

WRITING COMMENTS WITHOUT NEPA REGULATIONS

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INTRODUCTIONS AND OVERVIEW



- **What we'll cover:**
 - The deluge...
 - What is the state of NEPA?
 - What does the BLM have to do?
 - What other obligations does the BLM have?
 - Commenting on land use planning processes.
 - Commenting on other actions.
 - Key takeaways.
- **Opportunities for questions along the way**
- **Take home materials!**

The Deluge

This term looks different because they are very aggressively and very quickly changing a lot of processes and norms at one time – including bedrock environmental laws.

Lots of discussion of energy emergencies and energy above all – at the expense of conservation and federal agencies/workers.

Part of their point is to overwhelm you –

- Part of winning is to keep paying attention and keep weighing in. +
- Showing up for the National Conservation Lands and all public lands. •



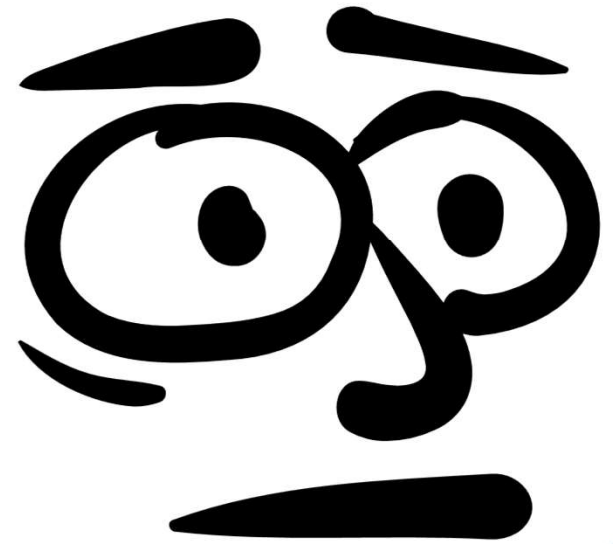
The state of NEPA

The statute is still in place

- Informed decision-making after taking into account environmental consequences, considering alternatives

Major changes

- CEQ implementing regs had existed for almost 50 years creating a very familiar process, and they have been revoked.
- New regs are limited to: (1) emergency situations; (2) the use of categorical exclusions; and (3) applicant prepared EIS's/EA's.
- All other direction regarding NEPA processes will only be addressed in guidance documents, such as department handbooks and bureau guidance.
- Supreme Court decision (*Seven County Infrastructure Coalition* case) changed the federal common law – finding the scope of NEPA review has become too broad and burdensome, so dialed back how much NEPA analysis will be required and emphasizing procedural nature.
- “Energy emergency” procedures for fossil fuel/mining projects.



DOI Handbook and Implementation Guidance

1. For EAs, no requirement for public participation of any kind other than posting information on the website.
 2. For EISs, requirement to publish a notice of intent, seek input and conduct a scoping process. There is also a requirement to request comments at some unspecified time during preparation of the EIS that is “reasonable” and “seek to provide 30 days, to the extent practicable” for comments to be submitted.
 3. Agencies are only *required* to seek comment from other federal, state, local and Tribal agencies and an applicant, but *may* also request comments from the public.
 4. Cooperating agencies have a seat at the table – federal/state/local/Tribal agencies
 5. A lot of discretion left in the DOI Implementation Guidance for BLM to provide for more public comment and other types of input – looking at insight, complexity, community insight, efficiency – benefit of comments, public meetings, etc.
- **KEY HERE TO BE PROACTIVE** – with BLM, with cooperating agencies, & with Tribes where aligned with their priorities



What does the BLM have to do?

Federal Land Policy & Management Act

- Manage for multiple use/sustained yield.
- Prioritize protection/designation of areas of critical environmental concern.
- Maintain current inventory of resources and manage under land use plans [*also very specific planning regulations*].
- Prevent unnecessary or undue degradation.
- Only authorize actions consistent with governing land use plans.
 - -
- Involve the public in decision-making about the management of public lands.



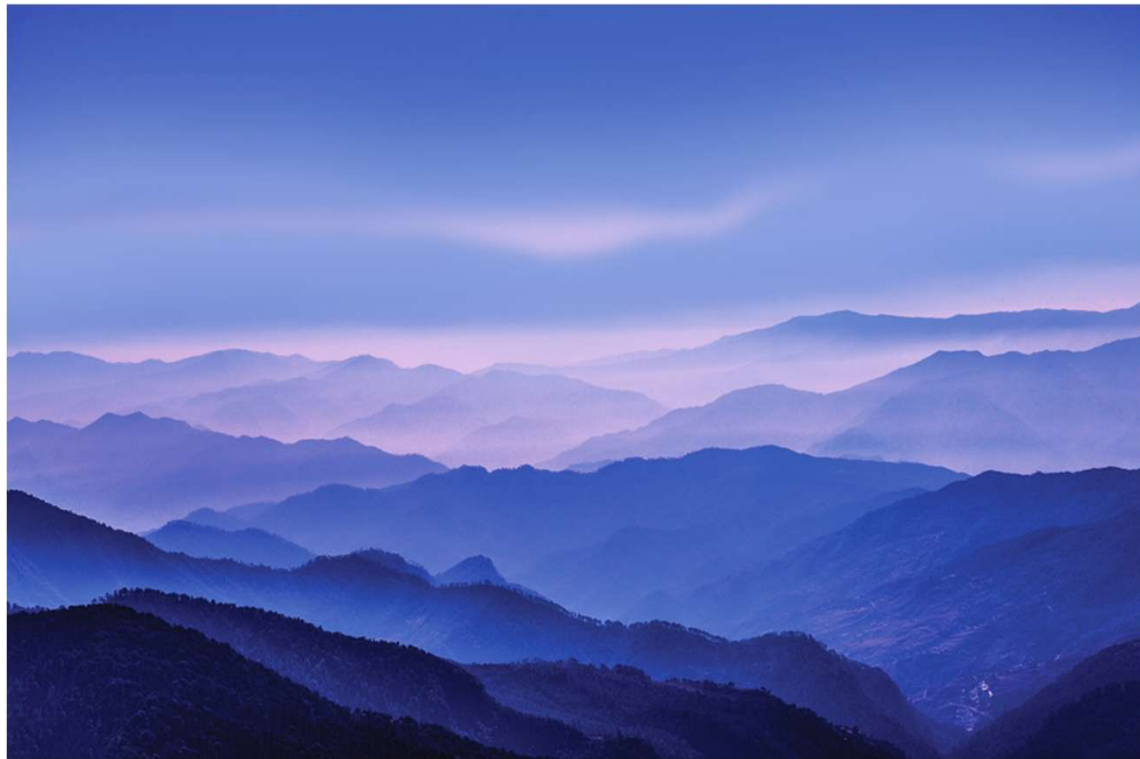
What does the BLM have to do?

Public Lands Rule

- Additional FLPMA regulations to address Conservation & Landscape Health.
- Identifying priority landscapes for restoration and intact landscapes to be protected.
- Formalizing mitigation and restoration leases as tools on public lands.
- Further defining unnecessary or undue degradation.
- Further defining requirement to avoid permanent impairment of ecosystem resilience and requiring justification of decisions that may impair it. • ○
- Incorporating Indigenous Knowledge into definition of high-quality information.
- Emphasizing seeking opportunities for Tribal co-stewardship.



BRIEF Q&A BREAK



Other legal obligations

- National Landscape Conservation System Act – created system of National Conservation Lands “in order to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.”
 - Defers to other governing acts such as Wilderness Act or Wild & Scenic Rivers Act.
- Individual Monument Proclamations and other enabling legislation – for specific units identify those objects or other values/resources to prioritize
 - Guide all decisions and require some.
 - May be interim management guidance issued until plans are completed.



Other legal obligations



- National Historic Preservation Act - Established to protect historic and cultural resources. Requires inventory, consultation and consideration of mitigation. Requires consultation with Tribes prior to action. Also provides for creation of Programmatic Agreements with broader set of parties that can govern action needed prior to approving permits or rights-of-way or other actions in broader areas.
- Endangered Species Act - Enacted to prevent extinction and promote recovery of threatened and endangered fish, wildlife and plant species. Requires consultation and consideration of protection of listed species prior to any actions that could result in jeopardy of the species or harm their critical habitat; generally prohibits “take” of those species. The BLM is also supposed to take action to prevent actions that could make listing more likely of species identified as “special status species” (per manual).
- Both of these tend to line up with ACECs, wilderness values, values of National Conservation Lands units.

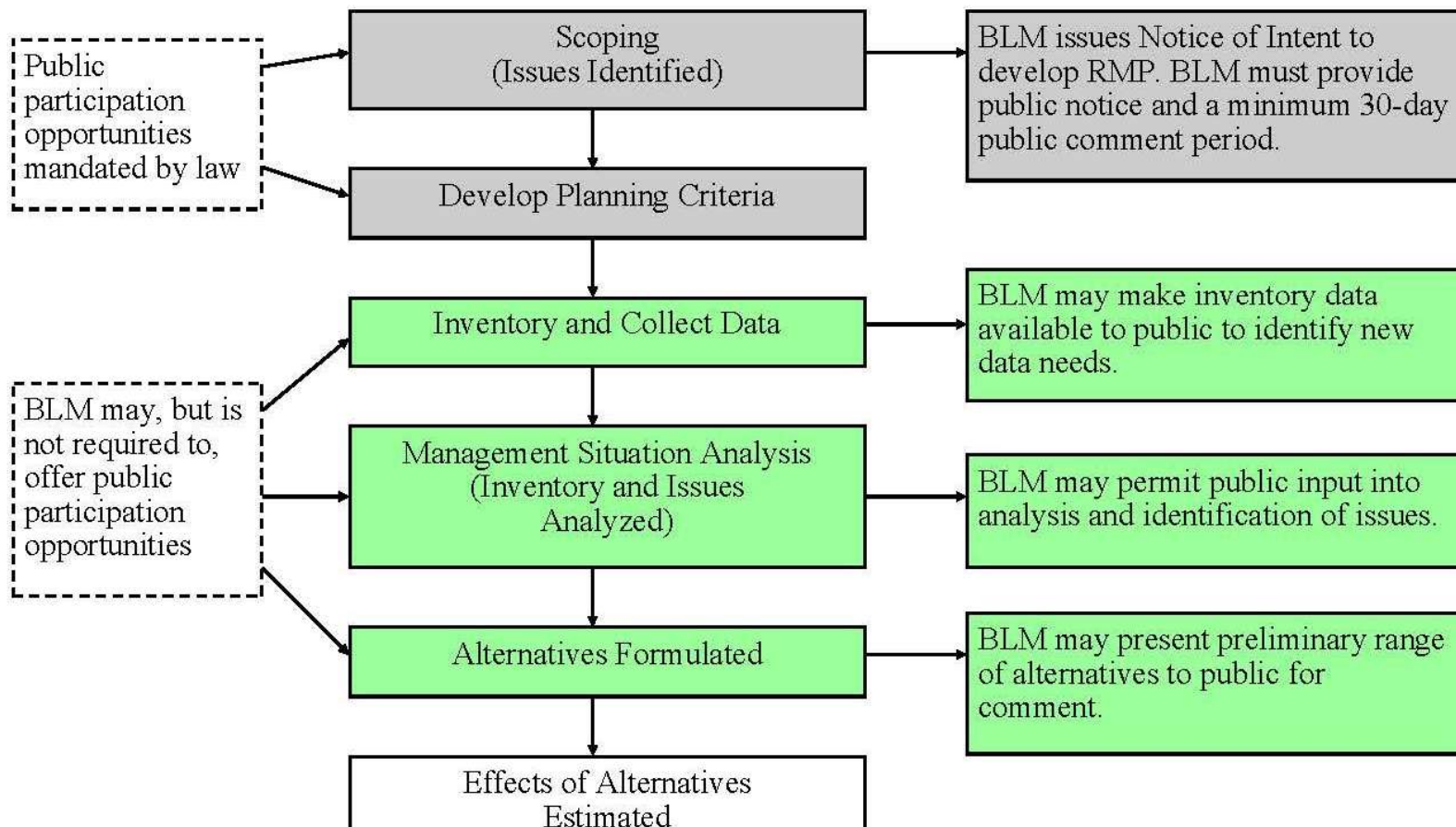
Commenting on land use planning processes

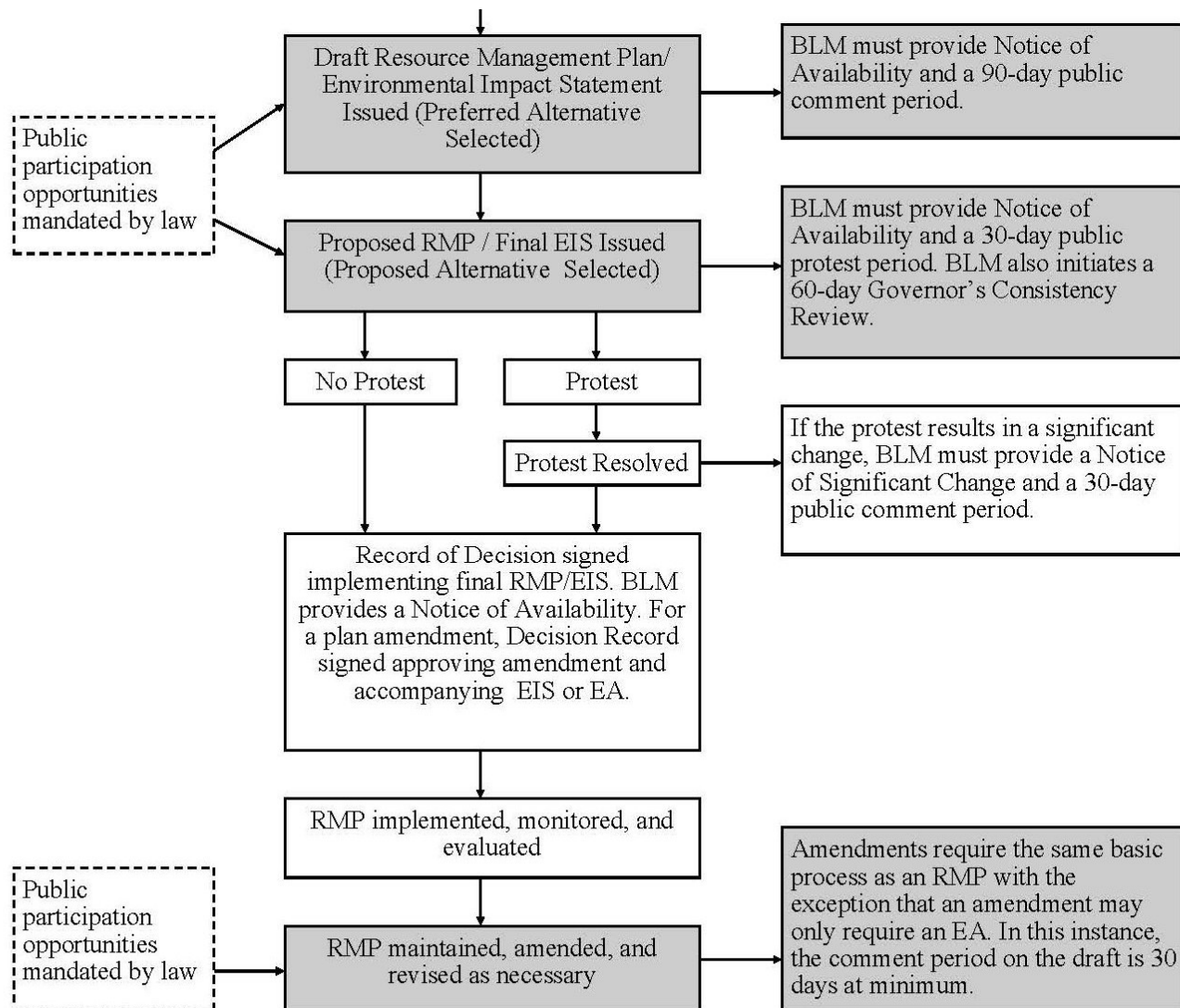
- Can be a new plan or an amendment – conducted per BLM planning regulations and guidance.
- If National Conservation Lands Unit, then priorities and specifics are guided by proclamation or legislation – including co-stewardship, specific approaches to travel management or grazing - otherwise guided by FLPMA principles.
- In all cases can submit proposals/alternatives/information:
 - Includes ACECs, backcountry conservation areas, lands with wilderness characteristics. +
 - Cooperating agencies can submit and are at the table.
- BLM must seek consistency with state/local/Tribal plans.
- Tribes have opportunities beyond cooperating agencies as sovereign nations – can look for shared goals to support.



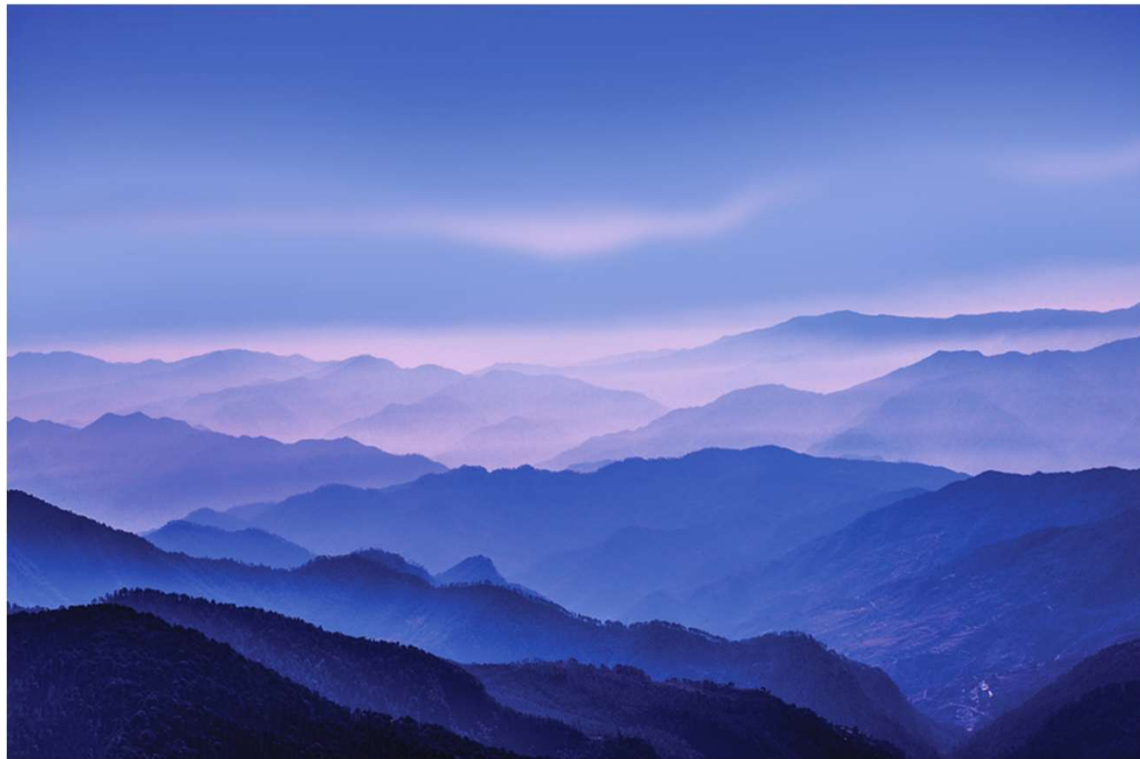
RESOURCE MANAGEMENT PLANNING PROCESS

The left side of the figure shows the progression of planning stages. The boxes on the right highlight the public participation opportunities at each stage.





BRIEF Q&A BREAK



Commenting on other actions

- Write substantive comments.
- NEPA must be current; FLPMA inventory must reflect current conditions on the ground.
- Actions must conform to current RMP.
 - Otherwise amendment may be needed to update plan and take into account new information.
- NHPA and ESA compliance is still required before approving actions.
 - BLM is used to combining with NEPA so likely to miss steps.
- If National Conservation Lands Unit, then must conform to proclamation or legislation even if no new management plan.



Commenting on other actions – cont'd

- Be proactive to seek opportunities for comment.
 - Communicate with the BLM – get on record to ask for notification and opportunities to comment.
 - Track on e-planning for areas of interest.
 - Work with potential cooperating agencies and encourage them to be cooperators.
 - Support shared goals with Tribes.
- Can set up advocacy for other places – including administrative designations, restoration/mitigation leases, longer-term protections



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NEPA #	Project Name	NEPA Status	Type	Lead Office
DOI-BLM-NM-L000-2018-0051-CX	Guided Hikes in Organ Mountains-Desert Peaks NM	Completed	CX	Las Cruces DO
DOI-BLM-NM-L000-2024-0015-EA	Land and Water Conservation Fund Organ Mountains Parc...	Cancelled	EA	Las Cruces DO
DOI-BLM-NM-L000-2024-0025-EA	Land and Water Conservation Fund Organ Mountains Parc...	Completed	EA	Las Cruces DO
DOI-BLM-NM-L000-2018-0079-RMP...	Mimbres Resource Management Plan Amendment: Land ...	Completed	RMP Amendm...	Las Cruces DO
DOI-BLM-NM-L000-2017-0017-CX	Organ Mountains Communications Site Lease	Completed	CX	Las Cruces DO
DOI-BLM-NM-L000-2018-0086-RMP...	Organ Mountains-Desert Peaks National Monument Resou...	Completed	RMP - EIS	Las Cruces DO

Some key points to keep in mind amidst the deluge:



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- BLM must comply with NEPA, FLPMA and additional legal requirements – not everything is an “energy emergency” and compliance is not optional.
- BLM must interact with the public – get on record and ask to be notified.
- BLM must consult with Tribes and comply with Programmatic Agreements.
- BLM must prioritize protection and the mission of the National Conservation Lands in those units.
- Stand with and support Tribes, partners.
- You can continue to pursue a long-term vision by engaging in public processes.
- These public lands are part of the local communities – they deserve to be treated that way – the community should be heard and the BLM can facilitate it.

○

CHOKMA - THANK YOU

NEW: TRIBAL – PUBLIC LANDS ALLIANCE

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Q&A

