

May 15, 2017 Email

Mary Camp, President
Deer Creek Valley Natural Resources Conservation Association

Orville Camp, Author
Forest Farmers Handbook: A Guide to Natural Selection Forest Management (1984); *The Natural Selection Alternative Natural Selection Alternative for the Medford District BLM South Deer Landscape Management Project* (EA# OR110-05-10)
Deer Creek Valley Natural Resources Conservation Association

Serena Barry, Vice President
Deer Creek Valley Natural Resources Conservation Association

Subj: National Environmental Procedures Act's (NEPA) Procedural Requirements

Dear Mary, Orville, & Serena:

Great meeting, May 12, 2017, at the Black Forest Restaurant. See ya there this Friday, May 19, 2017, at 10:00 a.m. for a continuing round of "table talk" on NEPA's procedural requirements. I understand one goal for the meeting is to finish reviewing the summary list - a peak at the BLM NEPA Handbook compliance criteria for "Significance" from draft May 12, 2017 letter/email to you with the subject of "National Environmental Procedures Act's (NEPA) Procedural Requirements." A companion goal is writing substantive scoping comments and comments on NEPA documents (e.g., EA, EIS, etc.) My goal is to finalized the May 12, 2017 consultation letter by our May 19, 2017 meeting.

- Substantive Comments. (BLM. 2008, p. 66) **Substantive comments do one or more of the following:**
 - question, with reasonable basis, the accuracy of information in the EIS or EA.
 - question, with reasonable basis, the adequacy of, methodology for, or assumptions used for the environmental analysis.
 - present new information relevant to the analysis.
 - present reasonable alternatives other than those analyzed in the EIS or EA.
 - cause changes or revisions in one or more of the alternatives.

Comments that are not considered substantive include the following (BLM. 2008, p. 66).

- comments in favor of or against the proposed action or alternatives without reasoning that meet the criteria listed above (such as "we disagree with Alternative Two and believe the BLM should select Alternative Three").
- comments that only agree or disagree with BLM policy or resource decisions without justification or supporting data that meet the criteria listed above (such as "more grazing should be permitted").

For me one of the main ideas for the subject of NEPA's "Procedural Requirements" is to try to understand the applicable NEPA compliance "standards and criteria" terms, and NEPA court precedents that support the values of the commenter. The BLM's NEPA procedural requirements are identified by six categories.

1. National Environmental Policy Act.
2. CEQ Regulations for Implementing the Procedural Provisions of the NEPA, 40 C.F.R. parts 1500-1508.
3. CEQ's *Forty Questions*.
4. USDI's Department Manual on NEPA (516 DM 1-7).
5. BLM National Environmental Policy Act Handbook H-1790-1.
6. Court Precedents.

This email communication follow-up is on "purpose and need" for some action of BLM, in compliance with the 2008 BLM National Environmental Policy Act Handbook H-1790-1 (i.e., from page 7 of draft May 12, 2017 letter/email). The purpose and need also relates to scoping and issues, also on page 7.

- The Role of the Purpose and Need Statement. **The purpose and need statement dictates the range of alternatives, because action alternatives are not "reasonable" if they do not respond to the purpose and need for the action** (emphasis added) (see section 6.6.1, *Reasonable Alternatives*). **The broader the purpose and need statement, the broader the range of alternatives that must be analyzed** (emphasis added). The purpose and need statement will provide a framework for issue identification and will form the basis for the eventual rationale for selection of an alternative. **Generally[?], the action alternatives will respond to the problem or opportunity described in the purpose and need statement** (emphasis added), providing a basis for eventual selection of an alternative in a decision (BLM. 2008, p. 36) .
- Scoping is the **process by which the BLM solicits internal and external input on the issues, impacts, and potential alternatives that will be addressed in an EIS or EA** (emphasis added) as well as the extent to which those issues and impacts will be analyzed in the NEPA document. Begin considering cumulative impacts during the scoping process; **use scoping to begin identifying actions by others that may have a cumulative effect with the proposed action** (emphasis added), and identifying geographic and temporal boundaries, baselines and **thresholds** (emphasis added). Scoping also helps to begin identifying **incomplete or unavailable information and evaluating whether that information is essential to a reasoned choice among alternatives** (emphasis added) (BLM. 2008, p. 38).
- Issues. The CEQ regulations provide many references to "issues," though the regulations do not define this term explicitly. At 40 CFR 1501.7(a)(2), 40 CFR 1501.7(a)(3), (40 CFR 1502.1, and 1502.2(b), the CEQ explains that issues may be identified through scoping and that only significant issues must be the focus of the environmental document. **Significant issues are those related to significant or potentially significant effects** (emphasis added) (see section 7.3, *Significance*) (BLM. 2008, p. 40).

What does “The Role of the Purpose and Need Statement” mean per the BLM NEPA Handbook (i.e., Chapter 6—NEPA Analysis)?

CHAPTER 6—NEPA ANALYSIS
6.1 OUTLINE OF ANALYTICAL STEPS
6.2 PURPOSE AND NEED
6.2.1 The Role of the Purpose and Need Statement
6.2.2 The Decision to be Made

The entire section “6.2 PURPOSE AND NEED”, versus the previous short paragraph, from the BLM NEPA Handbook follows.

6.2 PURPOSE AND NEED (BLM. 2008. p.35)

The CEQ regulations direct that an EIS “...**shall** (emphasis added) briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action” (40 CFR 1502.13 [for EISs]). The CEQ regulations also direct that EAs “...**shall** (emphasis added) include brief discussions of the need for the proposal...” (40 CFR 1508.9(b) [for EAs]).

The CEQ regulations do not differentiate the “purpose” of the action from the “need” for the action. However, distinguishing the “purpose” and the “need” as two separate aspects of the purpose and need statement may help clarify why the BLM is proposing an action. For many types of actions, **the “need” for the action can be described as the underlying problem or opportunity to which the BLM is responding with the action. The “purpose” can be described as a goal or objective that we are trying to reach. Often, the “purpose” can be presented as the solution to the problem described in the “need” for the action** (emphasis added). *For example, the “need” for a culvert replacement project might describe how the existing culvert blocks fish passage; the “purpose” might be to replace the culvert with one that allows fish passage.*

Regardless of whether the “purpose” and the “need” are treated as distinct or synonymous, **the purpose and need statement as a whole describes the problem or opportunity to which the BLM is responding and what the BLM hopes to accomplish by the action** (emphasis added).

We recommend that the purpose and need statement be brief, unambiguous, and as specific as possible. Although the purpose and need statement cannot be arbitrarily narrow, you have considerable flexibility in defining the purpose and need for action. To the **extent possible, construct the purpose and need statement to conform to existing decisions, policies, regulation, or law. The purpose and need for the action is usually related to achieving goals and objectives of the LUP** (emphasis added); reflect this in your purpose and need statement.

The purpose and need statement for an externally generated action **must describe the BLM purpose and need** (emphasis added), not an applicant’s or external proponent’s purpose and need (40 CFR 1502.13 [for EISs]). The applicant’s purpose and need may provide useful background information, but this description must not be confused with the BLM purpose and need for action. The BLM action triggers the NEPA analysis. It is the BLM purpose and need for action that will dictate the range of alternatives and provide a basis for the rationale for eventual selection of an alternative in a decision. See the Web Guide for examples of purpose and need statements.

Text Box: **The purpose and need statement should explain why the BLM is proposing action** (emphasis added). Note that you must describe the purpose and need for the action, not the purpose and need for the document

6.2.1 The Role of the Purpose and Need Statement (BLM. 2008. p. 36)

We recommend that you draft your purpose and need statement early in the NEPA process. Including a draft purpose and need statement with scoping materials will help focus internal and external scoping comments. **Reexamine and update your purpose and need statement as appropriate throughout the NEPA process, especially when refining the proposed action and developing alternatives** (emphasis added).

A carefully crafted purpose and need statement can be an effective tool in controlling the scope of the analysis and thereby increasing efficiencies by eliminating unnecessary analysis and reducing delays in the process. **The purpose and need statement dictates the range of alternatives, because action alternatives are not “reasonable” if they do not respond to the purpose and need for the action** (emphasis added) (see section 6.6.1, *Reasonable Alternatives*). **The broader the purpose and need statement, the broader the range of alternatives that must be analyzed** (emphasis added). The purpose and need statement will provide a framework for issue identification and will form the basis for the eventual rationale for selection of an alternative. **Generally[?], the action alternatives will respond to the problem or opportunity described in the purpose and need statement** (emphasis added), providing a basis for eventual selection of an alternative in a decision.

For example, in the culvert replacement example above (see section 6.2, Purpose and Need), the scope of the analysis would be narrowed by describing a more specific “purpose” of replacing the existing culvert to allow cutthroat trout fish passage in the spring; reasonable alternatives might include analyzing various culvert sizes, or moving the culvert. Conversely, the scope of the analysis would be broadened by describing a more general “purpose” of improving fish passage; reasonable alternatives might include culvert removal and road decommissioning.

Examples of purpose and need statements and related decisions are found in the next section, **6.2.2, The Decision to be Made**, and examples of combined and separated purpose and need statements can be found in the Web Guide.

6.2.2 The Decision to be Made (BLM. 2008. pps. 36-38)

You may include in the purpose and need statement a description of your decision(s) to be made based on the NEPA analysis. Tying the purpose and need for your proposal to your decision helps establish the scope for the NEPA analysis. A clear explanation of the decision(s) at hand is also helpful in public involvement; **it helps to set expectations and explain the focus of the BLM’s NEPA analysis** (emphasis added). In describing the BLM’s decision(s) to be made, you must retain the flexibility to select among **alternatives that meet the purpose and need, and are within the BLM’s jurisdiction (40 CFR 1506.1(a)(2) [EAs & EISs])** (emphasis added). As with the purpose and need, the description of the decision(s) to be made may be broad or narrow.

[Sec. 1506.1(a)(2) Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in §1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

- (1) Have an adverse environmental impact; or
- (2) **Limit the choice of reasonable alternatives** (emphasis added).]

For externally generated actions, the description of the decision(s) to be made helps differentiate your role in the action from the external proponent’s role. For NEPA documents prepared with cooperating agencies with jurisdiction by law, we recommend that you explicitly identify the decisions to be made by each agency (see section 12.1, *Cooperating Agency Status in Development of NEPA Documents*).

Examples:

The following examples are adapted from actual BLM actions. These are not intended to provide a template to be copied, but as examples for general consideration. Because the purpose and need statement controls the scope of the analysis and is directly tied to the eventual rationale for selection, it is important that the purpose and need statement be tailored to the specific action in question.

An externally generated implementation action. *The purpose of the action is to provide the owners of private land located in Township X South, Range X West, Section X, with legal access across public land managed by the BLM. The need for the action is established by the BLM's responsibility under FLPMA to respond to a request for a Right-of-Way Grant for legal access to private land over existing BLM roads and a short segment of new road to be constructed across public land.*

Decision to be made: The BLM will decide whether or not to grant the right of way, and if so, under what terms and conditions.

An internally generated implementation action. *The purpose of the action is to modify current grazing practices on the X Allotment by adjusting timing and levels of livestock use so that progress can be made toward meeting the fundamentals of rangeland health. The need for the action is that fundamentals of rangeland health are not being met for watersheds, riparian areas, and threatened and endangered plants in the X Allotment, based on a current assessment. Active erosion is evident and exotic annual grasses dominate the understory. The assessment found that current livestock grazing management practices do not meet the fundamentals of rangeland health.*

Decision to be made: The BLM will decide whether or not to issue a grazing permit with modifications from the current permit.

A Land Use Plan revision. *(Note: this example is abbreviated from the detail that would customarily be appropriate for revision of an LUP). The purpose of the X Field Office LUP revision is to ensure that public lands are managed according to the principles of multiple use identified in FLPMA while maintaining the valid existing rights and other obligations already established. The need for the action is that changing resource demands and technology have changed the type and level of impacts to various resources, as detailed in the LUP evaluation. Specifically, the emergence of new exploration and extraction technologies in oil and gas development may result in impacts not previously analyzed. Alternatives will address the availability of unleased lands for future oil and gas leasing; potential stipulations to be attached to new leases or leases to be reoffered if existing leases are relinquished; and mitigation measures to be considered in reviewing applications for permits to drill. This need is limited, because most oil and gas resources in the planning area have already been leased, and the LUP revision will maintain valid existing rights. The LUP evaluation also noted other changes in resource conditions and uses that could result in impacts not previously analyzed.*

Decision to be made: The BLM will revise the LUP and identify areas available for oil and gas leasing, leasing stipulations, and mitigation measures to consider in reviewing applications for permits to drill.

6.6 ALTERNATIVES DEVELOPMENT (BLM. 2008, pps. 49 - 52)

6.6.1 Reasonable Alternatives (BLM. 2008, pps. 49 - 50)

The NEPA directs the BLM to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;...” (NEPA Sec102(2)(E)). [42 U.S.C § 4332(2)(E) for EAs and EISs is IMPORTANT].

[NEPA, Sec. 102 [42 USC § 4332]. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall (emphasis added) --

Sec. 102(2) (E) study, develop, and describe appropriate alternatives (emphasis added) to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources; [42 U.S.C § 4332(2)(E)]

The range of alternatives explores alternative means of meeting the purpose and need for the action. As stated in section 6.2.1, *The Role of the Purpose and Need Statement*, the purpose and need statement helps define the range of alternatives. The broader the purpose and need statement, **the broader the range of alternatives that must be analyzed. You must analyze those alternatives necessary to permit a reasoned choice (40 CFR 1502.14)** (emphasis added; 40 CFR 1502.14 for EISs). For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. When there are potentially a very large number of alternatives, you must analyze only a reasonable number to cover the full spectrum of alternatives (see Question 1b, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981*). When working with cooperating agencies, your range of alternatives may need to reflect the decision space and authority of other agencies, if decisions are being made by more than one agency.

[1a. Range of Alternatives. What is meant by "range of alternatives" as referred to in Sec. 1505.1(e)?

A. The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. *Section 1502.14* [for EIS]. A decisionmaker must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents. Moreover, a decisionmaker must, in fact, consider all the alternatives discussed in an EIS. *Section 1505.1(e)*[for EAs &EIS].

[1b. How many alternatives have to be discussed when there is an infinite number of possible alternatives?

A. For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from **0 to 100 percent of the forest** (emphasis added). When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case].

In determining the alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. **"Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."** (emphasis added) (Question 2a, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981* [for EISs]). You can only define whether an alternative is "reasonable" in reference to the purpose and need for the action. See **Chapter 8, Preparing an Environmental Assessment** and **Chapter 9, Preparing an Environmental Impact Statement** for discussion of reasonable alternatives for an EA and EIS. For externally generated action, the range of alternatives will typically include at least denying the request (No Action); approving the request as the proponent proposed; or approving the request with changes BLM makes to the proponent's proposal.

[2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?

A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.]

For example,

An EIS for an oil field development project has a purpose and need which (in abbreviated form) is to determine whether to permit oil exploration and development within the project area consistent with existing leases and to develop practices for oil development consistent with the land use plan. The EIS would typically analyze at least the following alternatives:

- *No Action, which would entail no new drilling beyond what is currently permitted;*
- *The proponent's proposal for field development; and*
- *The proponent's proposal with additional or different design features recommended by the BLM to reduce environmental effects. This alternative would include design features that differ from the proponent's proposal, such as alternative well locations, alternative access routes, additional timing or spacing constraints, offsite mitigation, different methods for treating produced water, horizontal well drilling, or other technologies.*

In some situations it may be appropriate for you to analyze a proposed action or alternative that may be outside the BLM's jurisdiction (emphasis added) (Question 2b, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981*). Such circumstances **would be exceptional and probably limited** (emphasis added) [but not closed to consideration to EAs] to the broadest, most programmatic EISs that would involve multiple agencies. For most actions, we recommend that the purpose and need statement be constructed to reflect the discretion available to the BLM, consistent with existing decisions and statutory and regulatory requirements; thus, alternatives not within BLM jurisdiction would not be "reasonable."

[2b. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?

A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable (emphasis added), although such conflicts must be considered. *Section 1506.2(d)*. Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. *Section 1500.1(a)*.]

Note: Though not required, a manager may elect to analyze in detail an alternative that might otherwise be eliminated to assist in planning or decision-making (emphasis added). In such cases, explain in the NEPA document why you are electing to analyze the alternative in detail.

Go to BLM NEPA Handbook for more information on alternatives (i.e., Section 6.6 ALTERNATIVES DEVELOPMENT (BLM. 2008, pps. 49 - 52) and Section 6.6.1 Reasonable Alternatives (BLM. 2008, pps. 49 - 50)).

Brainstorming the Previous NEPA compliance rules to a real “Purpose and Need

“Purpose and Need for the Action” Statement For NEPA Compliance Evaluation

Let us start the evaluation of an October 2016 **Purpose and Need for the Action** identified in the *Pickett West Forest Management Project EA* (draft chapter 1 of EA). Is the purpose and need for the action in compliance with BLM NEPA Handbook (BLM. 2008, Section 6.2.1)?

- U.S. BLM Medford District Office – Grants Pass Field Office. October 2016. *Pickett West Forest Management Project DOI-BLM-ORWA-M070-2016-0006-EA*. Draft Chapter 1 of the Environmental Assessment. Grants Pass, OR.

[MDO GPFO. 2016. ¶ 1.] The BLM has a statutory obligation under the Federal Land Policy Management Act of 1976 which directs that “[t]he Secretary shall manage the public lands . . . in accordance with the land use plans developed by him under section 202 of this Act when they are available . . .” The Medford District’s Record of Decision and Resource Management Plan (1995 ROD/RMP) guides and directs management on Medford District BLM lands.

[MDO GPFO. 2016. ¶ 2.] One of the primary objectives identified in the RMP is implementing the O&C Lands Act that requires the Secretary of the Interior to manage O&C lands for permanent forest production in accordance with sustained yield principles.

[MDO GPFO. 2016. ¶ 3.] Existing forest stand conditions demonstrate there is a need for active management to meet objectives under the Medford District RMP and other regulatory directives. The proposed treatments are designed to provide a sustainable supply of timber, improve stand resiliency, and enhance or maintain northern spotted owl habitat. There is a need to apply silvicultural treatments that reduce the long-term risk of disturbances such as catastrophic wildfire or unacceptable mortality from moisture stress, insects, and disease.

[MDO GPFO. 2016. ¶ 4.] Any action alternative that is to be given serious consideration as a viable alternative must meet objectives provided for in the RMP. The RMP and statutes specify the following objectives that are to be accomplished in managing the various land use allocations (LUAs) for this project on the Medford District:

The information after the above is on the objectives of different land LUAs. These objectives appear to be part of the descriptions of the some of the reasonable alternatives, but not sure.

[MDO GPFO. 2016. ¶ 5.] LUA Objectives

- Within the Matrix LUA project objectives include but are not limited to:
- Within the Late Successional Reserve LUA, objectives include:
- Within the Adaptive Management Reserves and the Adaptive Management Areas, objectives include:
- Objectives common to all LUAs include:

[MDO GPFO. 2016. ¶ 6.] The inability to proceed with a given sale in the Medford District Sale plan for any particular fiscal year has the potential to prevent the district from meeting Allowable Sale Quantity targets, as directed in the O&C Act and the 1995 ROD/RMP.

[MDO GPFO. 2016. ¶ 7.] Alternatives

Alternative 1 - No Action Alternative

Alternative 2 - Proposed Action Alternative

Brainstorming Observations On “Purpose and Need for the Action” Statement

Brainstorming Observation on MDO GPFO. 2016. ¶ 2.

- Question ¶ 2.1. What does O & C Act require to manage O&C lands for permanent forest production in accordance with sustained yield principles?
- Question ¶ 2.1a. What is the definition of “permanent forest production”? Does it mean permanent wood production, and, if so, what species?
- Question ¶ 2.1b. What is the definition of “sustained yield principles” as it pertains to permanent forest production?

Brainstorming Observation on MDO GPFO. 2016. ¶ 3.

- Question ¶ 3.1. What is the definition of “*existing forest stand conditions*”? I assume this is a forest inventory. Is this inventory available for public review?
- Question ¶ 3.2. How does the “*existing forest stand conditions demonstrate there is a need for active management*”? What is the methodology used to demonstrate this conclusion?
- Question ¶ 3.3. What is “*active management and how would it meet objectives under the Medford District RMP*”?
- Question ¶ 3.4. What does “other regulatory directives” mean in the context of the objectives in the Medford District RMP?
- Question ¶ 3.5. Do the many objectives in the Medford District RMP along with other regulatory directives, and the O&C Act requirements/objectives make the purpose and need statement a “broad” purpose and need that would have a broad range of alternatives?
- Question ¶ 3.6. What does a “sustainable supply of timber” mean? Does it mean an absolute amount of wood fiber along with many other annual cumulative actions by BLM that will guarantee some annual allowable sale quantity (ASQ) goal? What does it mean? What methodology describes this draft chapter 1’s proposed action’s ASQ share with all the other ASQ shares? How will this be monitored?
- Question ¶ 3.7. I assume that “Sustainable Timber” is different than “Sustainable Forestry”?
- Question ¶ 3.8. Does this mean that a “sustainable supply of timber” is not designed for other forest functions, or perhaps it is for fiber production, improving stand resiliency, and enhancing or maintaining northern spotted owl habitat, but not other forest functions?
- Question ¶ 3.9. Is the following statement, “*There is a need to apply silvicultural treatments that reduce the long-term risk of disturbances such as catastrophic wildfire or unacceptable mortality from moisture stress, insects, and disease.*” a need or a goal? It sounds like a goal as there is no identification of the problem?
- Question ¶ 3.10. What is the problem? What is the EA’s proposed action trying to address/solve?

Brainstorming Observation on MDO GPFO. 2016. ¶ 4.

- Question ¶ 4.1. What does “serious consideration” mean: “*Any action alternative that is to be given serious consideration . . .*”? Is this like a “hard look” for alternatives instead of impacts?
- Question ¶ 4.2. What is a “viable alternative”? The CEQ regulations only identify and define a “reasonable alternative.”
- Question ¶ 4.3. Why must reasonable alternatives have to meet objectives provided for in the RMP? It is clear from **Sec. 102(2)(E)** - study, develop, and describe appropriate alternatives (emphasis added) to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources; (42 U.S.C § 4332(2)(E)) that EA alternatives can be outside the capability and jurisdiction of the federal agency.
- Question ¶ 4.4. What statutes, standards, criteria, methodologies specify that the RMP objectives are limiting variables in designing the reasonable range of alternatives to manage the various RMP land use allocations (LUAs)? See (42 U.S.C § 4332(2)(E) above.
- Question ¶ 4.5. Are there any reasonable alternative ASQ targets, one or many, for this proposed BLM action?

Brainstorming Observation on MDO GPFO. 2016. ¶ 5.

Question ¶ 5.1. The information after the above is on the objectives of different land LUAs. Are the objectives ¶ 5.1. part of the descriptions of the reasonable alternatives, and/or the purpose and need?

[MDO GPFO. 2016. ¶ 5.] LUA Objectives

- Within the Matrix LUA project objectives include but are not limited to:
- Within the Late Successional Reserve LUA, objectives include:
- Within the Adaptive Management Reserves and the Adaptive Management Areas, objectives include:
- Objectives common to all LUAs include:

Question ¶ 5.2.

Question ¶ 5.3.

Brainstorming Observation on MDO GPFO. 2016. ¶ 6.

Question ¶ 6.1. ¶ 6.] is odd. What does it mean?

Question ¶ 6.2. Is this Allowable Sale Quantity question the “problem or opportunity” defined in Section 6.2.1 The Role of the Purpose and Need Statement (BLM. 2008. p. 36)

Section 6.2.1. The purpose and need statement dictates the range of alternatives, because action alternatives are not “reasonable” if they do not respond to the purpose and need for the action (see section **6.6.1, Reasonable Alternatives**). The broader the purpose and need statement, the broader the range of alternatives that must be analyzed. The purpose and need statement will provide a framework for issue identification and will form the basis for the eventual rationale for selection of an alternative. Generally[?], the action alternatives will respond to the problem or opportunity described in the purpose and need statement, providing a basis for eventual selection of an alternative in a decision.

Question ¶ 6.3. Does only the first draft of “proposed action alternative” meet the ASQs? If true, what does CEQ Question 1b mean?

CEQ Question 1b. How many alternatives have to be discussed when there is an infinite number of possible alternatives?

A. For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from **0 to 100 percent of the forest** (emphasis added). When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

Question ¶ 6.4. Doesn't the answer to CEQ's Question 1b mean that when dealing with geography and/or ASQ that reasonable alternatives could “involve an infinite number of alternatives from **0 to 100 percent of the forest** (EA analysis area)”?

Question ¶ 6.5. Does the “potential” in “potential to prevent the district from meeting Allowable Sale Quantity targets” mean the probability of a significant impacts (i.e., 40 CRF Sec. 1508.27 Significantly. Significantly” as used in NEPA requires considerations of both context and intensity).

Sec. 1508.27(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

Sec. 1508.27(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following three of 10 intensity criteria should be considered in evaluating intensity:

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

Question ¶ 6.6. What does the following mean: “. . . meeting Allowable Sale Quantity targets, as directed in the O&C Act and the 1995 ROD/RMP”?

Question ¶ 6.7. What are the relationships of the two BLM identified reasonable alternatives to meeting ASQ targets?

Question ¶ 6.7. How will implementation monitoring determine if the “Alternative 2 - Proposed Action Alternative” meet the Allowable Sale Quantity targets, as directed in the O&C Act and the 1995 ROD/RMP?

Question ¶ 6.8. How will monitoring funding be guaranteed for administration and enforcement? My experience as a BLM Planner/Environmental Specialist is that RMPs are updated, in part, because of failing or inadequate inventories needed, monitoring administration and enforcement, and public concerns and controversy (might include court decisions).

Question ¶ 6.9.

Brainstorming Observation on MDO GPFO. 2016. ¶ 7.

Question ¶ 7.1. What is the degree that the BLM action defined in its purpose and need and “two” reasonable alternatives (i.e., Alternative 2 - Proposed Action Alternative and the No Action Alternative) leads to questions about “the effects on the quality of the human environment are likely to be highly controversial”?

Question ¶ 7.2. What is the degree that the BLM action purpose and need and range of two proposed reasonable alternative leads to questions about “The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks”?

Question ¶ 7.3. What is the degree that the BLM action purpose and need and range of two proposed reasonable alternative leads to questions about “Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.”?

Question ¶ 7.4. Why only two alternatives? The broad nature of the purpose and need suggests a broader range of alternatives (e.g., CEQ Question 1b, etc.).

Brainstorming questions need a little time to fertilize (i.e., time) for future analysis of the merits of the questions. Many times new more “substantive” research questions surface. Especially important are any supporting court precedents. In this I failed, I have enough B.S., but not enough quality fertilizer, and I send this communication before it is really ripe. Smile.

Thankfully researching court precedents for reasonable alternatives has already occurred by the Deer Creek Valley Natural Resources Conservation Association in its August 6, 2014 opening brief in the United States Court of Appeals for the Ninth Circuit

- *Deer Creek Association v. US Bureau of Land Management, et al.* August 6, 2014. United States Court of Appeals for the Ninth Circuit ??? (what is correct citation?).
- *Deer Creek Valley Natural Resource Conservation Association v. U.S. Bureau of Land Management,* Oregon District Court (2014)???? (what is correct citation?).

No. 14-35250

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEER CREEK VALLEY NATURAL RESOURCES CONSERVATION ASSOCIATION,
Plaintiff-Appellant

v.

UNITED STATES BUREAU OF LAND MANAGEMENT,
Defendant-Appellee

and

MURPHY COMPANY,
Intervenor-Appellee

Appeal from the Denial of Summary Judgment in the District Court for the District of Oregon.

Opening Brief of Appellant
August 6, 2014

This is an appeal of a denial of Summary Judgment before the Honorable Judge Owen Panner of the District Court for the District of Oregon.

James A. Redden United States Courthouse
310 West Sixth Street
Medford, Oregon 97501-2710
Chambers: (541) 608-8760

The United States District Court for the District of Oregon (in case citations, D. Ore. or D. Or.) is the Federal district court whose jurisdiction comprises the state of Oregon. It was created in 1859 when the state was admitted to the Union. Appellate jurisdiction belongs to the United States Court of Appeals for the Ninth Circuit (except for patent claims and claims against the U.S. government under the Tucker Act, which are appealed to the Federal Circuit).

Web Searches:

- No. 14-35250. IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

DEER CREEK VALLEY NATURAL RESOURCES CONSERVATION ASSOCIATION, *Plaintiff-Appellant*

v.

UNITED STATES BUREAU OF LAND MANAGEMENT, *Defendant-Appellee*

and

MURPHY COMPANY, *Intervenor-Appellee*

August 6, 2014

- DEER CREEK VALLEY NATURAL RESOURCES CONSERVATION ASSOCIATION, *Plaintiff-Appellant*

Appellant

v.

UNITED STATES BUREAU OF LAND MANAGEMENT, *Defendant-Appellee*

and

MURPHY COMPANY, *Intervenor-Appellee*

August 6, 2014

Deer Creek Association v. US Bureau of Land Management, et al

Original Case: 1:12-cv-01596

https://www.pacermonitor.com/public/case/3133707/Deer_Creek_Association_v_US_Bureau_of_Land_Management_et_al#

Viewed May 15, 2017

Ninth Circuit U.S. Court of Appeals

Case #: 0:14-cv-35250

Type: civil / united states

Nature of Suit: 893 Other Statutes - Environmental Matters

Case Filed: Mar 31, 2014

Terminated: Feb 13, 2015

Case Filed: Mar 31, 2014. DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 04/07/2014. Transcript ordered by 04/28/2014. Transcript due 05/27/2014. Appellant Deer Creek Valley Natural Resource Conservation Association opening brief due 07/07/2014. Appellees Murphy Company and United States Bureau of Land Management answering brief due 08/05/2014. Appellant's optional reply brief is due 14 days after service of the answering brief. [9036992] (RT) [Entered: 03/31/2014 09:54 AM]

Deer Creek Valley Natural Resource Conservation Association v. U.S. Bureau of Land Management. District Court for the District of Oregon.

<https://dockets.justia.com/docket/oregon/ordce/1:2012cv01596/108862>

Viewed May 15, 2017

Plaintiff: Deer Creek Valley Natural Resource Conservation Association
Defendant: U.S. Bureau of Land Management
Intervenor: Murphy Company
Case Number: 1:2012cv01596
Filed: September 5, 2012
Court: Oregon District Court
Office: Medford (1) Office
Presiding Judge: Mark D. Clarke
Nature of Suit: Environmental Matters
Cause of Action: 05:702 Administrative Procedure Act
Jury Demanded By: None

- *Deer Creek Valley Natural Resource Conservation Association v. U.S. Bureau of Land Management*, Oregon District Court (2014)???

QUESTIONS PRESENTATION & STATEMENT OF THE CASE

Deer Creek Association v. US Bureau of Land Management, et al. August 6, 2014

- *Deer Creek Association v. US Bureau of Land Management, et al.* August 6, 2014. United States Court of Appeals for the Ninth Circuit ??? (what is correct citation?).

The following sections (QUESTIONS PRESENTED (Question 2) and STATEMENT OF THE CASE) can be used in their entirety for submitting *substantive* EA reasonable alternative comments. Quotes from the brief will be identified by the author (Deer Creek Valley - DCV), year (2014), and page number (p. -?). Final format is (DCV. 2014. p. ?)

QUESTIONS PRESENTED

STATEMENT OF THE CASE

- I. NATURE OF THE CASE
- II. LEGAL BACKGROUND
 - A. The Federal Land Policy and Management Act (FLPMA)
 - B. The National Environmental Policy Act (NEPA)

QUESTIONS PRESENTED (DCV. 2014. p. 4)

1. Under FLPMA and the Northwest Forest Plan's Survey and Manage Guidelines, is the BLM required protect inactive red tree vole sites that are recolonized more than 2/3 of the time under the direction to "manage all known sites" when "known sites" are defined to include historic sites that remain habitat for red tree voles?
2. **Under NEPA, did the BLM arbitrarily exclude the reasonable Natural Selection Alternative when the BLM failed to adequately justify why the Natural Selection Alternative could not be considered in detail and when the BLM failed to acknowledge the Natural Selection Alternative in the Deer Creek Project EA? (emphasis added).**
3. Under NEPA, did the BLM take a hard look at the environmental impacts of the Project on red tree voles when the BLM (a) alleged that impacts would be "essentially eliminated" as a result of protecting sites pursuant to the Survey and Manage Guidelines, despite not protecting inactive sites and not disclosing to the public that inactive red tree vole sites are recolonized more than 2/3 of the time; and when the BLM diluted impacts to the red tree voles by averaging impacts across the watershed, a technique that has been invalidated by this Court?

STATEMENT OF THE CASE (DCV. 2014. pps. 5 - 9)

I. NATURE OF THE CASE (DCV. 2014. p. 5)

This is a civil action for declaratory and injunctive relief arising from Defendant-Appellee BLM's violations of FLPMA, NEPA, and the APA. The Deer Creek Association challenges the BLM's decision to approve and implement the Deer North Project and timber sale EA, Decision Documentation, and FONSI.

II. LEGAL BACKGROUND (DCV. 2014. pps. 5 - 9)

A. The Federal Land Policy and Management Act (FLPMA) (DCV. 2014. pps. 5 - 6)

The Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701 et seq., sets forth standards for BLM's management of "public lands," which are lands owned by the United States and administered by the Secretary of the Interior through the BLM. San Juan Citizens Alliance v. Norton, 586 F.Supp. 2d 1270 (D. N.M. 2008). FLPMA mandates the BLM to prepare Resource Management Plans (RMPs) for the various districts under its control. 43 U.S.C. § 1712. RMPs are land use plans which must "provide for compliance with applicable State and Federal air, water, noise, and other pollution standards or implementation plans." 43 U.S.C. § 1712(c). FLPMA and its implementing regulations require BLM to manage all future resource management actions in compliance with the requirements of the RMP. 43 U.S.C. § 1732(a); 43 C.F.R. § 1610.5-3(a).

The Medford District RMP, as amended by the Northwest Forest Plan Record of Decision, implements FLPMA. Failure to comply with the requirements of the RMP is a violation of FLPMA and its implementing regulations. Klamath-Siskiyou Wildlands Center v. BLM, 400 F. Supp. 2d 1234 (D. Or. 2005). The Northwest Forest Plan Record of Decision was issued by the BLM and the Forest Service. *Id.* It establishes management requirements for all BLM and Forest Service lands within the range of the northern spotted owl, and includes Standards and Guidelines which must be followed, including the Survey and Manage Guidelines.

B. The National Environmental Policy Act (NEPA) (DCV. 2014. pps. 6 - 9)

NEPA requires all federal agencies to assess the environmental impact of the proposed actions that significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). NEPA's disclosure goals are two-fold: (1) to insure that the agency has carefully and fully contemplated the environmental effects of its action; and (2) to insure that the public has sufficient information to challenge the agency's action. See Baltimore Gas & Electric Co. v. Natural Resources Defense Council, 462 U.S. 87, 97 (1983).

NEPA requires agencies to prepare an Environmental Impact Statement (EIS) when a major federal action is proposed that may significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C), 40 C.F.R. § 1501.4(a)(1). An EIS is a "detailed written statement" that "provide[s] full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. §§ 1508.11 and 1502.1.

The Council on Environmental Quality's (CEQ's) NEPA regulations allow an agency to prepare a more limited NEPA document, an Environmental Assessment, or EA. The EA is a "concise public document" that "[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an [EIS]." 40 C.F.R. § 1508.9(a). If an EA determines that agency actions will not have a significant effect on the human environment, the agency must issue a "Finding of No Significant Impact" (FONSI). See 40 C.F.R. §§ 1501.4(e), 1508.13. However, as explained

herein, even in an EA the agency must evaluate feasible alternatives to the proposed action and conduct a “hard look” regarding the project’s foreseeable environmental impacts.

“The purpose of NEPA is to foster better decision making and informed public participation for actions that affect the environment.” Or. Natural Res. Council Action v. U.S. Forest Serv., 293 F. Supp. 2d 1200, 1204 (D. Or. 2003) (citing 42 U.S.C. § 4321; 40 C.F.R. § 1501.1(c)).

[NEPA] ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.

Friends of the Clearwater v. Dombeck, 222 F.3d 552, 557 (9th Cir. 2000) (quoting Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989)). “Stated differently, NEPA’s purpose is to ensure that ‘the agency will not act on incomplete information, only to regret its decision after it is too late to correct.’” *Id.*

NEPA also requires that federal agencies take a hard look at the environmental impacts of its actions. A hard look includes “considering all foreseeable direct and indirect impacts,” Idaho Sporting Congress v. Rittenhouse, 305 F.3d 957, 973 (9th Cir. 2002), and requires the BLM to “undertake a thorough environmental analysis before concluding that no significant impact exists.” Native Ecosystems Council v. U.S. Forest Serv., 428 F.3d 1233, 1239 (9th Cir. 2005). A hard look “involve[s] a discussion of adverse impacts that does not improperly minimize negative side effects.” Earth Island Inst. v. U.S. Forest Serv., 442 F.3d 1147, 1159 (9th Cir. 2006) (quoting Native Ecosystems Council, 428 F.3d at 1241); National Audubon Society v. Dep’t of Navy, 422 F.3d 174, 185 (4th Cir. 2005) (“The hallmarks of a ‘hard look’ are thorough investigation into environmental impacts and forthright acknowledgment of potential environmental harms.”).

THE BLM VIOLATED THE NATIONAL ENVIRONMENTAL POLICY ACT

Deer Creek Association v. US Bureau of Land Management, et al. August 6, 2014

- *Deer Creek Association v. US Bureau of Land Management, et al.* August 6, 2014. United States Court of Appeals for the Ninth Circuit ??? (what is correct citation?).

II. THE BLM VIOLATED THE NATIONAL ENVIRONMENTAL POLICY ACT

The next section of *Deer Creek Association v. US Bureau of Land Management, et al.* August 6, 2014: ARGUMENT, II. THE BLM VIOLATED THE NATIONAL ENVIRONMENTAL POLICY ACT (referenced here, but not included here), needs to be seriously considered as EA comments (after any needed editing).

II. THE BLM VIOLATED THE NATIONAL ENVIRONMENTAL POLICY ACT

A. The BLM failed to consider the Deer Creek Association's reasonable Natural Selection Alternative (DCV. 2014. pps. 22-39).

1. NEPA requires rigorous evaluation of all reasonable alternatives (DCV. 2014. pps. 22-25).
2. The Deer Creek Association's Natural Selection Alternative (DCV. 2014. pps. 25 -28).
3. The BLM arbitrarily refused to consider the Natural Selection Alternative (DCV. 2014. pps. 28 -39).

That's all for now, and have a great day burning.

Sincerely,

Mike :)

Mike Walker, Chair
Hugo JS&PSS Exploratory Committee
Hugo Neighborhood Association & Historical Society

p.s., Serena: Is it possible that you could get of copy of this email for Orville and Mary before the May 19, 2017 meeting at the Black Forest Restaurant?