

Adaptive Management

Legal Authority and Other
Advice.....

Presented by:

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Authority

- **Secretarial Order No. 3270 (March 9, 2007)**
 - Cited: 16 U.S.C. Section 1602 (a) The "Take Pride in America" Program and Reorganization Plan No. 3 of 1950 (as amended)
- **OPEC issued Environmental Statement Memorandum No. ESM03-06 (July 2, 2003), "Procedures for Implementing Adaptive Management Practices,"** to heads of bureaus and offices. OEPC's definition:
 - "a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and, if not, facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes. **Adaptive management** recognizes that knowledge about natural resource systems is sometimes uncertain and is the preferred method of management in these cases."

Additional Administrative Authority

- The Department published a revision of its procedures for implementing NEPA procedures. *69 FR 10866* (Mar. 8, 2004). **516 DM 1.3 D.(7)** provides that heads of bureaus and offices "shall use adaptive management (see 516 DM 4.16) to fully comply with 40 CFR 1505.2 which requires a monitoring and enforcement program to be adopted, where applicable, for any mitigation activity." *69 FR 10873-74* (Mar. 8, 2004).
- **516 DM 4.16** quotes the definition in ESM03-06, adding: "Bureaus are encouraged to build adaptive management practice into their proposed actions and NEPA compliance activities and train personnel in this important environmental concept." *69 FR 10880* (Mar. 8, 2004).

General Guidance and

- CEQ, *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-Five Years*, "Monitoring and Adaptive Management," at 31-34 (Jan. 1997); CEQ, *The NEPA Task Force Report to the Council on Environmental Quality, Modernizing NEPA Implementation*, Ch. 4, *Adaptive Management*, at 44-56 (Sept. 2003).

Definition of Adaptive Management

- Adaptive management [is a decision making process that] promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Careful monitoring of these outcomes both advances scientific understanding and helps adjust policies or operations as part of an iterative learning process. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. It is not a 'trial and error' process, but rather emphasizes learning while doing. Adaptive management does not represent an end in itself, but rather a means to [achieve] more effective decisions and enhanced benefits. Its true measure is in how well it helps meet environmental, social, and economic goals, increases scientific knowledge, and reduces tensions among stakeholders.
 - Cited by the Department's *Adaptive Management, Technical Guide* and Adopted by BLM in *A Field Guide for Incorporating Adaptive Management Principles Into the BLM NEPA and Land Use Planning Process*.

Interior Board of Land Appeals Definition

- Over 100 cases of considering the use of "adaptive management." Definition preferred by the N.W. Forest Plan:
 - **Adaptive management** areas are "landscape units designated for development and testing of technical and social approaches to achieving desired ecological, economic, and other social objectives." Rural Information Network, 149 IBLA 336 (July 19, 1999)

IBLA, Cont'd:

- Center for Native Ecosystems, 170 IBLA 331 (2006)
 - BLM facts (ugh!)—must consider mitigation in the NEPA analysis
 - If you plan on signing a FONSI, and mitigation is used to eliminate significant impacts, then NEPA requires analysis of the proposed mitigation measures and how effective they are at reducing the impact to insignificance.

- Biodiversity Conservation Alliance
169 IBLA 321 (August 2, 2006)

- Cited adaptive management favorably despite the fact that BLM's use of AM was tenuous, "we'll adaptively change our management."
- Upheld agency action based on the hint of proactive management.

Federal Case Law

- Klamath Siskiyou Wildlands Center v. Boody, 468 F.3d 549 (9th Cir. 2006) (red tree vole case)
 - Northwest Forest Plan
 - BLM claimed change was “plan maintenance;” even though the action conflicted with specific language in RMP.
 - Court rejected the adaptive management claim completely.
- Oregon Natural Desert Association v. BLM, 47 F. Supp. 2d 1182 (1998).
 - Can’t plan to make a plan (W&SR designation case)
- Oregon Natural Desert Association v. BLM, 75 F. Supp. 2d 1139 (1999).
 - Grazing case: court enjoined BLM from implementing its grazing program because its science didn’t support the facts the agency adopted.