

Current Administration's Approach to Federal Land Use, Permitting, and NEPA Review

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PRELIMINARY OBSERVATIONS

- **Changes in agency practice have been slow to emerge**
 - Many changes require statutory or regulatory revisions
 - Uncertainties/resistance within agencies on policies and pending decisions
 - Delays in appointment of key decision-makers
 - Development of priorities and initial evaluations
- **Administration Is Focusing on:**
 - Committing resources to certain industries
 - Reduced funding for agencies
 - Efficiencies in regulatory process
- **Complex statutory/regulatory framework for federal land use & environmental law**
 - Significant changes require time to implement to ensure public participation
 - Some proposed activities have received revised decisions or experienced agency staff proceed with review of the action (wheels in motion)



CHANGE OF COURSE ON FEDERAL LAND MANAGEMENT

- **BLM's 2016 "Planning 2.0" Rule (overhaul/streamline FLPMA land use planning process)**
 - Concerns of New Administration:
 - Prioritize national/regional concerns over state and local and
 - Influence of federal government on public land decisions
 - Congress acted in 2017 to nullify the rules under the Congressional Review Act
- **Obama Administration's Withdrawal Actions**
 - ***Bears Ears and Grand Staircase-Escalante***: >3 million acres established under Antiquities Act
 - Reduced national monuments by ~2 million acres
 - Congress is considering bill to codify President's action
 - ***Sagebrush Focal Area***: Proposal to withdraw roughly 10 million acres
 - 10,000 acres of mining is not a significant threat to sage grouse habitat (<0.1% of range)
 - Consistent with previous USFWS decisions in 2005 (not warranted), 2010 (warranted but precluded), 2015 (not warranted)
 - ***Superior National Forest***: Proposal to withdrawal roughly 230,000 acres of federal minerals
 - USFS initially provided notice of intent to prepare an EIS with respect to proposed action of withdrawing federal minerals and amending Forest Plan
 - Proposal is still proceeding, but USFS decided to proceed with EA

NEPA EFFICIENCY FOR NATIONAL FORESTS

- **USFS Rule-making: Revise NEPA procedures**
 - Revise 36 C.F.R. part 220, FSM 1950, FSH 1909.15
 - Public comments closed February 2, 2018
- **Current NEPA Process Is Resulting in Delays**
 - Backlog of > 6,000 special use permits
 - Increased demands for wildfire suppression resulting in reduced permitting staff
- **Goal of “increasing efficiency of environmental analysis”**
 - Complete project decision-making in timely manner
 - Mitigate wildfire risk
 - “Ensure lands and watersheds are sustainable, healthy, and productive”
 - Improve/eliminate “inefficient processes and steps” and “increase the scale of analysis and the amount of activities authorized in a single analysis and decision”
 - Contribute to “economic health of rural communities” through use/access



SCOPE REFLECTS ADMINISTRATION'S STATED PRIORITIES

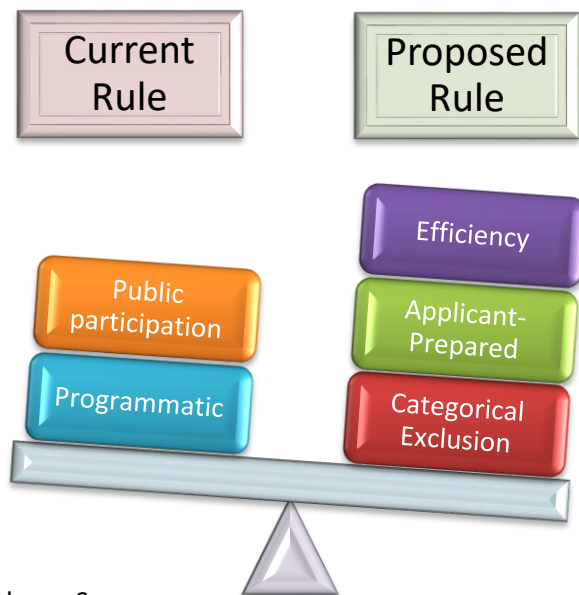
- **Processes/analysis requirements that can be modified, reduced, or eliminated to:**
 - reduce time/cost
 - maintain “science-based, high-quality analysis; public involvement; and honoring agency stewardship responsibilities”
- **Landscape-scale analysis/decision making that facilitate restoration of NFS lands**
- **Categorical exclusions**
 - Integrated restoration projects; SUAs; managing USFS sites/facilities/infrastructure
- **Expand coordination of environmental review & authorization decisions with:**
 - Other Federal agencies
 - State, Tribal, or local environmental reviews



COMMENTING THEMES SHOWCASE POLICY DEBATE

- **Theme Advanced by Supportive Comments**

- Focus on science-based management instead of process
- **Eliminate duplication** of environmental analysis and utilize tiering
- **Standard form** for certain documents (MOUs)
- Appropriately scoped NEPA documents
- **Applicant-prepared** assessments and materials
- New CX suggestions and encouragement to apply existing CXs
- **Objections to landscape-scale analysis**
- Specific timeframes for actions and process
- Specific suggestions for federal-state and federal-local coordination



- **Themes Expressed by Opposing Comments**

- Sufficient flexibility and not a burdensome process
- **Preserve science-based** and high-quality analysis
- Maintain **government accountability & public engagement**
- **Address funding/staffing** to improve efficiency
- Increase use of **programmatic analyses** with tiering later
- **Concern that new CXs** need appropriate significance limit
- Protect wilderness areas and other sensitive areas

FUTURE IMPLEMENTATION OF REVISED POLICIES

- **Several Factors Inform Changes in Permitting and NEPA Requirements/Process**
 - Type of Authority: Executive orders, Tribal treaties, statutes, rules, guidance
 - Analysis Level: Programmatic or site-specific
 - Nature of Action: Controversial policy/industry
 - Other Decision-Makers: States, Tribes, local governments, other countries
- **Environmental NGOs**
 - Mobilized opposition
 - Substantial increase in funding
 - Avenues for public comment, administrative challenge, and litigation (including citizen suits under laws such as MERA)
- **Judicial Review**
 - Potential for increased judicial review for permitting and environmental review processes and outcomes
 - Courts will review NEPA compliance and permitting decision based on administrative record
 - Procedural-based errors, in particular, may trigger remands



THANK YOU!