

Legislative NEPA Requirement

Consistent with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd(a)(1)), the National Bison Range NBR is a unit of the National Wildlife Refuge System (NWRS) and is to be managed by the U.S. Fish and Wildlife Service (Service).

Recently, the Service proposed to transfer NBR to the Confederated Salish and Kootenai Tribes. The Service's statements acknowledge that transfer of the Range to the Tribes would require approval of the U.S. Congress. The NWRS Administration Act specifically states that such an action requires an "...Act of Congress..." (16 U.S.C. 668dd(a)(6)). Therefore, the Service's NBR transfer proposal is a proposal for legislative action.

The National Environmental Policy Act of 1969, as amended (NEPA) requires that Federal agencies, "...include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment,..." an environmental impact statement (EIS) (42 U.S.C. 4332(C)).

These EISs are to be detailed statements that disclose the environmental impacts of proposed legislation, including –

- Unavoidable adverse environmental effects;
- Alternatives to the proposal and their effects;
- The relationship between short-term uses of the affected environment and the maintenance and enhancement of long-term productivity; and
- Irreversible and irretrievable commitments of resources associated with implementing the proposal.

Federal regulations promulgated by the President's Council on Environmental Quality (CEQ) provide detailed guidance (which has the force and effect of law) for agencies to implement NEPA's requirements, including the requirement to develop legislative EISs. Legislation is defined for purposes of these regulations to include, "...a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency..." (40 C.F.R. 1508.17).

CEQ's regulations require, among other things, that a legislative EIS be prepared in the same manner as any other EIS and be submitted concurrent with or no later than 30 days following an agency's recommendation or report on a legislative proposal (40 C.F.R. 1506.8). Legislative EISs must be available in time for Congressional hearings and deliberations.

CEQ's regulations also stipulate that EISs must describe and evaluate the effects of all reasonable alternatives, including the "no-action alternative" (40 C.F.R. 1502.14). For management of an existing NWRS unit, like NBR, that means continued management of the Range by the Service.