good point. Meagan, when all the resources are included in an environmental assessment or environmental analysis, that's what I call the "kitchen sink" approach to NEPA.

The kitchen sink approach doesn't lead to concise and focused NEPA documents. By focusing on the issues, the rest of the NEPA document becomes easier to read and to write and becomes much more useful to the decision maker because it focuses on the important discussions. Remember, the purpose of the NEPA process is to help us make better decisions, not to amass pages and pages of detail and documentation.

C. Humphrey: You know, this represents a shift in the typical way that BLMers have done their analytical process in the past. I think they feel more comfortable with that kitchen sink approach rather than focusing just on those issues that are significant.

M. Conry: Certainly I think there's something to be said for the safety of the kitchen sink approach, but I think it's also difficult making that shift because it's hard. It can be hard to evaluate the potentially significant impacts or what that could mean. On a personal note, it can be hard as a specialist to not see your resource being represented in the issues for analysis.

I think it can be really useful to get a decision maker engaged early in issue identification and sort of lend some support to that focusing of the scope of the analysis and creating buy-in early on.

R. Hardt: And beyond just the problems we have within the staff on the ID team, we're usually getting a lot of input from the public and even from our own solicitors urging us to include resource concerns as issues. We'll hear from the solicitors very often, "Well, if you'll just include this, it will help reduce your litigation risk." But I noted that Bureau Director Bob Abbey in his confirmation hearing was making it clear that we shouldn't be making our decisions based on -- just based on litigation risks. We have to be a little bit more thoughtful about this.

Dir. Abbey: well, you know, first I guess my philosophy is that we should not be fearful of litigation. It is certainly problematic as far as holding up final decisions and, therefore, actions on these public lands. But my advice and counsel to the BLM employees that if confirmed I will be working with would be to go

forward, take in the best available information, and to make decisions -- make good decisions based upon that information without being fearful of who might sue the agency.

I think, you know, what I have seen occur over the past 10 years, if not longer, is this fear of being sued and, therefore, people are reluctant to take any action at all. And, therefore, some of the decisions that could be made more timely are set aside, and it takes us -- or takes the agency a heck of a lot longer than maybe it should in order to issue those decisions. So, again, the only fresh idea I could bring to the table and to present to you today is the fact that we were hired to do a job, we have the ability to do the job, and we need to do the job, and then we let the chips fall where they may.

C. Humphrey: So, Jolie, what would you do with those resource concerns that people bring up that aren't -- they don't fit in the category of significant issues?

J. Pollet: Well, Cathy, the answer is always to document it. You have a choice... you can document it either in your admin record or you could possibly document it in the NEPA document itself, but you just need to be able to explain why an issue isn't going to be potentially significant and why analysis of a concern would not lead to a choice among the alternatives.

R. Hardt: As Meagan mentioned, we talked a little bit about it can be very hard to determine whether a resource concern really is related to an effect that's potentially significant, and to be able to make that determination, we have to understand a little bit more about what a significant impact is.

The CEQ regulations tell us a little bit. They tell us we need to consider both the context and intensity of the effects in determining significance. With the context, it's a judgment call. It's not a clear threshold. But the bigger the geographic scope of the effects of your action, the longer the temporal span of the effects of your action, the more likely it is that those effects are significant.

With intensity, the CEQ regulations lay out 10 factors to consider in evaluating significance. Now, the handbook goes through these 10 factors and gives a little bit more explanation, but I would like to highlight one a little bit here which is a particularly difficult one in which it talks about cumulative effects. It talks about whether or not the action is related to other actions with cumulatively significant effects. Now, that doesn't mean that we look at everything we've analyzed in our cumulative effects analysis to evaluate whether or not the effects are significant. Instead, those related actions need to count toward significance. And as the handbook explains, we look at those -- the related actions are those connected and cumulative actions that we can affect by our decision making. So it's really a small subset of the totality of what we end up analyzing are cumulative effects analysis.

Now, overall in looking at significance, when we're doing an EA, if we can tier to an EIS that has already addressed significant impacts, and you will that remain are effects that are not potentially significant, we don't need to do any further analysis to be able to reach a FONSI.

J. Pollet: Now, Richard, can you explain that again? I'm having a hard time trying to get my head around that concept.

R. Hardt: Right. This is a very, very difficult idea. It's presented both in the NEPA Handbook but also it's reflected in the Department of Interior NEPA regulations.

This idea is that if we can tier to an EIS, then those significant impacts have already been addressed, we don't need to evaluate whether or not they are significant again when we get to the project level. But it's only if that EIS we're tiering to really has addressed the effects of our project already.

M. Conry: So Richard did a good job touching on some of the factors to consider when identifying issues. I'm going to talk about some of the common mistakes that we see, because I think we can all learn from them.

Hands down, the biggest mistake we see in issue identification is believing that entire resources are issues. How many EAs and EISs have you seen where you have simply subject headings for your analysis, such as "water" or "wildlife"? For example, water by itself is not an issue. And a mere discussion of impacts to water may or may not help your decision maker make a better choice between alternatives. However, if you're considering, for example, a proposal of an open pit gold mine, you may need to consider impacts to ground water resources from cyanide heap leaching. Because these effects could affect public health and safety, threaten the violation of law, that is, they could be significant.

Similarly, another mistake is that it's really easy to lose track or focus on the specific aspects of a resource that are presenting the real issue. In the handbook one of the tips that we offer is recommendation to frame issues as a question.

So going back to my original example, rather than trying to address a broad-scale water issue, it may be helpful to isolate the specific aspect of the proposed action that could affect specific water resources, such as, how would cyanide heap leaching in the project area impact groundwater quality?

Not everything raised by the public or staff is an issue. Despite the fact that we sometimes feel that because the public raised it we have an obligation to analyze it. Not having an issue for a particular resource does not diminish the overall importance of that resource. Similarly, not analyzing a resource concern raised by a member of the public does not diminish the value of that input, especially if it's documented and explained clearly, such as your lead discussed earlier. The best way to handle it is acknowledge that this particular proposed action or alternative does not have the potential to significantly impact the resource.

Remember that issue identification is an iterative process, and as your project or alternatives develop, your issues can evolve.

Again, it's important to engage the decision maker in issue identification and ensure his or her understanding and support for the issues for analysis. This is often overlooked in our interdisciplinary team process.

C. Humphrey: Meagan, in the new NEPA Handbook it doesn't carry forward that requirement for the critical elements checklist, and I know a lot of people are very uncomfortable with that. They don't like

not including it. So how would you recommend that they consider all the things that they need to consider.

M. Conry: We felt that the critical elements checklist is a continuation of the kitchen sink approach, and as Richard mentioned earlier, that we didn't really want to tie non-NEPA requirements into our NEPA documents or establish them as an expectation.

R. Hardt: I think one of the dangers with using a checklist approach is it can make you feel that, once I've gone through the checklist, I'm done, that if I've addressed everything that's on this checklist, then I don't need to think about issues anymore. There are a lot of things that weren't on that critical elements list but were potentially issues that required analysis in our documents.

J. Pollet: But I still think that the critical element checklist is -- offices are really comfortable using it. It at least is a first step in the first process of going through kind of a -- to brainstorm any potential issues that could be lurking out there.

R. Hardt: Yeah, it can be a good tool, but we have to make sure it doesn't substitute for actually thinking through the process.

C. Humphrey: So they can use it, they just need to think about what they're doing.

J. Pollet: Now we're going to look at some examples of how we can frame issues. Go to Exercise 2, Issues, in your guide. First we're going to go through some bad examples of how to write issues. The bad examples are... "wildlife," "cultural resources," and "soils" as issue statements. Why aren't these issue statements?

R. Hardt: Well, one thing about them, they just describe a resource, but they don't explain any kind of cause and effect relationship with the action we're taking.

M. Conry: Right. There's no context in terms of what about cultural resources or impacts to cultural resources could be significant? There's no focus here whatsoever.

J. Pollet: Just so we know, those were taken from actual BLM documents.

Now we'll go through the less bad way of how to frame an issue. Less bad for wildlife would be "What are the effect of the proposed action on mountain goats?" Less bad for cultural resources would be, "What are the effects of prescribed fire on cultural resources?" And then for soils, a less bad version of how to frame an issue statement would be, "How would logging affect soils?" Why is this less bad and where do we still have room for improvement?

R. Hardt: Well, this is better because it's starting to describe something about our proposed action and how it would have some effect on a resource. It's still very broad, though, and so, you know, that might be okay for some kinds of very broad programmatic analyses, but for a site-specific project, there's probably still a lot more specificity we could lend to this.

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M. Conry: Starting to get more specific, and at least there's an action component there, but this still has a long way to go for most of our analysis.

J. Pollet: I'm thinking the same thing. I think we still have quite a bit of room for improvement. So let's talk about a better version, or better way that we can frame these issues. So instead of "wildlife," a better way would be, "What are the effects of authorizing helicopter landings for commercial guiding of backcountry skiing on mountain goat populations in the Haines block?" Instead of just plain old cultural resources, an issue statement, how about this, "What are the effects of heat and char from the prescribed fire on the pictographs in Kokopelli Canyon?" Instead of soils, this would be a better issue statement or question, "How would compaction and erosion from road construction and ground-based harvest affect soil productivity?" I think these are a lot better.

R. Hardt: I think they're nice because they start to tell us what about the proposed action, what specifically about the proposed action would affect what specifically about that resource and how would it affect it, how do we anticipate that it would affect it. That really, I think, helps guide what is it we are going to analyze.

M. Conry: Yeah, it does a good job of drawing that cause and effect link between the proposed action, the resources on the ground, and what you expect to see happening. They also do a nice job of teasing out the specific resource aspects. It's not just wildlife in general.

C. Humphrey: We just heard the instructors talk about bad issues, less bad, and better issues. Now it's your turn to grab an EA or the EIS that you brought with you and look in there and see if you can find the issues. Can you see them? And see which version they resemble the most. Do they look most like the bad, the better or the less bad?

Then what we want you to do is try to rewrite them like we discussed. Try and take it to the next level. It would be best if you could get it to the better, or even better than the better. It's okay if your NEPA document is already finalised, because that's a low-risk way of practicing, and what you can do is you can try it with some of your co-workers first so it's easier to work through how to write the issues best with a friend and then you could try on it your own.

So good luck.