

Review of New Wilderness Information During Plan Implementation

The Land Use Planning Handbook (H-1601-1) provides some criteria to use when reviewing new information. Other factors to consider when reviewing new information contained in BLM wilderness inventories or public wilderness proposals that may be relevant to an implementation action are:

1. Was the information on land and resource conditions available to the BLM and adequately considered within the range, scope and analysis of the alternatives in the plan/EIS or other NEPA document, and is there adequate documentation to that affect?
2. Does the new information suggest significant changes in land and resource conditions have occurred since the plan/EIS or other NEPA document was completed?
3. Though BLM may not have formally disclosed in existing NEPA documents the impacts to the wilderness characteristics that have been identified in new inventories or public wilderness proposals, did BLM reasonably consider the environmental effects to the lands and resources that contribute to the wilderness characteristics in relevant NEPA documents?
4. Does the new information suggest that the impacts to those lands, if analyzed today, would be significantly different than the impacts already disclosed in the plan EIS or other NEPA document(s)?
5. Can BLM condition use of the lands for which new information exists in such a way that the effects of the action would not be significantly different from the effects already described?
6. Is the information at such a scale that BLM would ordinarily use the new information to make land use plan level decisions or is it more appropriate to consider for implementation level decisions?

New information or changed circumstances alone, however, or the failure to consider a factor or matter of little consequence, may not be sufficient basis to require additional NEPA consideration prior to implementing a previously approved decision. For example, the fact that roads and trails have become overgrown since previous inventories were completed represents a changed circumstance. Such change is most likely the result of natural environmental processes and, alone, may not be sufficient to require the preparation of additional NEPA documentation. The fact that BLM did not specifically analyze impacts of the proposed action on wilderness characteristics identified since the current land use plan or NEPA document was prepared is not an omission that, alone, would indicate that additional NEPA consideration is required. In all cases then, BLM should evaluate: 1) the extent to which the new information presents potential significant environmental consequences associated with the proposed action that were not analyzed in the previous NEPA analysis; and 2) whether those consequences are of significant gravity in context or intensity.

Case Law on Supplementation of NEPA

The lead case from the United States Supreme Court on supplementation is Marsh v Oregon Natural Resources Council, 490 U.S. 360 (1989). It provides that “an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decision-making intractable, always awaiting updated information only to find the new information outdated by the time the decision is made.” Id. at 373.

Rather, to trigger supplementation obligations, the new information must be sufficient to show that the proposed action will affect the quality of the human environment “in a significant manner or to a significant extent not already considered.” Id. at 374.