

>> Announcer: The Bureau of Land Management presents live from the BLM National Training Center in Phoenix, Arizona... A Planning/NEPA Forum on Administrative Records.

And now the host of your program, Cathy Humphrey.

>> C. Humphrey: Good morning and welcome to our latest Planning/NEPA Forum. The focus of today's broadcast is how to create a project file, and how to compile an administrative record.

We'll hear from our panel first. Then you'll have plenty of time to ask questions and interact with them later in the broadcast.

We've changed from an analog to a digital signal, the delay for push-to-talk is longer. Therefore, we're going to only use phone, fax and e-mail to get your input and questions. The phone, fax and e-mail address is on your screen now. You might want to take a moment to jot them down. We have some people listening on the phone, a listen only bridge, if you could write this down the toll free number is 877-862-5346.

If you think of a question, an example, a tip, or a comment on anything during the panel presentations, please jot them down so you'll be ready when we're ready to take your input. And speaking of input, I'd like to thank everyone for sending in your questions and other comments prior to the broadcast. We got a lot of input and it was terrific.

Our panel will answer most of your questions during their presentations, and I'm sure by the end of the program we'll have answered them all! Your input will give us something to start with when we open the phone lines... while you're gathering your courage to call in. So I've got those questions here.

After I introduce the panel, we'll hear a story based on actual events that you might be able to relate to. Next, you'll hear the legal framework, because it's always good to start with the requirements. That will be followed by discussion of what a project file is—yes, it is different from an admin record. We'll move on to the administrative record, what it is and how to put it together. Finally, it will be your turn. After the presentations, we'll have lots of time for your questions and comments. Don't be shy. Call us. E-mail us. Whatever you want to do.

Some of the questions we got before the broadcast were very detailed and program specific, especially for lands and realty, minerals, and range. Those programs have additional requirements for compiling project files or case files that are beyond what we'll discuss here. However, even though we aren't going to answer those questions, we have posted some materials on the KRC page for this broadcast that should be helpful for you, e.g., how to organize a case file for a land exchange or grazing authorization, a list of manual sections for realty actions.

You might want to go to that Knowledge Resource Center page. That's also where we posted the PowerPoint's you'll see today, the legal guidance that Laura will talk about, a list of acronyms that may be used today, and eventually that's where this broadcast will be posted. To find it, go to www.ntc.blm.gov/krc. Then enter "admin record" into the search box.

Now I'll introduce the panel and we'll get going with the good stuff. Let's start with our guest in the nation's capitol...

Laura Damm is an attorney in the solicitor's office, division of land and water resources, in Washington D.C. She works primarily on planning, NEPA, timber and forestry and recreation and travel management issues.

>> L. Damm: Hello from Washington DC., Cathy.

>> C. Humphrey: Next joining us from the Oregon State Office in Portland is Anne Boeder who will talk about her experiences with the project file and administrative record for the western Oregon plan revision. Anne is a planner in the Oregon State Office. She has worked in both staff and leadership positions on project-level NEPA, major interagency EIS's, RMP amendments and RMP revisions. Hi, Anne.

>> A. Boeder: Hi, everybody. Greetings from rainy Oregon.

>> C. Humphrey: Finally, the panel members here in our studio... Megan Stouffer is the state planning and environmental coordinator at the New Mexico State Office. She is responsible for providing policy guidance and review on NEPA and planning projects in New Mexico. Megan began her career as a presidential management fellow in the Washington Office as a planning and environmental analyst and transferred to New Mexico after two years. Hey, Megan.

>> M. Stouffer: Thanks for being here.

>> C. Humphrey: Also here in the studio is Michael Williams, who is an attorney advisor in the southwest region solicitor's office in Santa Fe, New Mexico. He's worked on administrative and judicial litigation involving lease sales and RMP's in New Mexico. Hi, Michael.

>> M. Williams: Good morning.

>> C. Humphrey: And our final panel member is Linda Garrison. Linda is the state litigation coordinator at the Arizona State Office. Since 2004 she has served as the liaison between Arizona BLM and the Office of the Solicitor, Phoenix Field Office. Linda conducts training, examines project and administrative records for submission to administrative and judicial tribunals and provides procedural guidance and other legal support. Hi, Linda.

>> L. Garrison: Good morning.

>> C. Humphrey: So, Linda, in your position, I am sure you have seen and heard a lot of situations that aren't ideal regarding litigation, project files, and administrative records. Why don't you tell us a little story about maybe a typical situation you've heard about that I think probably most of our listeners will be able to relate to.

>> L. Garrison: Thank you, Cathy, I will. Here is a story of what has happened over the years from a colleague in another state. A Field Office employee, planning and environmental coordinator, was assigned as a project lead for a Resource Management Plan revision and EIS. An interdisciplinary team was organized to assist with working the various phases of the project.

With everyone so wrapped up in trying to make sure they involve the public in the scoping sessions and various stages of the review and revision, maintaining record documentation had become an afterthought. No time was taken for creating a project file to document the basis for the decisions nor did anyone think to document the many public and internal meetings held, some of which involved crucial decision-making efforts. Many public and environmental organizations worked with the team throughout the revision. However, they expressed that if decisions were made contrary to their beliefs, they would challenge BLM's decisions in court.

Well, you guessed it... five to seven years later the RMP was finally finished and approved and the public was notified. A couple of those environmental organizations, however, disagreed with BLM's environmental analysis for supporting the decisions made regarding grazing and travel management and filed a lawsuit. Subsequently, the solicitor's office notified BLM that they would need the administrative record within 45 days.

Out of those 45 days typically you would need to subtract two weeks for the solicitors appeared DOJ, Department of Justice, review and approval prior to submission to court. Then subtract another week for BLM to finalize the record and get it back to the solicitor. All in all, the time frame to prepare and submit the administrative record had just been reduced by three weeks. So you can see how quickly you can run out of time to prepare and submit the record.

To top everything off, the planning lead (the project lead) and many of the team members had changed several times during the years. So many of the personnel knowledgeable of the project details were gone. This being the case, the newly hired range tech was then tasked with developing the record without help. He was now scrambling to find the project's details.

He found thousands of documents in boxes, on desks, in computer directories, and stacked on bookcases and shelves. In searching the documents, he found documents without dates or authors, handwritten notes of meetings instead of official minutes, documents referring to web sites that now had dead links, and he couldn't seem to find

enough supporting documents for some of the decisions made. He was now in panic mode.

The court [deadline], nevertheless, still had to be met. He ended up working late nights and weekends sorting through thousands of documents to compile, organize and index the record. The record, however, ended up with much of the data missing or lost over the years and couldn't be found. Still, he forwarded onto the solicitor's office, who were unhappy with the incomplete record, as were the justice attorneys, since they were the ones that had to try the case with a deficient record.

Has this happened to you? Or to someone you know? Believe me, you don't want to be the one to track down missing people or missing documents. All this work and stress could have been avoided if enough attention had been given to create a complete project file from the start of the project.

In a NEPA case, an attorney can only defend what is in the administrative record. The court will render its opinion on whether a challenge decision was made contrary, arbitrary or capricious based on the contents of the administrative record. As far as the court is concerned, if you did it and you didn't write it down, it didn't happen. If you wrote it down and you can't find it, it doesn't exist.

We live in a world of increasing litigation. So always keep in mind that the project file you are working on today may be challenged, and if so, it will then become our agency's administrative record. That is why the project file is so important. Every BLM administrative record must tell the complete story from start to finish of how the decisions transpired during the lifetime of the project.

I'd like to leave you with two analogies to remember when preparing a project file...

The first is, imagine that you're in the 8th grade and taking a math test. You feel good because you know most of the answers that you've written down are correct. However, when your teacher grades your test, she gives you a C-minus or fails you completely. You're shocked because you know the answers you wrote down are right. When you ask her why, she tells you that it's not enough to write down the correct answers. Rather, you must show the work processes of how you arrived at the answers. Therefore, the grade is justified.

As with NEPA, the courts want to see the processes you took that led to the decisions made, not just the answer.

Second, think of building your project file as though you are an author writing a book. If you're like most of us, you read a book from the beginning, chapter by chapter, until you get to the end of the book. You then understand what actions transpired all the way through that tells the complete story without any gaps.

The same goes for the record you are creating. By taking a step-by-step approach to

documenting, you will end up with a complete project file that tells the whole story. If litigated in the future, you can feel confident that BLM won't be left hanging and will be able to present the best possible case.

Thank you.

>> C. Humphrey: Thanks, Linda. Those were good analogies. I can see how they would be helpful when compiling project files and administrative records, and I am sure that our listeners can relate to the story you just told, changing personnel, missing documents, poorly organized files. I'm sure a lot of you have been in that situation.