WESTERN ENERGY ALLIANCE

BLM Streamlining Planning & NEPA - Input Form

A. Focused Analysis: How can the BLM reduce duplicative and disproportionate analyses?

Solution #1: Environmental Assessments (EA) are frequently required by BLM even when a project is already covered by an existing Environmental Impact Statement (EIS) and associated Record of Decision with appropriate stipulations. Per Section 390 of the Energy Policy Act of 2005, a Categorical Exclusion (CX) should be granted for Applications for Permit to Drill (APD) when an EIS has been completed within five years. BLM could save considerable time and resources but not conducting redundant EAs when the five-year EIS criterion for a CX is met. Field offices should first screen a project and use an existing EIS or applicable EA within the area, and they should be directed to use CXs when at all possible.

Solution #2: CXs are rarely granted, meaning BLM frequently conducts additional NEPA review when it is unnecessary. It appears that BLM automatically requires an EA, rather than considering a CX. Make Section 390 Categorical Exclusions mandatory when an APD meets one of the five statutory criteria mandated in the Energy Policy Act of 2005. Currently, individual field offices are choosing to ignore the law, despite the mandate from Congress.

Solution #3: After determining that a CX may apply for a project, BLM still often determines that extraordinary circumstances apply requiring an EA or EIS, yet these determinations are arbitrary. BLM should establish clear criteria for what constitutes extraordinary circumstances and implement these criteria through an Instructional Memorandum and the NEPA handbook. Furthermore, if BLM decides an EIS or EA is necessary, there is no process for the project proponent to challenge this decision. BLM should implement a review process for decisions regarding the level of environmental analysis required for a project.

Solution #4: BLM is developing Master Leasing Plans (MLP) for areas as another layer of duplicative NEPA used to further restrict oil and natural gas development on public lands. MLPs are duplicative with the normal Resource Management Planning (RMP) process, which already designates which areas are open to leasing and which are closed, and outlines conditions for leasing where it is available. The RMP process incorporates extensive public input and is developed over a number of years. BLM should rescind IM 2010-117, which established the MLP process, and replace it with an IM that explicitly authorizes leasing pursuant to existing Resource Management Plans and ends the MLP process.

B. User-friendly Planning: How can the BLM help state and local governments, tribal partners, and other stakeholders understand and participate in the planning process?

Solution #1: State, local and tribal governments often lack the resources and bandwidth necessary to participate in the planning process without aid from BLM. Early engagement with stakeholders as the planning process is beginning would give them time to prepare and set aside resources. Educating relevant stakeholders as to how the planning process

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will proceed and how they can participate would encourage more active participation from these important partners. BLM should also consider a dedicated source of funding for stakeholder engagement.

C. Transparency: How can the BLM foster greater transparency in the NEPA process?

Solution #1: BLM releases EIS text for public comment before allowing the project proponent to review and address issues raised. Public comments will often identify issues with the EIS which could have been addressed more effectively beforehand by the proponent. The project proponent should be allowed to review the EIS before it is released for public comment. Doing so would reduce the amount of work BLM must complete in response to the comment period and allow for additional collaboration and problem solving between the project proponent and BLM, saving resources and time.

Solution #2: Even though companies often pay, in many cases millions of dollars, for contractors to conduct the environmental analysis necessary under NEPA, project NEPA documents frequently go into a black hole without visibility on where the document is in the process or why there are substantial delays. Western Energy Alliance has documented numerous projects that have taken several years, many without any update to project proponents. BLM should make information available to project proponents at least every six months on where the document is in the process, the cause of delays, and what BLM is doing to move forward.

Solution #3: BLM should adhere more closely to Council of Environmental Quality (CEQ) guidelines on NEPA timelines. When EAs exceed six months and EISs eighteen months, BLM should assign strike teams to complete the NEPA. These strike teams should be composed of planning specialists, perhaps at the state office level, who have the expertise to move forward expeditiously with NEPA documents, as sometimes staff at the field office level are not as skilled in the NEPA process and focused on many different tasks.

D. Being Good Neighbors: How can the BLM build trust and better integrate the needs of state and local governments, tribal partners, and other stakeholders?

Solution #1: BLM should adhere to the principles established in the 2005 Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners. While BLM allows for substantial public input during the resource management plan development process, stakeholder concerns, particularly those from state and local governments, are frequently ignored in the final plan. BLM should ensure that public comments are sufficiently incorporated into final RMPs and EISs.

Solution #2: Many counties across the West have planning processes that are not given full consideration by BLM. BLM should improve the recognition and incorporation of state and local government land use plans, data, and policies in RMP amendments.

Solution #3: BLM should abide by statutory and regulatory timeframes for completing NEPA analysis. When an EA is required, BLM should ensure it is completed within a 3-6 month period, per the Energy Policy Act of 2006, and when an EIS is required, it should take no longer than 18 months, per Council on Environmental Quality guidance.

E. Reducing Litigation: How can the BLM create legally defensible documents and avoid the delays associated with legal challenges?

Solution #1: In many ways, BLM is at the mercy of the federal courts, which have construed the requirements of NEPA to require more procedure and delay than Congress ever envisioned when enacting the statute. Because of the myriad requirements contained in regulations, policies and other guidance documents, it is very easy for environmental groups to find deficiencies in documents to exploit in court. When the documents are several thousands of pages with several thousands more pages of supporting studies, it is very easy to flyspeck BLM's analysis to find a supposed deficiency. BLM should therefore do as complete a job as possible, but more robustly defend itself from the inevitable court challenges.

Solution #2: It will remain difficult to create legally defensible documents as long as they are so long and complex. Several policies enacted without Congressional mandate or a rulemaking process during the Obama Administration should be overturned, as they created more complexity and made planning documents even longer and more indefensible. The complexity of the sage grouse plans and their associated Instruction Memoranda are a case in point, as is the Master Leasing Plan process. While redoing the sage grouse plans will take time, the IMs and the MLP policies can be overturned in short order. BLM should also consider simplifying other policies and guidelines to reduce vulnerability in court.

Solution #3: The Administration should work with Congress on ways to limit opportunities for unaccountable groups to sue to stop energy projects that create jobs and economic opportunities. Having the Administration support legislation to prevent the use of the Equal Access to Justice Act as a means of using taxpayer dollars to fund litigation from large environmental groups is one way. Another is reducing the statute of limitations for legal challenges to energy projects from six years to ninety days, the same timeline that energy developers and lessees must meet to challenge federal decisions.

Solution #4: BLM should support legislation to limit venue for actions challenging energy projects on public lands or leasing decisions to either the judicial district where the project or leases exist/are proposed or the D.C. District Court, which has broad jurisdiction and an extensive history of analyzing regulatory issues. Requiring litigation to be filed in one of these courts would more closely align the action with a court that has the appropriate expertise.

F: "Right-sized" Environmental Analysis: How can the BLM more closely match the level of NEPA analysis to the scale of the action being analyzed?

Solution #1: The NEPA process is initiated for wells on private or state lands even when only a minority of the oil and natural gas resources being accessed are federal, using the "federal nexus" as a reason for BLM to become involved in wells in which it has only a minority of mineral interest and/or when the well is not on federal or tribal surface. Once BLM determines the federal nexus requirement is met, it holds up development of individual private minerals, potentially for years, while conducting NEPA and permitting.

Rather than undergoing that additional NEPA, BLM should recognize its minority interest and determine that additional NEPA is not required.

Solution #2: BLM frequently requests information that is not required in the EA but would be beneficial for BLM to collect. This information is collected at the company's expense and is often unrelated to the project. The scope of EAs should be limited to information that is truly required for NEPA compliance, and field offices should be directed to stop requesting additional information for its own benefit and is inconsequential to the project at question.