

> C. Humphrey: We know Anne is good at that. So you heard it here, pizza, that's the secret. Okay. Now, this question is kind of beyond the scope, but I'll ask it anyway. This one is from California and it says: what rules guide withholding of prepositional documents from FOIA requests? I don't know if that's a Michael or a Laura.

>> M. Williams: What rules -- I didn't quite understand the question.

>> C. Humphrey: What rules guide withholding of prepositional documents from FOIA requests?

>> M. Williams: There's a whole body of law around FOIA and it's complex, which is why I keep saying you should probably talk to your FOIA coordinator. We have a great one in New Mexico. I'm sure there's other great ones throughout the west, even in Eastern States, perhaps, and I would go to that person because they have a big like three-inch-thick book that tells them how to do FOIA. I have it, too. Every time I get a new issue I have to go and look in that book. Sometimes I even have to look up case law about what is releasable and what isn't. They're difficult decisions. There's no right or wrong answer. If you really want some interesting reading, to go to that three-inch-thick book.

>> C. Humphrey: One thing I would like to clarify, we keep talking about talk to your FOIA coordinator or talk to your solicitor and every office has a different way to do that. You might have to talk to your program lead or somebody else before -- sometimes they don't like you to go directly to the solicitor or the FOIA coordinator. So just do whatever process you do in your office.

How about this one, probably for Laura: how do you put a copy of a document that is copyrighted or patented into the administrative record? And this one is from Spokane.

>> L. Damm: That's an interesting question, and not an expert in copyright and patenting, so I'll give you my gut thoughts on this. My advice would be -- obviously if it's part of your -- if the information was part of your decision-making process, it needs to go into your administrative record, include a complete copy and make sure the copyright symbol is included in the document itself.

>> C. Humphrey: Anybody want to add anything or is that good?

>> M. Williams: I might add one other little thing and that's if you did have like a set of encyclopedias or some gigantic geological treatise, that is copyrighted maybe a textbook you had in geology school, you could maybe just reference that gigantic volume. Megan touched on that a little bit. Instead of taking that gigantic textbook and dumping it into the record, put the table of contents and cover page and maybe a memo saying this is something that informed my analysis in making the decision.

>> C. Humphrey: This one might be a Linda question. This one is from the California Desert District. This person is wondering if regular weekly meeting agendas that just go over costs and scheduling should be included in the project file and administrative

record?

>> L. Garrison: I would say just the project file. Once, if it is litigated, which we hope it won't be, but if it is, at that point in time that would not go in the administrative record. That is our business. That's nobody else's. But it's also future information for if the project lead leaves, team members or so forth down the road, whoever comes in may want to see all of that. So it is good information to keep.

>> C. Humphrey: Now, this question I'd say is probably for Megan or Anne, and it's from Fairbanks, and they're wondering what's the best way to document interdisciplinary team meetings for the record would be and what needs to be recorded, and this person submitted a format that they had developed and they were wondering if that format was acceptable or not.

>> M. Stouffer: I'll let Anne add on in a minute but again, we mentioned it's just important to make sure that you're keeping the title -- the names of the people that are there and their titles, the topic of conversation, anything that was agreed to or proposed, and, you know, it's not so important the exact method you keep it in, but I think that having a standardized form or having something that is consistent throughout your project can be very helpful because it can allow you to be able to look up very quickly what you might have said during that meeting, but it also is sort of going to make it a habit for you to keep those notes and keep those meeting notes throughout the time that you're in that project.

Anne, do you have anything to add?

>> A. Boeder: Yeah, I think that you can get out of control in terms of capturing every word that was said in a meeting. That's just not needed. So there's some judgment, there's some art to it. I think you develop it over time. Certainly any important discussions where there was disagreements between team members you want to capture. Any "small D" decisions by the ID team or important action items, follow-up items, that sort of thing. So typically for our ID team meetings, we might have an all-day meeting or a meeting of several hours, and I would end up maybe having two or three pages of meeting notes.

>> C. Humphrey: And do you guys recommend, we've done it both ways, and I know I have a preference, but do you recommend having one person keep the notes or having it rotate around the team?

>> A. Boeder: You can do what works best for you. On a large ongoing project I've found that I wanted to keep those notes because that way I did it in a consistent manner.

>> M. Stouffer: And if you have somebody who is rotating or you have a whole bunch of people in that same meeting taking notes, be the person that collects them afterwards and compiles them. Type them all up. Because that's a lot easier than later having to request from everybody to, "can you please send us your meeting notes on that meeting?" I didn't get everything. Go around and make sure you collect what everybody got because it might be different from what you wrote down.

>> A. Boeder: I would do a draft of the meeting notes and I would send that out to the ID team to make sure I didn't miss any critical information.

>> C. Humphrey: That's good. Here's one that's trying to set up Michael and Laura. So I'll say that in advance. It's anonymous. Our local solicitor said we don't need to keep meeting notes in the record that don't document decisions or processes. Do you agree with this?

>> M. Williams: Yeah, I guess, but I'll have a "but also" which is sort of a lawyer thing to do. Yeah, if the meeting notes don't document decision-making process, you don't have to keep notes, but you never know what aspects of decision-making may become important. Megan said earlier, if it's scheduling, if it's-- Linda said if it's just about budget, that's probably not going to be part of the decision-making process that becomes an issue in the litigation. But I think it would be good habit for someone to be taking notes, even at the more boring or more fun meetings where nothing happens. So just in case those notes can be included in the project file.

>> C. Humphrey: Okay. Good. And then here's a question -- I'm not sure who this would go to -- this person is asking if there's a standardized system for administrative records. This person is from Wyoming and their practice is to put everything in one file, and I'm not sure if they mean one electronic folder or an actual hard copy file or what. It seems that each project manager uses their own system, and this person is wondering if they can change it or, is it up to the project manager or the Field Manager, or is it BLM policy or what? Anybody want to take that one?

>> L. Garrison: Well, I would say, first of all, check your manual. If you've got -- if it's a NEPA, you have the NEPA manual, they give you guidance in the appendix area for records and so forth. I definitely would check with that and then -- oh, read me it one more time. I've lost track.

>> C. Humphrey: They're just asking -- the way that administrative records, and I think they might mean project files, the way that's set up is can each project manager use their own system or is it up to the Field Manager?

>> L. Garrison: I would say it depends on the project you're working, but you would want to have one project file. I'm hoping we're not talking case file for realty or so forth, plus a project file. So I'm not quite sure where he's coming from.

>> M. Stouffer: If I could take a stab, you know, I mentioned a little bit in the broadcast earlier about how there are some outlines available on the KRC and you should be trying to create consistent outlines throughout your project. So if you've got three or four EAs and they run the gambit of topics, try to keep that outline similar for your project file so that again if you switch ID team members or new staff, new managers, they all know where to find all of that stuff when they're searching through it. So there isn't one standardized format that I think the BLM is using right now.

You might want to ask your state lead. I know for my state I would prefer if they used the samples I've provided for them because that way if I'm the one who is digging through the admin records try -- or the project file trying to create an admin record that I know where everything is across multiple projects, across multiple field offices. So check with your state lead. Check with your field officer planner. Maybe they have something they would like you to use, some kind of organizational structure.

>> L. Garrison: I would say consistency is really a big part of it. That's what I would add in there. You don't want everybody doing their own thing.

>> C. Humphrey: Like you guys said, it really depends on what the topic is. On the KRC page this might help you, if it's lands, we have a document on lands case file content documentation maintenance, we have lands case file organization. If it's for allotment and grazing case files we have a file that's grazing case file organization from the grazing handbook. I didn't post the NEPA Handbook but Laura was talking about where it was in the NEPA Handbook, so you can look there. Oregon has a bunch of examples. So we've got a lot of good resources that you can go to, but consistency is always best.

That's the one thing that drives some people crazy about the BLM is how different we are but that's one thing I think is so great, we can have some individuality as long as we keep to some sideboards.

Here is one of my favorite questions, and we'll keep this one anonymous to protect the innocent: we produce a lot of NEPA documents in our office but we don't always keep an administrative record for any of them because keeping an administrative record can be a major workload and, again, I think they probably mean project file. We could use some guidance and support in prioritizing when to maintain a record and what is crucial to keep in it. And I think what this person is talking about is they're new to that office but not new to NEPA, and they haven't been sued, and so they're wondering how they can encourage the rest of the people in their office to maybe keep better records. I think that's what they're getting at. So Michael I don't know if you or Laura want to . . .

>> M. Williams: I will take the first stab at this. I find it quietly horrifying that perhaps there's NEPA happening without any project file associated with it. No matter how small the NEPA is, if it's a little DNA, or maybe a little tiny APD or something going on that's small, I would like for there to be a project file associated with that NEPA action because you never know what's going to get sued. What decision is going to be challenged. It may never end up being a full-blown administrative record that a court's review, but each little NEPA decision needs to go ahead and have a project file associated with it.

>> L. Garrison: I agree 100%. I think the other thing is what in time you needed to go back and see some history on it or such. If you're not keeping any type of record, how would you have any history of what happened or transpired during that project? Maybe management needs to see some -- something about grazing or whatever it was, but, yeah, I would definitely get everybody aboard, and also something that management

should be able to help you with.

>> M. Stouffer: Another useful benefit of keeping a project file separate from the need for an admin record is a lot of times I get questions from field planners, "do you have an example of this EA?"

Or "do you have something that talks about this topic?" "I need some language on this." If you kept some pretty good project files, you'd be able to go through your files and quickly pull up those references, pull up those examples. It's a really good reference to have that. So I say just to reduce my heartburn, please start now, start keeping those files today. Please.

>> C. Humphrey: Here's one. Maybe we'll give this one to Laura. This person from Rawlins is asking: what should be considered public information, proprietary information or any other designation? I think they're struggling with how to identify different things, different types of information. I don't know -- I don't know if by public information if they mean FOIA-able.

>> L. Damm: It sounds like maybe they mean what's FOIA-able and what's not and what would be protected as proprietary. I guess what I would say is there are some specifics for each one of those.

In terms of what might be FOIA-able, privileged documents wouldn't be, you know, information that contains proprietary information -- likely would not be. I guess I probably need a little bit more context for the question.

>> C. Humphrey: Yes. Does anybody else have anything to add. It is kind of a short question?

>> L. Garrison: It's a hard one because it's -- you could go in so many directions with that.

>> M. Williams: It sounds like another opportunity to talk to your FOIA coordinator to reference that gigantic three-inch-thick book.

>> C. Humphrey: Now we have some more contractor questions. This person, and I'm not sure if this is California, Eastern States or Wyoming. I think it's California. Is there standard language that can be used in a contract to specify how the contractor should prepare the project file?

>> M. Stouffer: I don't know that any standard language exists at this time, but I'm going to say that you want to make sure that what you put in that statement of work is clear, concise and very -- that it outlines exactly what you want. So if you want to put an organization file in there with them, do it. If you want to make sure they're regularly giving you the files, do that. Make sure you're very specific.

This is the contract they're going to use throughout the life of your project and you need to hold them to those standards. Ask your state planner, your field planner, because they

might actually have some language they've been using about that I know I have some I share with my field offices and I definitely review those big RMP statements of work to make sure we're clear those are our files. The BLM owns the records. Be very clear.

>> C. Humphrey: Yep, in writing. And here's another. This is a pretty good one about contractors.

Are there certain documents that shouldn't be shared with the contractor, for example, what if we have something proprietary that the contractors shouldn't see? That's kind of a tough one?

>> M. Stouffer: There's not often a lot of things your contractor shouldn't see. There might be things you don't want to share with the proponent if it's a third-party project. We have some language that can go in the MOUs to make sure you're separating what the contractor has and what you're giving contractor, maybe it's Indian sacred sites or something like that. As far as proprietary information, part of the contracts -- the contractor, your NEPA contractor would sign and your proponent are disclosure statements. So they are not allowed to release proprietary information. So you've got to make sure you include that in the contract that you're signing with them, a Disclosure Statement not to release those documents.

Michael, do you have anything to add to that?

>> M. Williams: No, but the agreement you have with the contractor needs to have language saying that they can't release like Indian sacred sites, the BLM shares with them to the general public. When the contractor is hired hopefully the contract with the contractor will contain language that makes it as if the contractor is a BLM employee. So you can share that privileged information with the contractor and the contractor is legally liable if it releases the privileged information to the public or even perhaps to the third party proponent of the project.

>> C. Humphrey: Here's something kind of in-line with that. What should or can a contractor be held liable for regarding the record?

>> M. Stouffer: Again, it's what you put in the contract. Whatever you put in the contract they can be held liable for. So be specific.

>> L. Garrison: Yes, that's why it's so important to make sure that the specifications, your SOW, is really on target.

Take the time to use your state planning lead, environmental coordinator, and such, and procurement, because procurement plays a big rolled, and make sure before they finalize that contract to go out, you know, for RFQs and so forth that you have the specifications that you know are needed in there. Everything spelled out. Because if it's in black and white, they are legally held responsible. There's no guessing. They can't say later on, "Well, that wasn't part of the contract," and then you end up maybe having to do some change orders. Why? Because it wasn't put in the beginning. You can only hold them responsible for what's in the contract. So make sure everything is in the contract.

>> C. Humphrey: So if anybody out there has any statements of work that talk about requirements for a contractor to do the administrative record, let me know and I can post that also if you're okay with that. And I've been kind of laughing about this because one of my co-workers, Genie Ramsden and I work with contractors a lot to develop these online courses and every one our statements of work is a little bit bigger, little bit bigger, little bit bigger because we think we have everything figured out and then something slips through the contracts. We're trying to make it as tight as possible.

So I wanted to tell you all in the field that we're closing in on our last few questions. So if you have any questions that we haven't answered yet, it's now is your time because we only have a couple more. Here is a really great question, too, I love this. It's a handwritten question. It's from Kingman.

It says: how would you make a handwritten document word-searchable? This is a really good question because we get lots of handwritten public letters and that kind of thing. Anybody want to take a stab? Anne, do you have experience with this?

>> A. Boeder: I don't. I know there's certain software available that searches Word documents but I'm not familiar with any that search handwritten documents.

>> M. Stouffer: The OCR function on a lot of the PDF file stuff but it is hard to do the handwritten stuff. My recommendation again, I was sort of saying it with meeting notes, if you're collecting everyone's meeting notes, type them up, I know it's extra work but it does save a lot of time and it also helps for me to rethink what happened in that meeting. I'm like, oh, yeah, I want to rephrase how I said that because that's not exactly what it captured. And so it's really good to try to type those things up whenever you can because there isn't necessarily a software that will search those.

>> L. Garrison: Also, I think we need to remember that if it does become your -- your project file does become litigated in the future, that's going to have to end up in the administrative record. You really don't want handwritten notes in an administrative record if at all possible. They don't scan very well, normally. People's handwriting can be good and then again it can be atrocious. Remember, this is going forward to courts. Take the time to type it out. Whether it's yourself or someone else, you know, it really pays in the long run.

>> A. Boeder: I'll add, I think typically the situation where you have handwritten notes is when you get public comments, and on a large project I don't think it's feasible to type up all those comments, but what you can do is create key words and at least capture sort of the main subject matters of that public comment in electronic format.

>> C. Humphrey: I worked on a large project and we got tens of thousands of comments, and a lot of them were handwritten, and we did have them all typed up, and we hired a bunch of people, 10 people, to type, type, type, type. But for most people and most projects, you're right. We were pretty lucky there. Here's one more about -- this is

probably for Megan -- what is critical in a project file for a project that is only about a CX or a DNA? Do you have to keep a project file?

>> M. Stouffer: Yes, you definitely have to keep a project file. We're definitely getting litigated on some of these things. Despite that, you want to have that record. And you just want to keep all the same things you would normally keep for an EA, the whole level of gambit. I did provide some sample outlines for a CX online. I don't think I provided a DNA.

>> C. Humphrey: I think you did.

>> M. Stouffer: I did?

>> C. Humphrey: Oh, no, you didn't.

>> M. Stouffer: So the same level of detail, the same files, meeting notes, any e-mails that you will talk about, those CX's and DNA's go through a certain level of review as well, so you want to make sure that's documented and it's all there. We're seeing if has no environmental impacts or the NEPA is adequate, we have to prove that. It's on us to prove it. Include everything you can to make sure we're proving that.

>> C. Humphrey: I have just a couple comments. We got a question from Rawlins asking if it's possible to have the questions and answers in writing for follow-up on the broadcast. So we will type up the questions. Not the answers, but we'll list the questions that have come in so you can go to that section of the KRC or skip it.

And then we also got a comment that the Utah State Office has an Excel format for landing administrative records that seems to work pretty well, and I don't think -- I don't know if that one was part of their IM or not. But if you want to know more about that talk to Lauren Mermejo.