



Presentation by:

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## Modified Approach to Expedite NEPA Projects



## Objective of Presentation

To propose a modified approach to preparing EISs that can streamline the process, with focus on US West projects:

- Baseline studies before an EIS typically take 1 to 2 year
- EISs have taken from 19 months to 7+ years to complete
- Not unusual for delays to occur after starting the EIS w/ (NOI)
- The delays reflect poorly on the current NEPA process

## Current EIS Workflow Practices

- Early discussions with lead agency (typically BLM or USFS)
- Conduct and report on baseline data collection studies (1<sup>st</sup> party)
- Agency reviews and accepts baseline reports
- Proponent submits PoD or PoO for proposed action
- Agency selects 3<sup>rd</sup> party EIS contractor
- Publish NOI and conduct scoping
- Select alternatives and issues to analyze in the EIS
- Conduct impact analysis
- Prepare draft EIS document
- Follow NEPA review and finalization process through ROD

# Reasons for EIS Delays Post-NOI



- Scoping can identify new issues or alternatives that were not included in the baseline studies (do more)
- EIS impact analysis can identify needed changes in the PoD or PoO and in the baseline information (do over)
- Agency staff have limited availability or experience to deal with problems (wait for decisions)
- Cutting corners is not an option and can lead to remand on appeal or litigation (must take the “hard look”)

# Implications of NEPA Project Delays

- Missed deadlines
- Staff turnover
- Project legacy
- Increased EIS Costs
- Project owner/investors concerns
- Now: non-compliance with an E.O. and a DOI S.O.

# Executive Order No. 13807

August 15, 2017 (applicable to major infrastructure projects)

- Performance goals for environmental reviews
- Early engagement with public
- Decisions within 2 years of the NOI
- Project timetable with milestones
- Missed milestones elevated to “senior agency officials”
- Single Record of Decision
- All federal authorizations within 90 days of lead agency ROD
- Applies to all federal agencies doing NEPA

# DOI Secretarial Order No. 3355

## August 31, 2017

- Focus on important issues, analytic not encyclopedic
- EISs less than 150 pages long and not more than 300 pages
- EISs done in 12 months of the NOI and not more than 15 months
- Exceedances require high level approval
- Effective immediately
- Applies to all DOI agencies, typically BLM for mining projects

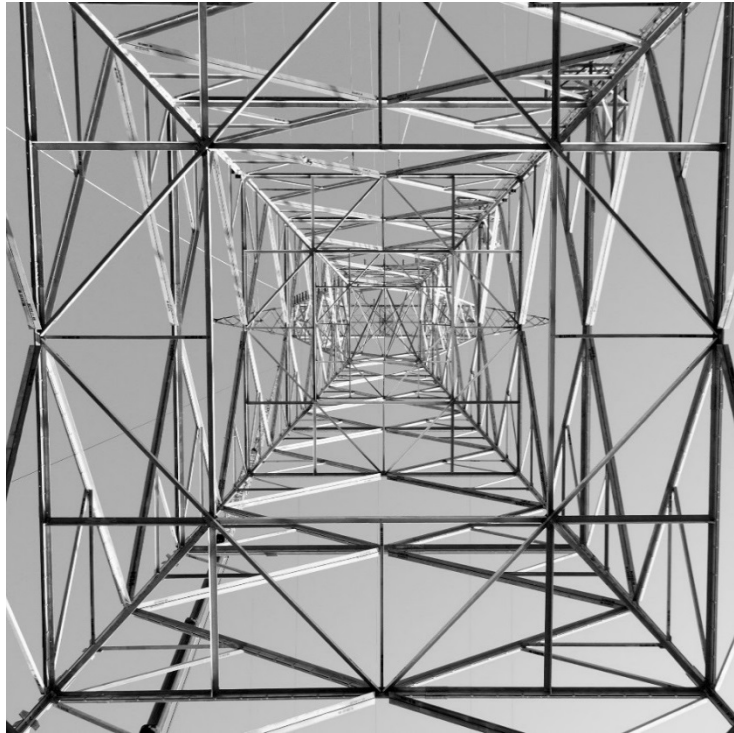
## BLM Responses to S.O. 3355

- Bureau-wide guidance
- State Office IMs
- Applying to current projects
- The major concerns:
  - Staying within page limits
  - Staying within schedule
  - Building a solid administrative record
  - Holding up to appeals





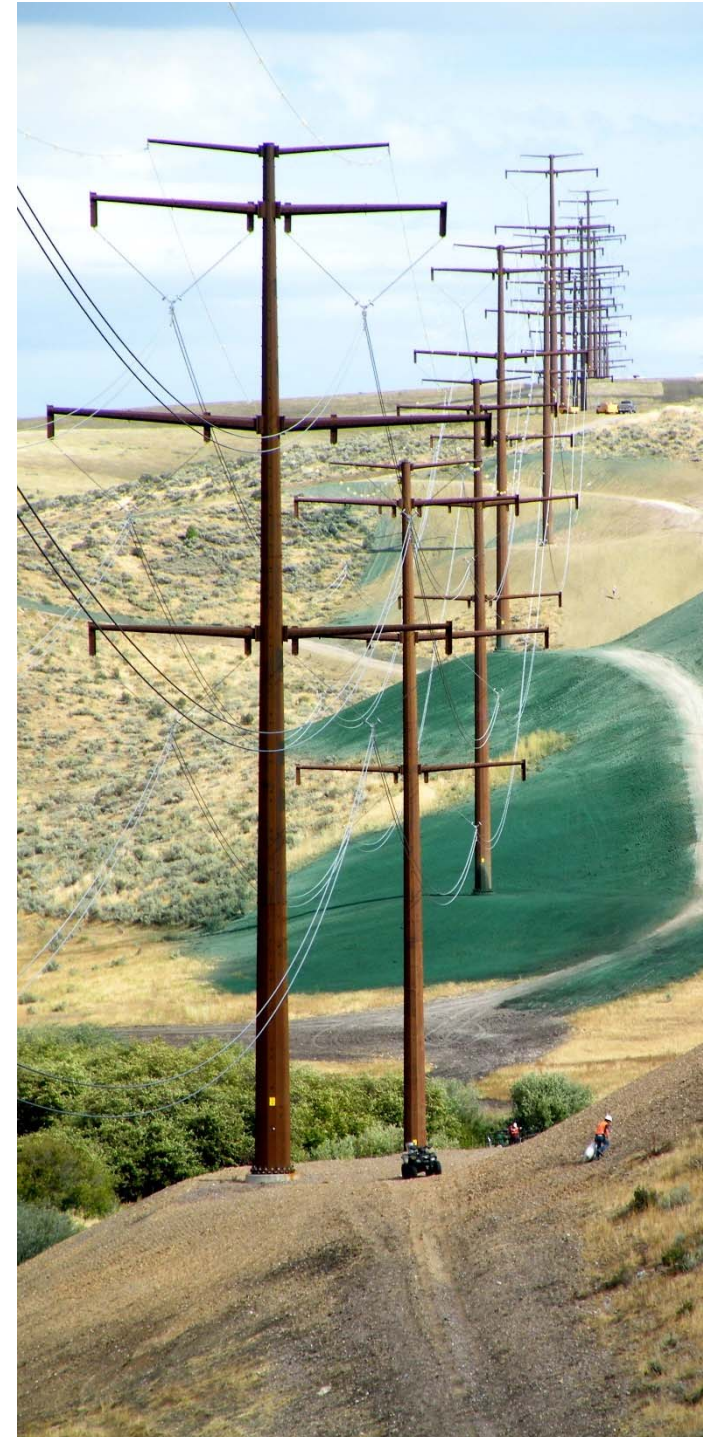
# Workflow Opportunity



- Comply with the S.O. 3355 while also addressing the typical EIS delays
- Define the EIS process to include scoping (NOI) through the NOA for the FEIS (i.e. “EIS Phase”)
- “Front-load” the work that often results in EIS delays before the NOI (Pre-analysis Phase)
- Still conduct a thorough NEPA analysis with complete documentation to provide a defensible administrative record

## Address the Typical EIS Delays Before the NOI

- Early coordination with agencies
- Early stakeholder outreach
- I.D. preliminary issues and alternatives
- Develop Pre-Analysis planning docs
- Collect baseline data for all preliminary action alternatives and issues
- Do preliminary impact analysis
- Develop responsive PoD or PoO
- Prepare Resource Reports with baseline and preliminary impacts info



## Revised Workflow Benefits

- Early stakeholder outreach shows issues and alternatives earlier
- Baseline studies are more likely to be sufficient without data gaps
- Preliminary impact analysis tests baseline data before starting EIS
- PoD or PoO can address impacts more comprehensively
- Agencies have more complete information before starting EIS
- Resource Reports are not affected by time or page limitations
- EIS can be faster and thinner by summarizing Resource Reports

## Potential of the Modified NEPA Approach



- Typical reasons for EIS delays are addressed in the Pre-analysis Phase
- EIS Phase can be smoother and more predictable
- Can comply with the E.O. and S.O. timeframes in the EIS Phase
- Provides a robust project record to support a slimmer and faster EIS

## Integration of the Modified NEPA Approach with Current Practices

- Can be implemented with current authorities and procedures
- Can reduce the typical EIS-Phase schedule to 12 – 15 months
- Can reduce overall EIS project schedule
- Can reduce overall time commitment of BLM staff in the project



## BLM Responses so Far

Presented this to multiple BLM Offices in the US West. Their main comments to date are:

- Agree that changes to workflow are required
- Support early outreach to stakeholders and determining issues and alternatives before doing baseline studies
- Concerned about new input obtained during official scoping
- Support impact analyses and documentation before the NOI
- Concerned about the optics of proponents doing the preliminary impact analysis (allowed by CEQ 1506.5a)
- Like easing the potential workload for ID Teams

## Commercial Client Responses so Far

We have presented this approach to a number of Mining Sector proponents. Their main comments to date are:

- Strong support for the intent of the E.O. and S.O.
- Concerned how EISs done under the S.O. will hold up on appeal
- Concerned how the S.O. is applied to existing EIS projects
- See opportunity to revise the entire EIS process
- Looking for workable solutions that are practicable

## Recent Developments from Washington

March 20, 2018 MOU for federal agencies on the E.O.

April 27, 2018 DOI Additional Direction for the S.O.

April 27, 2018 DOI NEPA Document Clearance Process

April 27, 2018 DOI Compiling Contemporaneous Decisions:

- Generally support the “front-loading” approach
- Do not specifically call for all the same steps as proposed here
- Hopefully allow innovative approaches for the Pre-analysis Phase

Are we fully and effectively streamlining NEPA?



## Path Forward



- Consider this modified NEPA approach for new EIS projects
- Continue talks with BLM and clients to improve the whole NEPA process
- Monitor developments on implementing the E.O. and S.O. for EISs



Questions?

