

reduces species diversity, increases soil erosion due to a decrease in surface cover, and promotes undesirable

• Promptly eliminating new invaders (species not previously reported in the area) before they become established.

Management of Noxious Weeds EA for control of noxious weeds to:

# A Rancher's Guide to NEPA and Permit Renewals

For these reasons it is imperative to assess and manage invasive species and their impacts. The purpose and need of the project is to prevent and reduce loss of native plant communities associated with the spread of invasive plants. Specifically, the purpose of this project is to treat invasive plants in the Medicine Bow-Routt National Forests and Thunder Basin National Grassland (MBRTB) and to reduce the impacts from invasive plants on other resources. These management activities would

• Preventing or limiting the spread of invasive plants to resources including the on- and off-range habitats including critical big game winter ranges, sage-grouse core areas and other important habitats. • Broaden control methods to include

• Treat new infestations through adaptive management tools for assessing new treatments and new sites; • Permit the use of newly developed, species-specific, EPA registered herbicides; • Continue the use of integrated treatment methods, including habitat modification, mowing, and prescribed fire, consistent with wilderness values;

## WYOMING



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## NEPA For Ranchers

The National Environmental Policy Act (NEPA) impacts 48% of Wyoming's land mass, much of which are vital to ranchers and the livestock grazing industry. Range improvement projects such as water developments or fences, and most importantly grazing permit renewals are all analyzed under NEPA.



Wyoming Agriculture and Natural  
Resources Mediation Program



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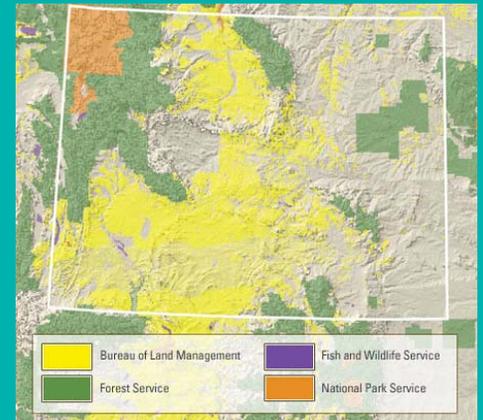
# What is NEPA

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 passed at a time in our country referred to as “the period of dissent and disobedience” (1964-1975). Nixon signed it into law in 1970.

There are varying levels of analysis under NEPA; Categorical Exclusions (CX), Environmental Assessments (EA), and Environmental Impact Statements (EIS). CXs are used by the US Forest Service (USFS) or Bureau of Land Management (BLM) for small projects with little to no environmental impact, such as installing temporary electric fence.

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

## Federal Lands of Wyoming



Some agencies may renew permits under a CX while others will require 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 or not 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.

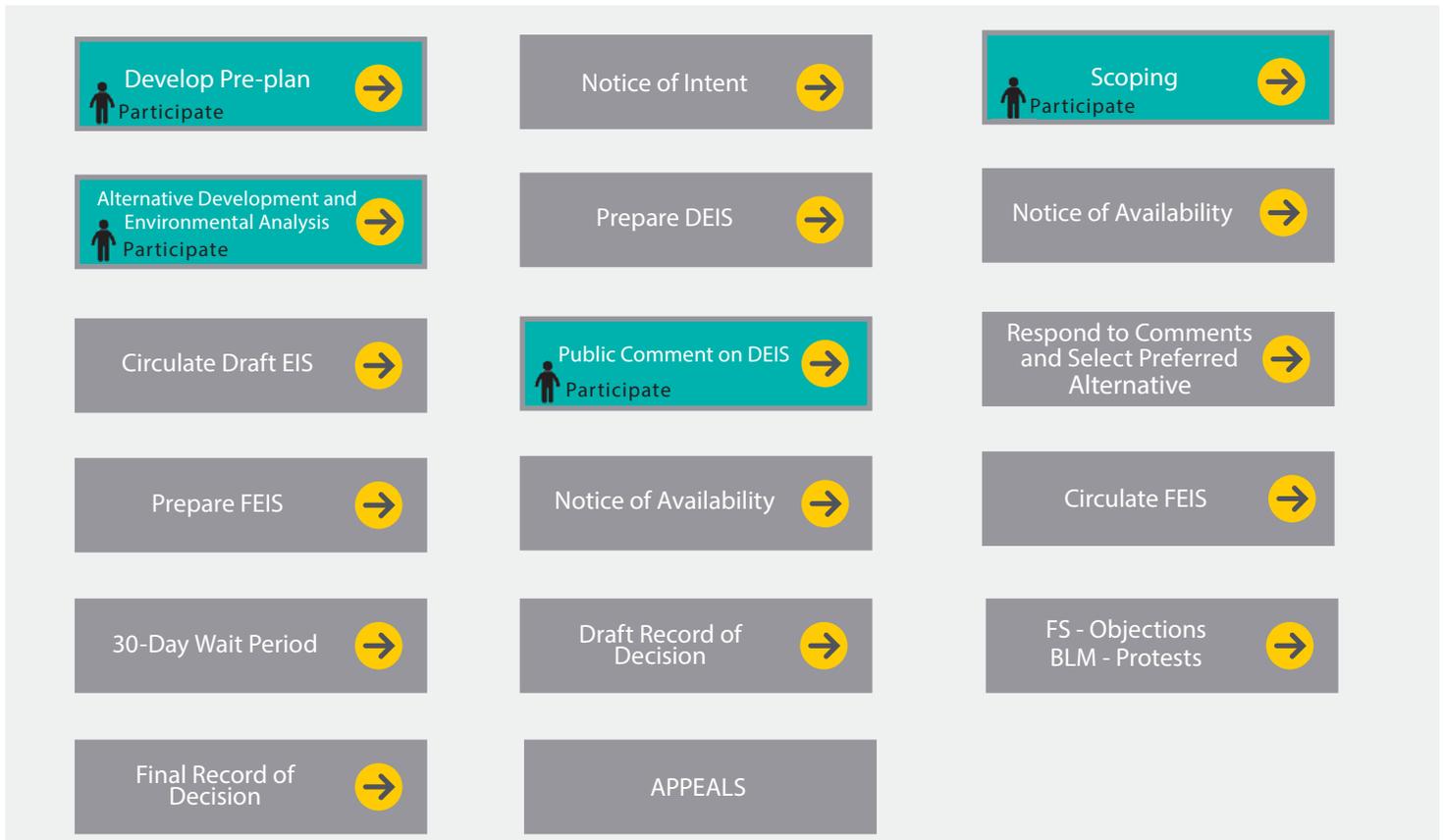


# THE NEPA PROCESS

## EA Process



## EIS Process



# Participation

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. Recognize 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.

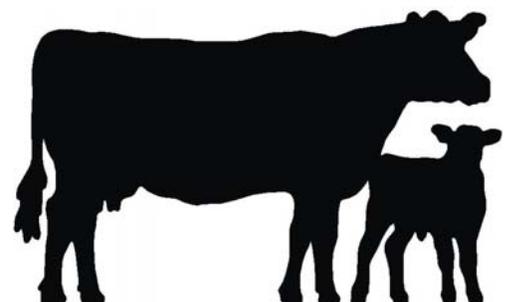
An Interdisciplinary Team (IDT or ID Team) reviews the allotment prior to the NEPA process for renewal or modification of the permit. Permittees are not considered a part of the ID Team, but permittees should ask for inclusion in the process as much as possible such as accompanying the ID Team in the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

## Develop your own 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 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 agency will then consider.



# List of Considerations to go into the NEPA Process and 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:** 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.
- **Past Management Actions vs 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 special conditions or influences describing existing conditions on the allotment. Examples may include drought, wild horses, weeds, 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. The issues of concern, existing conditions, current livestock management, and monitoring data, will create the logical course of action and the immediate steps required to accomplish the plan of action. Close collaboration with agencies, outside resources (UW 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 (above).
- **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.

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.

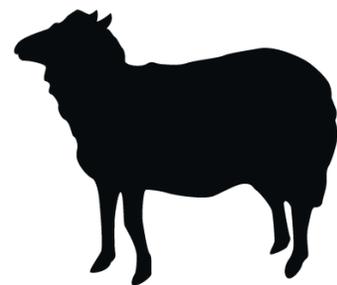
## For an EIS

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 final decision documents are released the various objection/protest/appeals processes begin.

## 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

## APPEAL

The appeals process is for a Final Decision

A protest is a formal request for reconsideration by a BLM official of a Proposed Decision; the appeals process is for a Final 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.

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).



# 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.

Generally speaking, in order to object to a proposed project, permittees must have submitted timely, specific, written comments during the public comment periods. It is important the specific written comments provided are within the scope of the project and 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 must contain the following information: Objectors 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; Explain 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. The authorized officer will determine if people other than the objectors can actively participate in the discussion; the meetings can be 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 you are still not satisfied with the decision, your only recourse is a lawsuit.

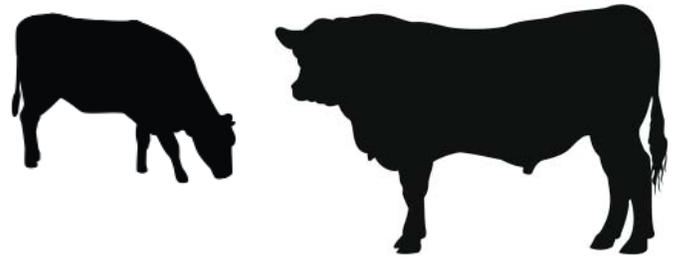
On grazing decisions, after the decision document is finalized, the permittees of the affected allotment can still appeal the decision.



# 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. An appeal of a term grazing permit action under 36 CFR 251 of a decision by a District Ranger is made to the Forest Supervisor.

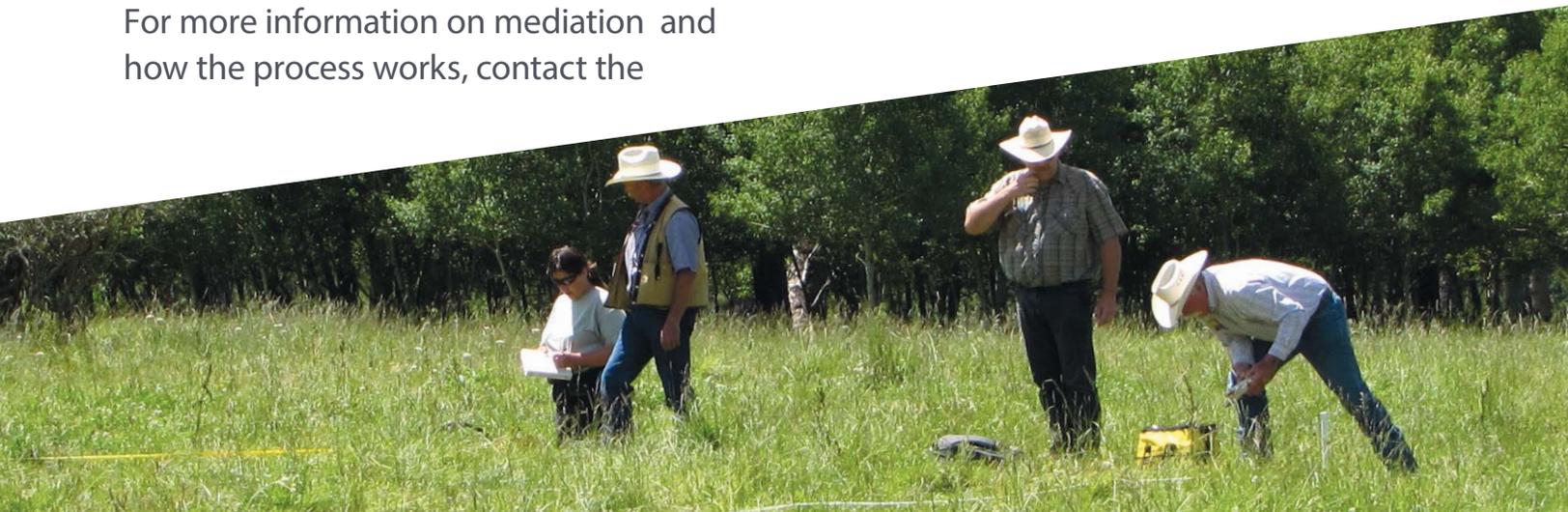
If this reviewing officer's decision is unsatisfactory to the appellant, the appellant may appeal to the the Regional Forester. This is the final level of review by the Forest Service of decisions made by an authorized official and any additional actions would have to be taken in Federal District Court.



## Mediation

**Mediation is available** after a District Ranger's decision and before appealing to the Regional Forester. Mediation is not offered automatically and must be requested by the permittee. Mediation requests must be made within 45 days of receiving the adverse decision. Mediation is a voluntary and confidential process. For more information on mediation and how the process works, contact the

Wyoming Agriculture and Natural Resources Mediation Program at (307) 777-8788 or visit the website at <http://wyagric.state.wy.us/divisions/nrp/mediation-program>. A mediation request stops the appeal clock for 45 days with an additional 15 days if progress towards a resolution is being made.





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Wyoming Agriculture & Natural Resource Mediation Program	307.777.8788	<a href="http://agriculture.wy.gov/divisions/nrp/mediation-program">agriculture.wy.gov/divisions/nrp/mediation-program</a>
University of Wyoming Extension	307.766.3566	<a href="http://uwyo.edu/uwe/">uwyo.edu/uwe/</a>