

A RANCHER'S GUIDE

Participation in the NEPA process

NEVADA



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



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FEDERAL AGENCIES' ROLES

The National Environmental Policy Act (NEPA) impacts all federally-owned land, much of which is vital to ranchers and the livestock industry. Range improvement projects such as water developments, fences and 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 lands connected to the Nevada 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/

NDA'S ROLE

The Nevada Department of Agriculture (NDA) acts as a resource to producers for rangeland health issues, including assisting with objective development and rangeland monitoring and offering guidance related to NEPA and other natural resources needs. This publication is a starting point to guide producers through the NEPA process.

Thank you to the Wyoming Department of Agriculture for sharing their content for this guide.



WHAT IS NEPA?

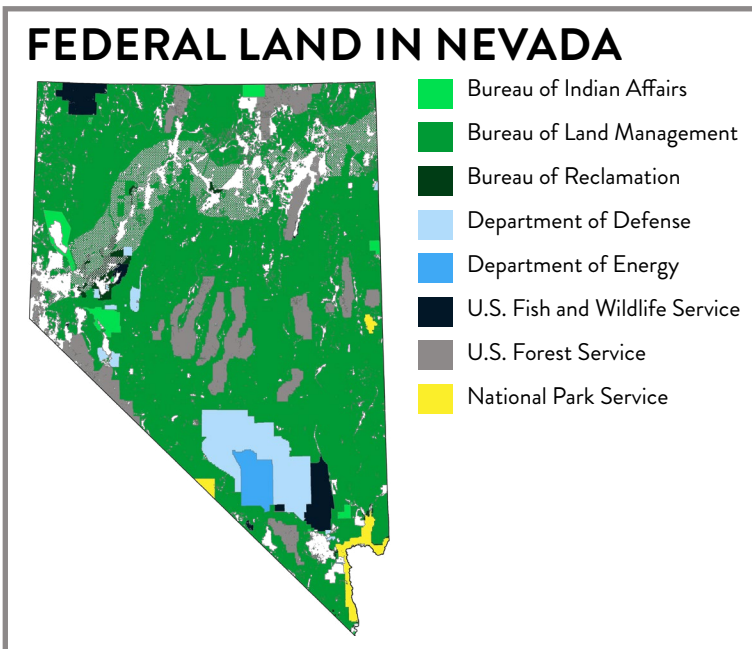
NEPA is the National Environmental Policy Act, which requires federal agencies to consider the impacts a project may have on the environment and allow the public an opportunity for input. NEPA was signed into law in 1970.

There are varying levels of analysis under NEPA.

Categorical Exclusions (CX)- CXs are used by the U.S. Forest Service (USFS) or Bureau of Land Management (BLM) for small projects with little to no environmental impact, such as installing temporary electric fence.

Environmental Assessments (EA)- Most federal grazing permits are analyzed under an EA (some agencies may renew permits under a CX while others will require an EIS).

Environmental Impact Statements (EIS)- 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 of the NEPA process 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 a project from EA to EIS.



THIS GUIDE WILL PROVIDE A BASIC UNDERSTANDING OF WHAT NEPA IS, HOW NEPA WORKS AND HOW TO PARTICIPATE IN THE NEPA PROCESS.



APPLYING NEPA ON PUBLIC LANDS

The following diagram briefly outlines the NEPA process for renewing livestock grazing permits. Allotment evaluation, the NEPA process and implementation of approved management all play a role in applying NEPA on public lands. Allotment evaluation is the review of the allotment; this includes planning and data collection. The NEPA process consists of all activities from proposed action (permit renewal) to decision and implementation. The third column is implementation of the approved decision and subsequent monitoring of the approved action. This is also where on-the-ground adjustments come into play.

APPLYING NEPA



ALLOTMENT EVALUATION

- ▶ Review objectives
- ▶ Annual operating instructions/meetings
- ▶ Discuss improvements & management objectives
- ▶ Allotment tours & trainings
- ▶ Discuss existing & desired conditions
- ▶ Discuss resource needs & potential practices
- ▶ Discuss adaptive management
- ▶ Review permittee/allotment file
- ▶ Evaluate current management
- ▶ Prepare for permit renewal
- ▶ Develop purpose & need for renewal

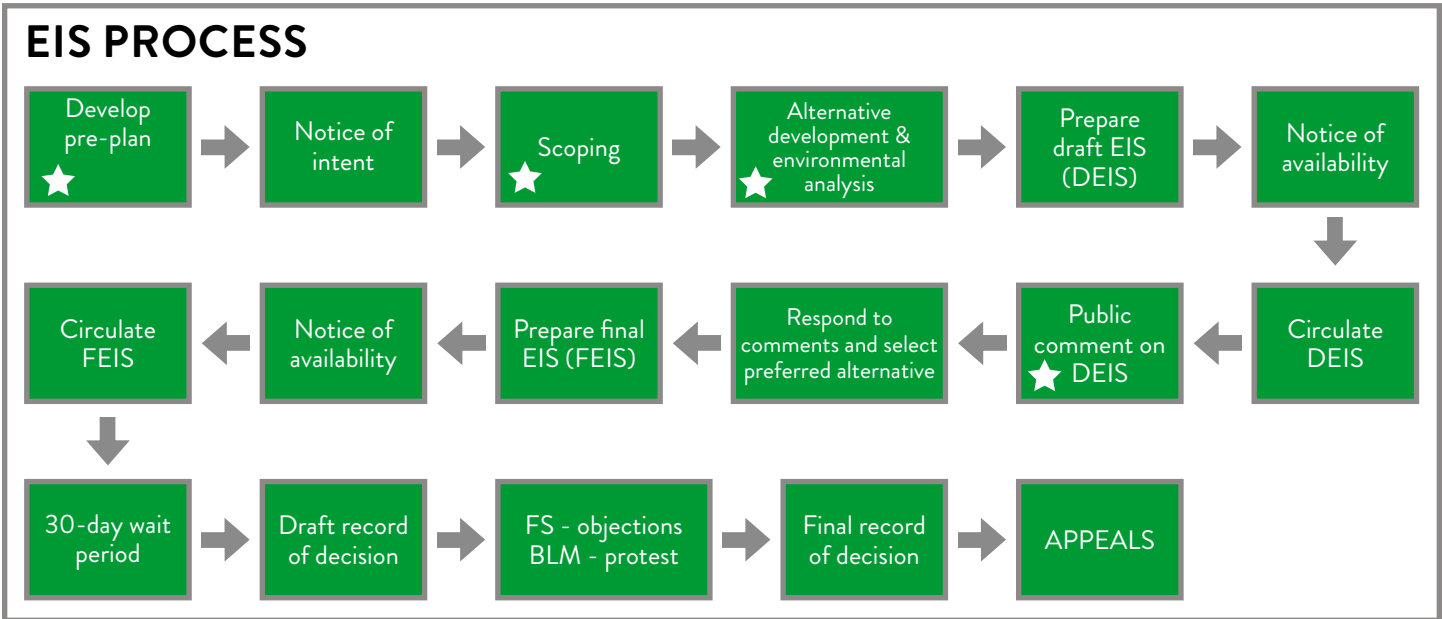
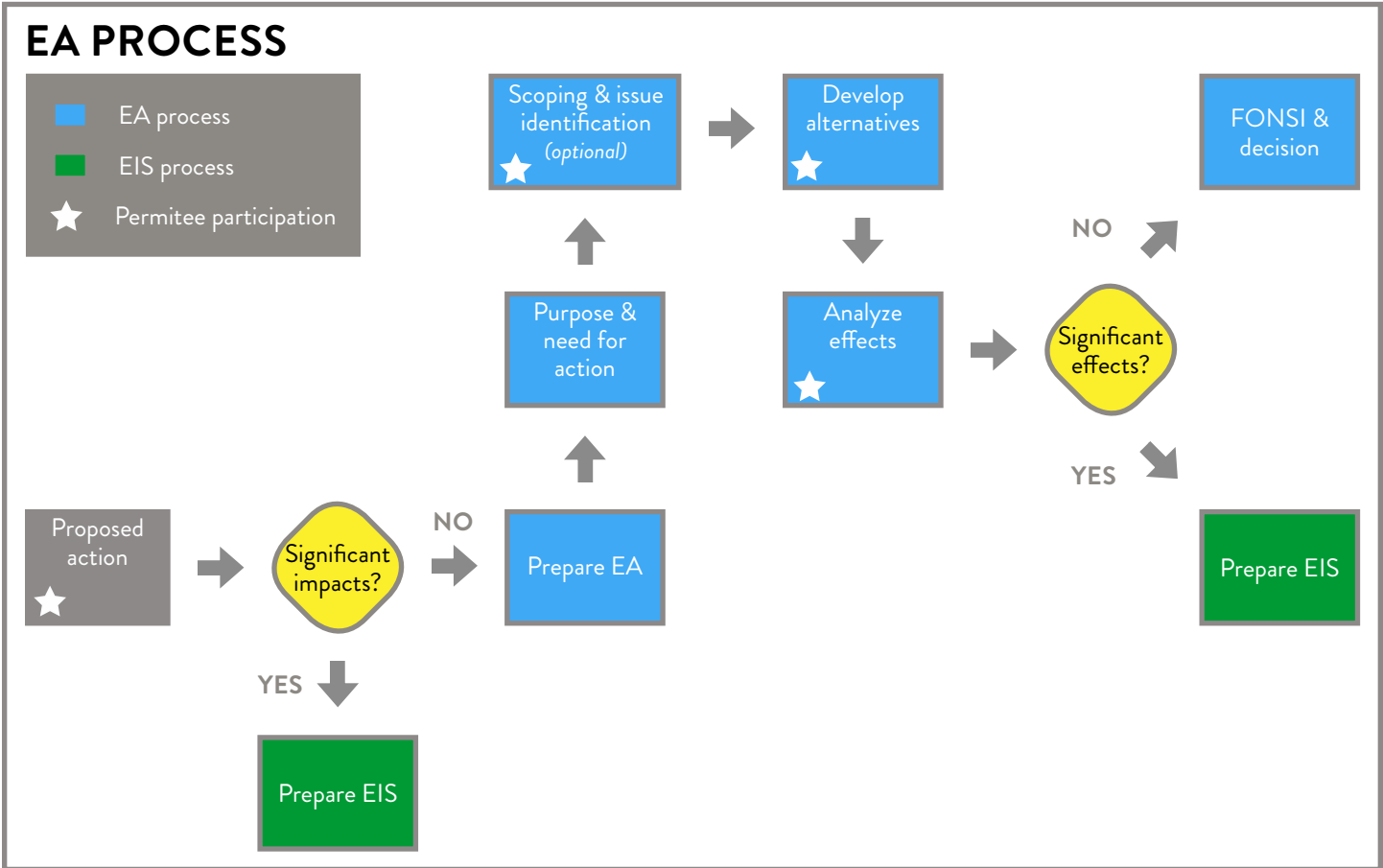
NEPA PROCESS

- ▶ Proposed action development
- ▶ Assessments of allotment
- ▶ Public scoping of proposed action
- ▶ Alternatives developed
- ▶ Analysis of effects
- ▶ Draft decision & EA/EIS
- ▶ Notice & comment period
- ▶ Decision record on EA/EIS
- ▶ Agency decision
- ▶ Objection/appeal/protest process
- ▶ Implementation of allotment management

IMPLEMENTATION OF APPROVED MANAGEMENT

- ▶ Constant review of objects
- ▶ Monitoring designed to meet objectives
- ▶ Permittees must participate in monitoring

THE NEPA PROCESS



PARTICIPATION

WHY & HOW TO PARTICIPATE

It is imperative for permittees to actively participate in the grazing permit renewal process, including the NEPA process, monitoring and management on the allotment. It is also crucial to assist the federal agency with the development of the proposed action and potential development of a permittee-preferred alternative. Involvement in the entire process ensures the permittees can represent their business interests as federal decisions are made.

The scope of the action is focused on the authorization of livestock grazing and must include livestock management practices necessary to address environmental concerns caused by grazing and ensure successful rangeland management in the future.

An interdisciplinary team (IDT or ID team), assembled by the federal agencies, 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, but permittees should ask for inclusion in the process as much as possible including accompanying the ID team in the field. Permittees may insist on reviewing drafts and provide comments throughout the NEPA process.

DEVELOP YOUR OWN PROPOSED ACTION/ALTERNATIVE



Permittees should consider developing a proposed action or alternative to ensure all their proposed changes and improvements are evaluated. 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 the no grazing alternative.

The proposed action could be either a modified grazing management or current management. Permittees may voice their concerns with the current management of the allotment and identify changes they believe would benefit the allotment or changes they believe would harm the allotment if removed. 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 federal agency will then consider.

Information permittees may want to consider for their proposed action or alternative is included on pages 6 and 7.



PARTICIPATION

PROVIDING INFORMATION FOR NEPA PROCESS & 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 alternative management actions?
- ▶ **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, etc.), other issues on the allotment (invasive species, etc.) 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:** 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 or current management.
- ▶ **Past management actions and activities:** 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 de-stocking, etc. This is also the time to highlight successes and failures.
- ▶ **External factors:** Explain any special conditions or influences impacting existing conditions on the allotment. Examples may include drought, wild horses, weeds, tree encroachment, recreation uses or fire.



PARTICIPATION

PROVIDING INFORMATION FOR NEPA PROCESS & PERMITTEE-PREFERRED ALTERNATIVE (CONT.)

- ▶ **Monitoring data summary:** This is perhaps the most important information for an allotment and the NEPA analysis for permit renewal. Good data leads to informed decisions and 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 objectives for management to serve as the basis for decisions. The issues of concern, existing conditions, current livestock management and monitoring data will guide the logical course of action and the immediate steps required to accomplish the plan of action. Close collaboration with federal agencies and resources like the University of Nevada Cooperative Extension, the NDA and others is 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 versus 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 resources.
- ▶ **Supporting documents:** Monitoring data, pictures and peer-reviewed science are all examples of supporting documents to attach, which the agency will 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 and Taylor Grazing Act.



NEPA DECISION

THE NEPA DECISION WILL PROVIDE THE GUIDANCE AND FUTURE DIRECTION FOR MANAGEMENT ON THE ALLOTMENT. IF DETERMINED THROUGH THE EA THERE IS A SIGNIFICANT IMPACT ON THE LAND, AN EIS IS REQUIRED.



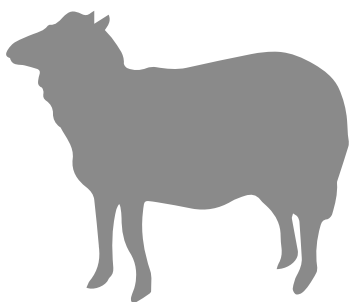
FOR AN EA

The decision is a finding of no significant impact (FONSI). The agencies will then release a decision notice (USFS) 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 (FEIS). 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 FINAL DECISION DOCUMENTS ARE RELEASED, THE VARIOUS OBJECTION, PROTEST OR APPEALS PROCESSES BEGIN.



APPEAL/OBJECTION PROCESS

Before a formal appeals process is considered, additional communication with federal decision-making officials is recommended. 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 several options available, depending upon the agency.

BLM PROTEST & APPEAL PROCESS

BLM decisions have two different administrative remedies.

PROTEST

A formal request for reconsideration of a proposed decision by a BLM official

APPEAL

Appeal of a final decision to an administrative law judge

PROTEST

An EA decision record becomes a proposed decision under the BLM grazing regulations (43 CFR). Stakeholders and the public are notified of proposed decisions. Upon issuance of the proposed decision, the administrative clock starts. Affected entities have 15 calendar days to protest the proposed decision for an EA. In the absence of any protests, the proposed decision becomes a final decision.

If a protest is received, the BLM may incorporate pertinent protest points into a final decision.

APPEAL

If the proposed decision proceeds to a final decision, it can be appealed to an administrative law judge (ALJ). Affected parties have 30 calendar days to appeal a final decision to the ALJ. If permittees are unsatisfied with the decision of an ALJ, they can pursue the appeal with the Interior Board of Land Appeals.

LEARN MORE ABOUT BLM'S ROLE IN NEPA

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



USFS OBJECTION & APPEAL PROCESS

OBJECTION *(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 larger land use plans [LUP]). 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 must have submitted timely, specific, written comments during the public comment periods. Specific written comments should be provided 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. "I do not like the proposed action" is not specific enough to be considered effective.

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 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, how the proposed plan can be improved and explanation of how it is inconsistent with law, regulations and/or policy; and statement of relationship to past comments.

The 45-day objection review period begins once the 45-day objection period is completed. The USFS will review all comments and may request to meet with various objectors to discuss issues raised and any potential resolutions. The authorized officer will determine if people other than the objectors can actively participate in the discussion; the meetings are sometimes open to the public.

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.

Once the decision is finalized, if the permittees are still not satisfied with the decision, their only recourse is a lawsuit. On grazing decisions, after the decision document is finalized, the permittees of the affected allotment can still appeal the decision.

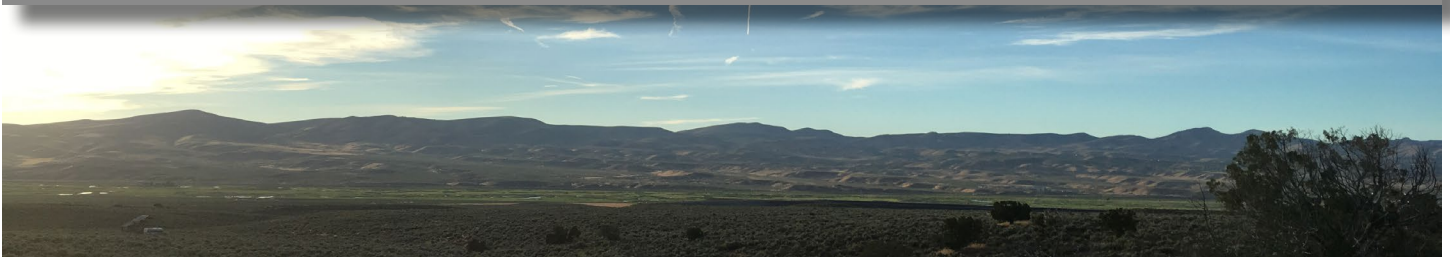
APPEAL

After a final grazing decision has been provided on the grazing permit, only the permittee can appeal the grazing decision. All appeals must be in writing. An appeal of a term grazing permit action under 36 CFR 251 of a decision by a district ranger (the individual

authorized to execute all resource management and general administration activities on a ranger district) is made to the forest supervisor (the individual responsible for management, protection, development and administration of a national forest.)

LEARN MORE ABOUT USFS'S ROLE IN NEPA

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





Handbook sponsored by
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