

A Rancher's Guide to NEPA and Permit Renewals

Idaho



Photo Courtesy of Thadd Strom

Learn what NEPA is, how it works,
and how to participate in the process.



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NEPA For Ranchers

The National Environmental Policy Act (NEPA) impacts 63% of Idaho's landmass, much of which is vital to ranchers and the livestock grazing industry. Range improvement projects such as water developments or fences, as well as grazing permit renewals are all analyzed under NEPA. While every agency in the executive branch of the federal government has a responsibility to implement NEPA, the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) implement the process on the lands connected to the Idaho livestock industry.

Learn more about BLM's Role:

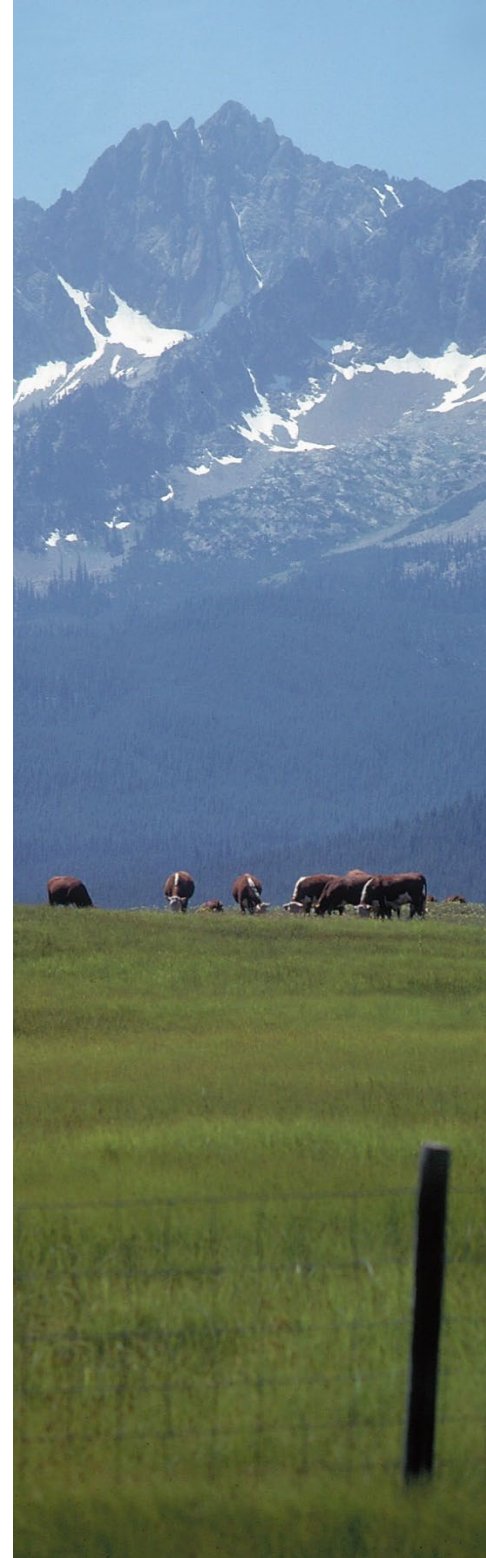
www.blm.gov/programs/planning-and-nepa

Learn more about USFS's Role:

www.fs.fed.us/emc/nepa/

ISDA's Role:

The Idaho State Department of Agriculture (ISDA) is a resource for producers during the NEPA process and for general conservation of rangelands. ISDA aids in cooperative rangeland monitoring and provides technical expertise for planning and management of vegetation and other resources utilizing best available science and best management practices.



ISDA Range Program Contact Information:

(208) 332-8561

info.range@ISDA.IDAHO.GOV



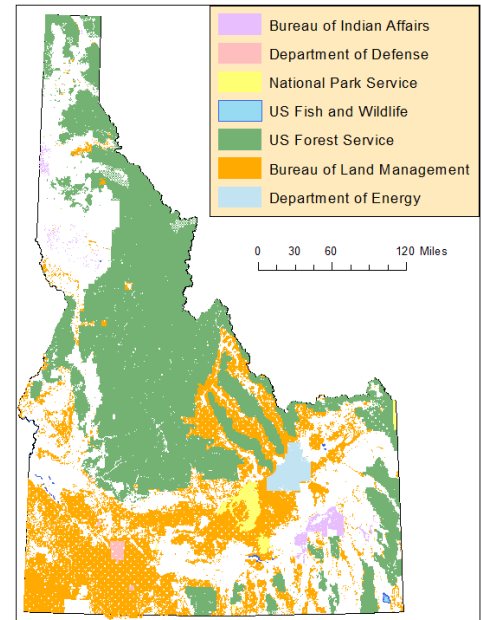
Photo Courtesy of Bill Grange

What is NEPA

NEPA is the **National Environmental Policy Act** which requires federal agencies to consider the impacts a project may have on the environment and provide the public an opportunity for input. NEPA was signed into law in 1970 by President Richard Nixon, as a way to provide protection of the multiple use of public lands for future generations.

There are varying levels of analysis under NEPA; Categorical Exclusions (CX or CE), Environmental Assessments (EA), and Environmental Impact Statements (EIS). CX/CEs are typically used by the USFS or BLM for small projects with little to no environmental impact, such as installing a temporary electric fence.

Federal Lands of Idaho



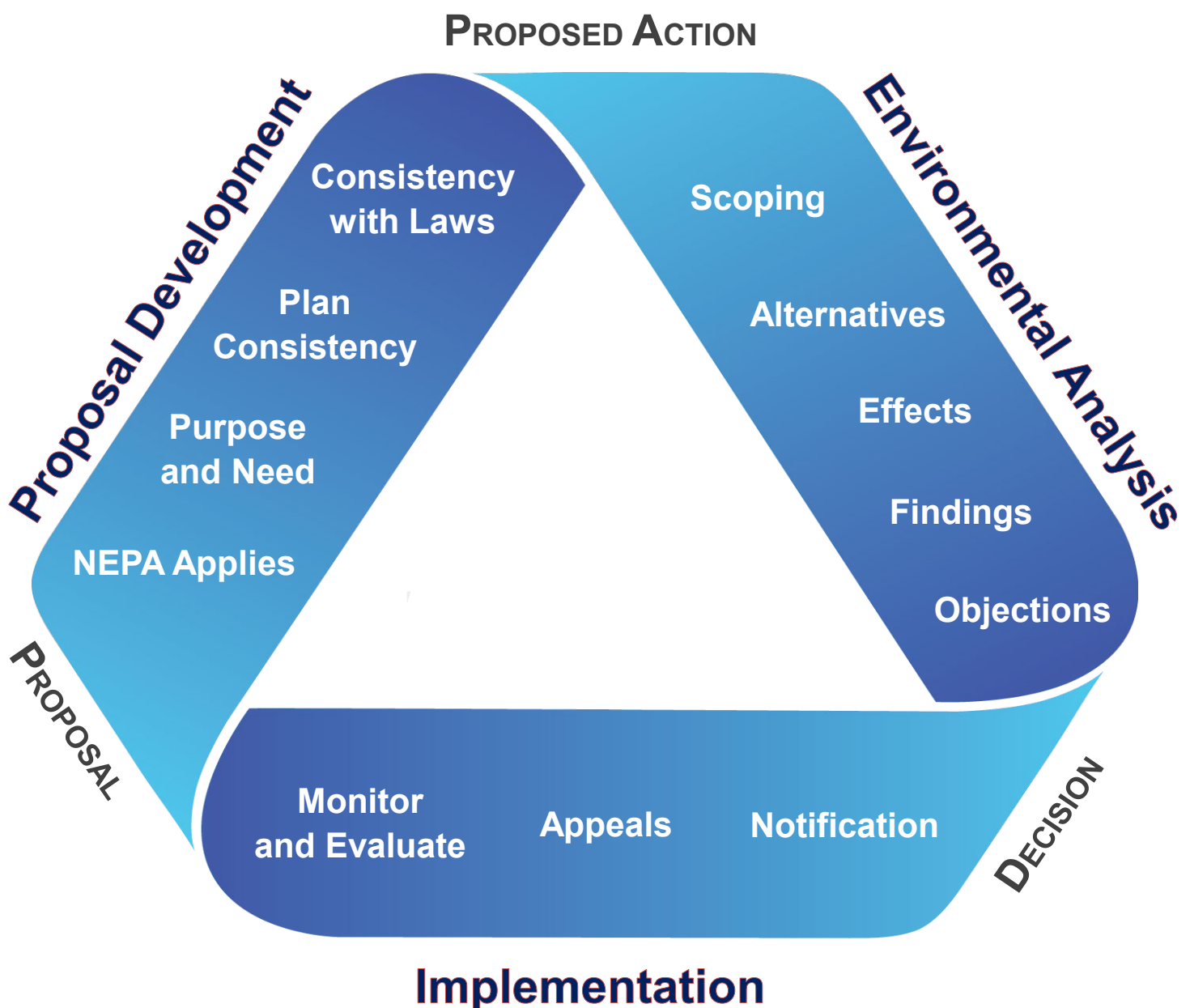
This document will provide a basic understanding of what NEPA is, how NEPA works, as well as how to participate in and influence the NEPA process.

Some agencies may renew permits under a CX/CE while others will require an EA or/and an EIS. Most federal grazing permits are analyzed under an EA. The main difference between an EA and an EIS is the level of impact the proposed action is assumed to have and whether the impact is “significant” under NEPA. If an EA is prepared and impacts are considered “significant,” an EIS is required.

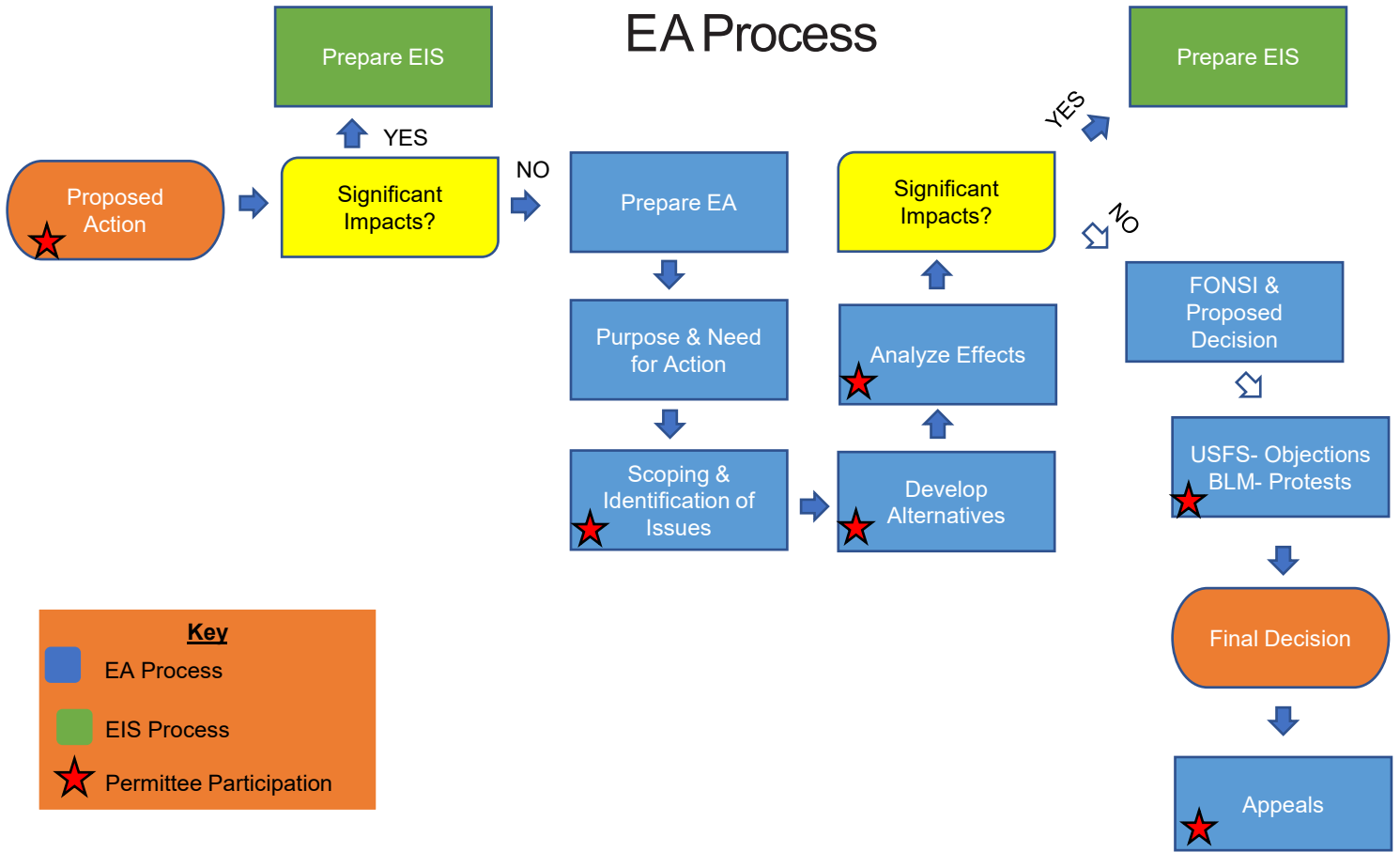
An agency can initiate an EIS from the beginning if the impacts of the action are highly likely to rise to a level of “significance,” or if there is considerable controversy surrounding the effects of the action. Controversy over the proposed action itself does not move an EA to an EIS.

Applying NEPA

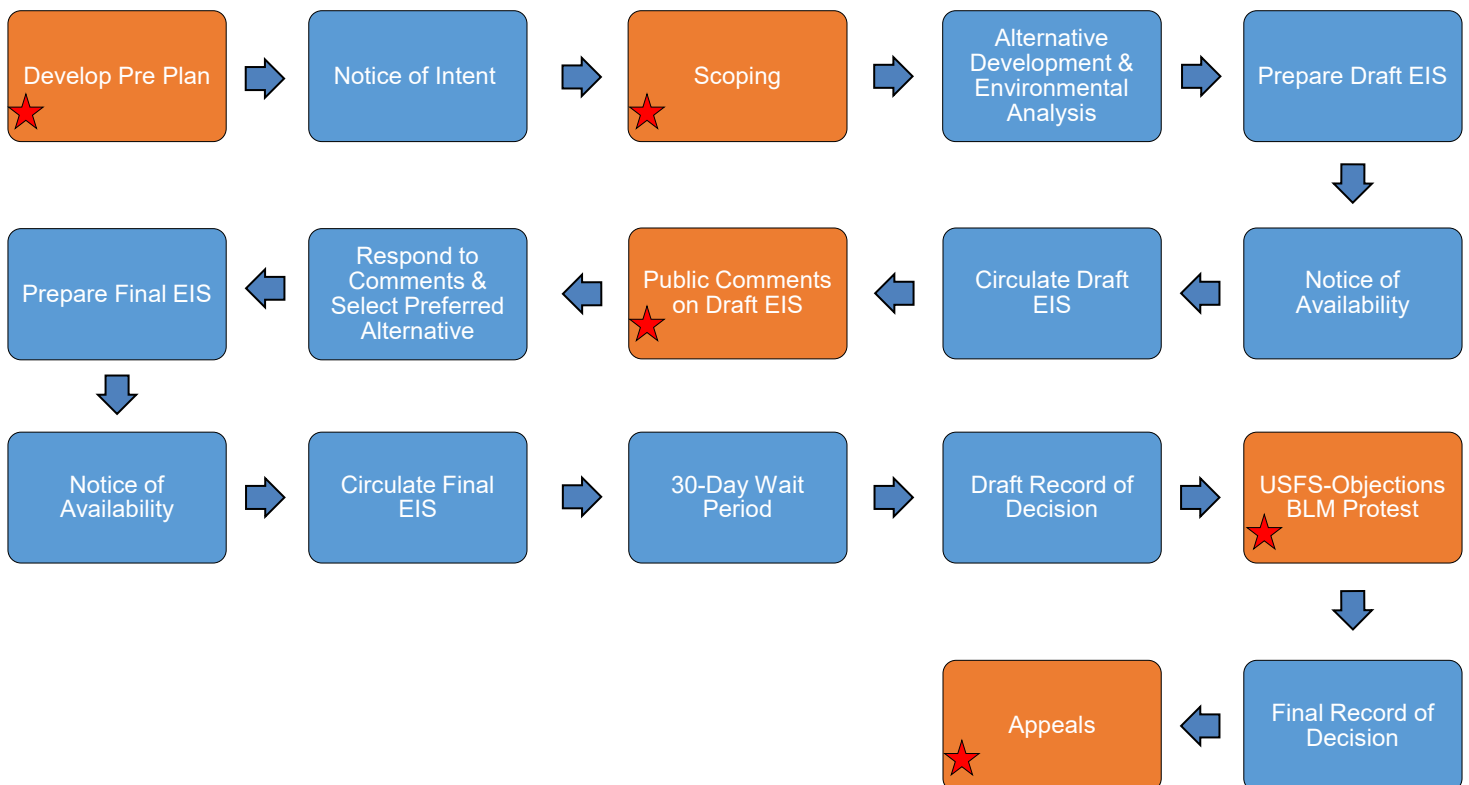
The following diagram briefly outlines the NEPA process for renewing livestock grazing permits. The left side of the triangle is the review of the allotment; this includes planning and data collection. The right side is the NEPA process, from proposed action (permit renewal) to decision and implementation. The base of the triangle is the implementation of the approved decision and subsequent monitoring of the approved action. This is also where on-the-ground adjustments come into play.



The NEPA Process



EIS Process

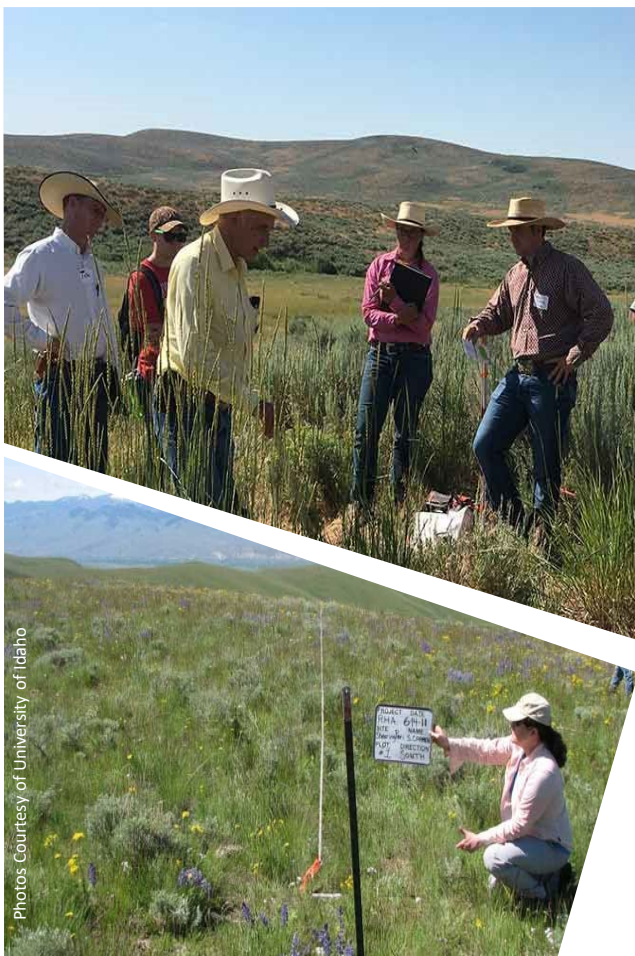


Participation

It is imperative for permittees to actively participate in the grazing permit renewal process, including the NEPA process, rangeland health assessment, and monitoring/management through the life of the permit. When permittees review monitoring data, provide comments for the NEPA team and assist the federal agency with developing the proposed action, the most optimal alternative can be identified for both the permittee and conservation goals. Participating permittees should recognize that the scope of the action is focused on the authorization of livestock grazing and must include livestock management practices that address and reduce environmental concerns from grazing and ensure successful rangeland management in the future.

An Interdisciplinary Team (IDT or ID Team) reviews the allotment prior to the NEPA process for renewal or modification of the permit. Permittees are not considered a part of the ID Team. However, permittees should ask for inclusion in the process as much as possible, such as accompanying the ID Team in the field. Permittees should insist on reviewing drafts and provide comments throughout the NEPA process.

Develop your Proposed Action/Alternative



Permittees should always consider developing a proposed action or alternative.

The agencies are only required to analyze a “No Action alternative” and “Proposed Action alternative.” The No Action alternative can default to either “current management,” or as the “no grazing alternative.” The proposed action could be either a modified grazing management or current management.

Permittees should voice their concerns with the current management of the allotment. Identify changes that would benefit the allotment or current management that should remain in place. These changes will most commonly surface as design features or design criteria within the alternatives.

Permittees who develop their own alternative can request changes or recommend keeping some management the same, which the agency will then consider.

Providing Effective Comments and Developing a Permittee Preferred Alternative

Restate the Issues: If existing conditions on the allotment could benefit from changes in management, ask the following questions – Does a problem exist? What is the severity of the problem? What is the causal factor? Is there supported monitoring data? Can it be fixed through appropriate management?

Description and Characterization of the Allotment: This is a detailed summary of the allotment consisting of the physical characteristics (elevation, precipitation, soils, location, etc.). It may also contain information about the operation including type of livestock grazing plan (rotational, seasonal, yearlong) other issues on the allotment (e.g., invasive species) hindering proper management or desired outcomes. This is also an opportunity to differentiate between historic and current grazing management, to determine causal factors.

Historical Information: Keep long term records to provide information on historic and more recent stocking rates and management. This tells the story of the allotment and may help determine if causal factors are based on past management versus current management. It is important to provide the agencies a description of past management activities on the allotment, such as fencing, water developments, changes in grazing management, voluntary non-use or removing livestock, etc. This is also the time to highlight successes and failures.

External Factors: Explain special conditions or influences describing existing conditions on the allotment. Examples may include drought, wild horses, weeds, invasive annual grasses, tree encroachment, recreation uses, or fire.

Monitoring Data Summary: This is perhaps the most important information for an allotment and the NEPA analysis for permit renewal. Good information leads to good decisions and informed management. If monitoring data does not exist, the agency must collect the data prior to beginning the NEPA process.

Goals and Objectives: It is important to create logical, site-specific goals for management to serve as the basis for decisions. Based on the issues of concern, existing conditions, current livestock management, and monitoring data, the team will create the logical course of action and the immediate steps required to accomplish the plan of action. Close collaboration with agencies, outside resources (University of Idaho Extension, etc.) and others are necessary to develop a set of goals and objectives to include in developing an alternative and future management. This is also where fences, water developments, vegetation treatments, and changes to livestock grazing management strategies become important. Range improvements or management changes should tie directly to meeting new goals and objectives for the allotment.

Environmental Impacts: Determine the environmental impacts, both positive and negative, of the proposed vs. preferred action. The use of best available science is key. Provide peer-reviewed science to the agencies to ensure they consider the proposed actions and understand the potential outcomes. Assistance in finding peer-reviewed science is available from local agencies and outside resources.

Supporting Documents: Monitoring data, pictures, and peer-reviewed science are all examples of supporting documents to attach, which the agencies should consider in their analysis.

Compliance with Pertinent Laws: There are certain laws the agencies must follow, such as the Endangered Species Act, National Historic Preservation Act, Taylor Grazing Act, Federal Land Policy and Management Act, and National Forest Management Act, etc.

NEPA Decision

The NEPA decision will provide the guidance and future direction for management on the allotment.

There are two kinds of decisions associated with an EA or EIS:

For an EA

The decision is a Finding of No Significant Impact (FONSI). The agencies will then release a Decision Notice (Forest Service) or a Decision Record (BLM). It is common for the agencies to release both the FONSI and the Decision Notice/Record together.

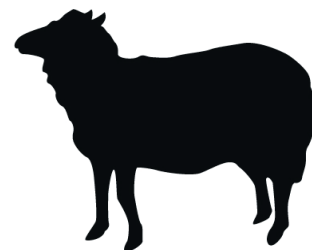
For an EIS

In an EIS, the final decision comes in the form of a Record of Decision (ROD) coupled with a Final Environmental Impact Statement. The ROD is a written public record identifying and explaining the reasoning for the decision on the Proposed Action. The ROD must include: the decision made, the rationale for the decision, the alternatives considered, identification of environmentally preferable alternative(s), mitigation measures (if necessary), and explanation of any monitoring and enforcement program(s).



Once the proposed decision documents are released the various objection/protest periods in the appeals process begin. Final Decisions start the appeal period.

Appeal Process



Before a formal appeals process is considered, we highly recommend additional communication with the range staff and decision-making officials. This communication can give permittees valuable information regarding the rationale for the decision and remaining areas of concern.

However, if this effort does not result in a desired outcome, there are a number of options available depending upon the agency.

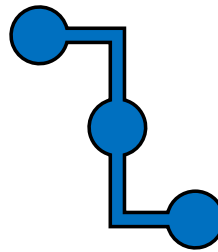


Bureau of Land Management Appeals

BLM decisions have two different administrative remedies:

PROTEST

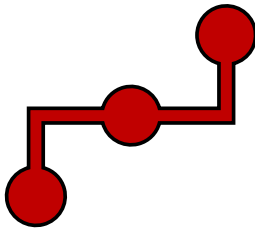
A formal request for reconsideration by a BLM official of a **Proposed Decision**



An EA Decision Record becomes a Proposed Decision under the BLM grazing regulations (43 CFR). Stakeholders and the interested public are notified of Proposed Decisions. Upon issuance of the Proposed Decision, the administrative “clock” starts. Affected entities have 15 days to protest the Proposed Decision for an EA. In the absence of any protests, the Proposed Decision becomes a Final Decision.

APPEAL

A formal request for reconsideration by a BLM official of a **Final Decision**



If a protest is received, the BLM may incorporate pertinent protest points into a Final Decision. However, if the Proposed Decision proceeds to a Final Decision it can be appealed to an Administrative Law Judge (ALJ). Affected parties have 30 days to appeal a Final Decision to the ALJ. If a permittee is unsatisfied with the decision of an ALJ, they can pursue the appeal with the Interior Board of Land Appeals (IBLA).



Photo Courtesy of Bill Grange



U.S. Forest Service Objection Process

A pre-decisional administrative review process

Many projects and activities, and most land management plan amendments and revisions, are subject to a pre-decisional administrative review process, commonly referred to as an objection process. Direction for the project-level objection process is at 36 CFR 218 (for Project level decisions), and for the planning objection process is under 36 CFR 219 (for the larger Land Use Plans). Under both processes, individuals and entities may file objections after the NEPA document is completed and before a decision document is signed.

To object to a proposed project, permittees should submit timely and specific written comments during the public comment periods. It is important the specific written comments provided are within the scope of the project, have a direct relationship to the proposed action, and include supporting reasons and information for the authorized officer to consider. It cannot be, "I do not like the proposed action."

The Objection period begins with the publication of legal notice of the EA/EIS and Draft Decision document. The USFS notifies everyone who provided comments and provides 45 days to file their objection.

The objection document must contain the following information:

- Objector's contact information
- Signature
- Name of Project
- Responsible Official, National Forest/Ranger District
- Statement of Issues and Objection Points
- Statement of the Objection and how the proposed plan can be improved
- Explanation how it is inconsistent with law, regulations and/or policy
- Statement of relationship to past comments.

The 45-day Objection Review period begins once the 45-day Objection period is completed. The Forest Service will review all comments and may request to meet with various objectors to discuss issues raised and any potential resolutions. Although the meetings are open to attendance by the public, the authorized officer will determine whether those other than objectors may participate.

At the end of the Objection Review period, the authorized officer may provide a written response to the objections, but there may not be a specific response to each objection point. Once this is completed, the authorized officer may sign the Final ROD or Decision Document.

Appealing a Grazing Decision

The Forest Service grazing appeals process is relatively simple and straightforward. After a final grazing decision has been provided on the grazing permit, the permittee (and only the permittee) has the opportunity to appeal the grazing decision. All appeals must be in writing and submitted within 45 days of the date of the decision. An appeal of a term grazing permit action under

36 CFR 214 of a decision by a District Ranger is made to the Forest Supervisor.

Following an unsuccessful appeal, any additional actions would have to be taken in Federal District Court.



Mediation

Mediation is only available to decisions related to the suspension or cancellation of a grazing permit.

Requests for mediation must be made within 45 days of receiving the adverse decision. Mediation is not offered automatically and must be requested by the permittee. Mediation is a voluntary and confidential process.

For more information on mediation and how the process works, contact the USDA Certified Mediation Program for Idaho provided through the Fulcrum Institute Dispute Resolution Clinic at (208) 667-5325. Ask for the USDA mediation coordinator. A written mediation request stops the appeal clock for 45 days with an additional 15 days if progress towards a resolution is being made.



Photo Courtesy of University of Idaho

Federal Permittee Grazing Permit Checklist

- Contact ISDA regarding cooperative rangeland monitoring and permit renewal assistance.
- Request from your local BLM or Forest Service office a copy of all information that they have on your grazing allotment.
 - This includes monitoring data, AUM numbers, a copy of your permit, etc.
 - Keep this information for your use.
- Request that they invite you each time they go out to gather data or monitor. Thoroughly participate in the allotment monitoring process.
- Accompany the interdisciplinary team from the federal agency as they conduct a rangeland health assessment on your allotment. Be thoroughly engaged in the rangeland health assessment process.
- Submit a permit renewal application to your local BLM or Forest Service office.
- If monitoring shows that there is an issue on the allotment, work with your federal agencies to make changes to the permit. This includes changes in season of use, infrastructure, and other tools to adjust grazing management as needed.
 - The regulations only require a change in use or management of a term permit if livestock grazing is a significant cause of an environmental issue on the allotment. If range or riparian issues are being caused by excess wild horse use, wildlife use, recreation use, geomorphological or material element or some other factor, livestock grazing should still be continued under current management if desired.
- Document the cause of any range or riparian issues. The cause of these issues is critical when it comes to permit renewal. Both the BLM and Forest Service allow the use of categorical exclusions (CX) to renew term permits so long as:
 - The monitoring data or rangeland health evaluation shows that the allotment is meeting all rangeland health standards or that livestock grazing is not the causal factor in failing to meet a standard.
 - The allotment does not contain any extraordinary circumstances (i.e. need to change management, significant historical sites, a request to analyze range improvements, presence of endangered species habitat, etc.).
 - The permit is being renewed substantially under the same terms and conditions as the prior permit.
 - Endangered Species Act and other types of reviews have been completed.
 - If the agency determines that either an environmental assessment (EA) or an environmental impact statement (EIS) is necessary, a permittee needs to have significant involvement prior to the public comment period.
- Request to help draft and edit the NEPA document.
- Continue to accompany the interdisciplinary team on all data gathering and monitoring trips they take.
- If an unsatisfactory NEPA decision is the end result, protest or appeal the decision.

Allotment Name: _____

Allotment Number: _____

Range Management Specialist: _____

Phone Number: _____

Email: _____

BLM Field Office: _____

Phone Number: _____

Email: _____

Forest Service Ranger District: _____

Phone Number: _____

Email: _____

**ISDA Range Program Contact Information:
(208) 332-8561
info.range@ISDA.IDAHO.GOV**



Photo Courtesy of Jeremiah Johnson

Notes

A series of horizontal lines provided for taking notes.

Photo Courtesy of Thadd Strom



IDAHO STATE DEPARTMENT OF AGRICULTURE
Idaho State Department of Agriculture
Serving agriculture and consumers since 1919

(208) 332-8500 <https://agri.idaho.gov/main/animals/range-management-program/>

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