Is Public Participation Public Inclusion? The Role of Comments in US Forest Service Decision-Making

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Abstract

In the United States, forest governance practices have utilized a variety of public participation mechanisms to improve decision-making and instill public legitimacy. However, comments, one of the most frequent and accessible avenues for the public to provide input, has received little attention. Further, there has been no analysis of the ways that government actors utilize this form of public participation in their decision-making. I empirically examine responses to public comments across the United States Forest Service to understand how they handle and deal with public feedback on forestry projects. I employed two qualitative approaches that examine comment handling processes and agency justifications for responding to comments. Through this empirical work, I found that agency employees utilize a range of strategies to handle and respond to public concerns. I present data suggestive that most public comments received are outside of agency personnel decision-making capacity and thus, personnel respond to comments in ways that deny their worth and block those concerns from project agenda setting. Understanding how the United States Forest Service thinks about and deals with public input will help forest managers and public commenters better negotiate efficacy in projects and decisions that affect forestland areas.

Keywords Public participation · Public comments · United States Forest Service · Environmental impact assessment · Decision-making · Agenda setting and blocking

Introduction

Soliciting public feedback is a key component of environmental impact assessments (EIA), documents that provide cumulative analysis of the environmental, social, and economic harms from planned activities. Institutionalized rounds of public participation increase project transparency and create a legally legitimate case to complete activities (Innes and Booher 2004, p. 423). This paper understands public participation as the "variety of mechanisms and processes used to involve and draw on members of the public or their representatives…" (Dietz and Stern 2008, p. 12). This involvement improves the quality of environmental decisions as they are required to consider public concerns and suggestions and, ultimately, broaden the range of potential solutions (Stewart and Sinclair 2007, p. 162).

Public participation processes within environmental projects and decisions are seen as highly valuable and necessary for just decision-making (Brulle 2000; Ryfe 2005; Stewart and Sinclair 2007; Momtaz and Gladstone 2008; Morrison-Saunders and Early 2008; Reed 2008; Arts et al. 2018). However, effective implementation of public participation (Hartley and Wood 2005, p. 333), as well as the efficacy and power that the involved public has within that process in affecting decisions (Stewart and Sinclair 2007, pp. 165–168; Morrison-Saunders and Early 2008; Yang 2008; O'Faircheallaigh 2010), are still contested.

The first legal requirements mandating public participation in the US was instituted in 1946 through the Administrative Procedures Act. Since then, the National Environmental Policy Act (NEPA) of 1969 furthered this requirement to EIA projects with the intention of "improving the environment through procedural regulation" (Espeland 2000, p. 1089). The goal of NEPA law is to enhance, preserve, and sustain the environment and environmental resources "for present and future generations of Americans" (42 U.S.C. §§ 4321). However, the United

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States Forest Service (USFS) is currently reconsidering their institutional EIA requirements through revisions to NEPA regulations. This new proposal, NEPA Compliance[1], suggests more "efficient" changes to USFS EIA that reduce the kinds and number of projects that are legally required to seek public participation.

The role and use of public participation are of particular concern within the USFS, a highly bureaucratic agency that oversees 193 million acres of publicly owned forest and grasslands in the United States. This agency is tasked with administering public land for multiple uses in accordance to both environmental and resource extraction laws (Culhane 1981; Hirt 1996). Thus, agency personnel work to maintain public support while simultaneously being economically dependent on extractive industries. Balancing forestry and environmental requirements has lead the USFS to develop more EIAs than all other land management agencies combined (Broussard and Whitaker 2009; Mortimer et al. 2011). Although these projects are justified and promoted by the agency, civil disobedience, and legal contestation—averaging 61 lawsuits a year between 1989 and 2008—is convincing that the USFS is facing a public legitimation crisis (Miner et al. 2010, p. 119). The agency has spent considerable time and resources to try and improve this process. In 2006 alone, environmental requirements and lawsuits cost the USFS almost 365 million dollars (Mortimer et al. 2011). Project documents easily take more than 7 years to complete and encompass hundreds of pages of specialist reports, maps, responses to comments, and analysis of unutilized alternatives (Broussard and Whitaker 2009). Even with these efforts, the current administrative processes for public involvement in USFS EIA has proven ineffective to resolve social conflict and instill public trust (Blahna and Yonts-Shepard 1989; Behan 1990; Steelman 1999; Ryfe 2005; Scardina et al. 2007; Widick 2009; Miner et al. 2010).

In the USFS, public comments are the most accessible and common mechanism that the public uses to participate in EIA processes. However, we know little about comments outside of Innes and Booher's (2004) discussion amongst all forms of EIA public participation, Steelman's (1999) analysis of public commenters for the Monongahela National Forest Plan, and Scardina and coauthor's (2007) cross-case analysis between legal plaintiffs and their prior comments on the George Washington and Jefferson National Forest between 1994 and 2002. Public comments are empirically useful, not only because they provide a print of public concerns, but they are also considered and responded to by USFS agency personnel. USFS responses to public comments offer a window into how the agency thinks about and deals with received input (Steelman 2000, p. 124). Research on public participation thus far has

thoroughly dealt with public perceptions and project-level outcomes but has yet to address how that occurs and why we are seeing these outcomes. This is important as USFS EIA processes are likely to change and we still have yet to know the direct effects that public comments have on USFS decisions.

This article proposes a process-oriented analysis to examine how the USFS attains public feedback and the processes they use to respond to and consider public comments for inclusion. To understand how USFS agency personnel navigate the public comment processes and handle public concerns, this article uses a combination of interviews with USFS personnel and a comprehensive database of public comments, responses, and agency rulemaking to ask: (1) What is the institutional process for handling public comments? (2) How does the agency respond to public comments? And (3) what do those responses mean for public comment inclusion in USFS projects/plans? These empirical questions help to address larger theoretical questions within the EIA field around how public participation is utilized by decision-makers.

The objective of this paper is to examine the processes and discourses that influence public comment incorporation, using the USFS as the agency of study. This article outlines opportunities for public comment, how both mass and individual comments are handled, and the justifications utilized to either incorporate or deny incorporation of public concerns into project documents. Power influences this process and justification discourses through agenda setting and -blocking.

Power in Comment Incorporation

Resource management is political (Cortner and Margaret 1999, p. 1; Torgerson and Paehlke 2005, p. 5) and Cook (2015, p. 383) argues that we need to analyze the role of power within EIA governance and decision-making. Thus far, politics and power in EIA have received little attention (Bartlett and Kurian 1999; Bartlett 2005). A few cases have come to defy this trend (Parkins 2010; May 2013; Brisbois and de Loë 2016; Cook 2015), however, they all focus on collaborative governance, "processes that seek to share power in decision-making with stakeholders in order to develop shared recommendations for effective, lasting solutions to public problems" (Purdy 2012, p. 409). Collaborative governance offer spaces for agency personnel and stakeholders to meet in-person and deliberate, albeit this often operates in a variety of forms. Public comments differ, however, through a form of remote communication where commenters send written concerns to agency personnel and may not hear a response back addressing those

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concerns until months later (Innes and Booher 2004, p. 423). Given that opportunities for public comment are legally required for all USFS environmental assessments (EA) and environmental impact statements (EIS) are a prerequisite for objections and lawsuits and are the most accessible and utilized form of public participation, calls for considering the role of power in public comment utilization.

How public comments are handled, responded to, and utilized by USFS agency employees are determined by authority and discursive legitimacy, two of the sources of power within Purdy's (2012) framework of collaborative governance. Authority refers to the "socially acknowledged right to exercise judgment, make a decision, or take action (Greenwald 2008 as cited in Purdy 2012 p. 410). Within bureaucratic rational-legal authority, there is social agreement to delegate power to decision-makers within the accountable government agency according to socially determined policies and practices (Weber 1978). In this case, authority is reflected in the power to determine how to handle and choose which comments are to affect management documents. Discursive legitimacy, on the other hand, is when organizations

"act on behalf of the values or norms of a society, such as the rule of law, the logic of economic rationality, or principles such as democracy or respect for diverse cultures… Discursive power also stems from the ability to manage meaning by influencing how information is presented" (Purdy 2012, p. 411).

Discursive legitimacy creates meaning through negotiation. This negotiation is represented in agency responses to public comments as they are capable of utilizing a spectrum of logics to determine and communicate the validity and usefulness of those comments based on the norms of the agency.

In this study, power is conceptualized through Bachrach and Baratz (1962) and Lukes (1974) power frameworks because they offer prevailing definitions across diverse literature and help to explain public efficacy and inefficacy in decision-making. The former recognizes that those with power can modify decisions and the behaviors of others within both decision- and nondecision-making process. Regarding decision-making, innocuous issues are brought to the public for consideration and debate and power appears as "instrumental" and overt (Bachrach and Baratz 1962, p. 952; Brisbois and de Loë 2016, p. 204). Issues that are hidden from the public are considered a nondecision and are based upon a "mobilization of bias" of dominant values, myths, procedures, and rules (Bachrach and Baratz 1962, p. 952). Lukes (1974) adds to this by creating a third-dimension, where the public does not recognize that power is being wielded at all as it is taken for granted appearing as

natural and self-evident. This form of power shapes public desires and thoughts in a way that could even be contrary to their own interests (Lukes 1974, p. 34). It is necessary to clarify the relationality of power dynamics as they are not always, though often, top–down trajectories. Rather, who has power in which situations are continuously socially co-created. For example, sometimes public commenters may have power over USFS decisions if they are litigated, win, and result in future sanctions, rules, or policies (Bachrach and Baratz 1963, p. 637).

Within EIA, power often takes place through framing and agenda setting, "the politics of selecting issues for active consideration" (Cobb and Ross 1997, p. 3). In Howlett and Ramesh's (1995) policy cycle model, agenda setting is primary. This is when a policy purpose and need are first identified as well as their range of potential options. Cobb and Ross (1997), however, consider agenda denial and control strategies to take place on multiple occasions in project and policy development and rejection. Four of the strategies that Cobb and Ross (1997) identify for agenda blocking include

"denying or downplaying that a problem exists or is significant, discrediting the groups advocating for change, limiting the scope of change, and finally issuing economic, legal, or political threats against advocates for change" (Cook 2015, p. 37).

As an example, Cobb and Ross (1997) reference Ibarra and Kitsuse's (1993) "antipatterning" as one way to agenda block. This is when "the existence of a problem is admitted, but it is defined as an isolated incident and not part of a larger pattern" (Cobb and Ross 1997, p. 28). This agenda blocking often leads to a dismissal of public suggestions and concerns through discourse justifications. It is at this juncture where we witness a strain between participation and inclusion (Parkins and Mitchell 2005, pp. 533–534). Public participation, as defined earlier in this text reflects the involvement, outreach, and consideration of affected or interested public through a variety of formats. Public inclusion, on the other hand, I define as the utilization of public participation to affect, at least at some extent, management decisions.

The EIA literature, for instance, has pointed to the power of capitalist actors as effective in diverting influence from other individual and stakeholder groups through strategies of agenda setting and blocking. In their study on three EIA public consultations in Alberta, CA, Adkin et al. (2017) found that the seemingly democratic processes became irrelevant in affecting environmental policy when there were also business stakeholders at the table. In New Brunswick, Crown Forest Land managers experimented with collecting meaningful public input but ended up

rejecting it in favor of behind-the-scenes negotiations with the timber industry (Beckley 2014). In British Columbia, Mascarenhas and Scarce (2004) found that those who participated in deliberative forums about public forest land management felt as though they had little power compared with the forest industry. Even environmental interests in a European Union regional advisory council (RAC), a kind of small collaborative decision-making group, did not feel like their participation in that group came with the power that they expected. The emotions brought forward by interest-based minority RAC participants were ones of feeling like "hostages", "hijacked", and in a "battle that is already lost" as their presence itself was used as proof of collaboration (Linke and Jentoft 2016, p. 148). During the Klamath River Hydroelectric Project relicensing process by PacifiCorp, Karuk tribal representative Ron Reed attended and participated in monthly meetings for 3 years. However, when the final license application was published in 2004, it reported that "there were 'no downstream impacts from their operation below the dams.' In the words of Ron Reed, 'The document was five feet tall and contained no mention of our needs'" (Norgaard 2019, p. 131).

In the Canadian forestry cases addressed above, the timber industry is repeatedly referenced as having a strong influence in forest management agenda setting. Similarly, in the US, there is an early and long history of private timber lobbying activities, that predate the USFS (Steen 2013). Historically, the timber industry used tactics to influence Congress by assigning a lumberman to

"each member of the House and Senate Committees on Agriculture and Forestry… Congress was the target. Every congressional district was to have an industrial contact. Each man was to be fully instructed in the industrial position and the best methods of approaching congressmen and senators with this information. Witnesses at hearings needed careful grooming to assure optimum presentation" (Steen 2013, pp. 262–267).

Another example, "[i]n Washington, Oregon, and California, at least, the state forest practice acts were drafted by the industry which lobbied successfully for their passage" (Steen 2013, p. 266). Culhane's (1981) interest group theory model, where policy and project outcomes are determined by a group's relative influence index, can help to explain the power to agenda set in USFS and Bureau of Land Management decisions. This influence index measures access to decision-makers, value preferences, and the total number of subgroups within each represented interest. Therefore, groups with the most involvement, highest number of subgroups, closest relations to decision-makers,
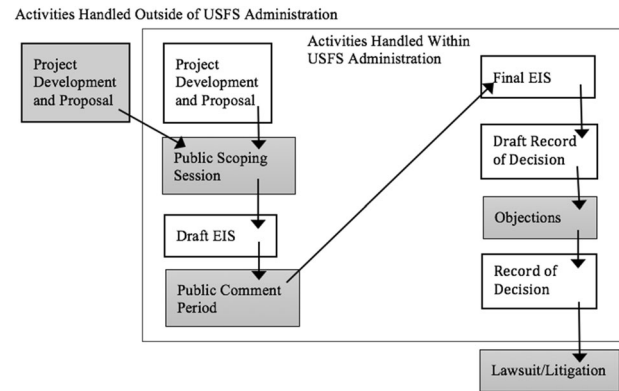
Fig. 1 USFS NEPA requirements for EIS projects. Shaded blocks represent the institutional opportunities for public participation. Clear blocks represent USFS actions

and most economic power tend to have the strongest influence over public land management decisions.

Opportunities for Public Comment

Since the passing of NEPA in 1969 three bureaucratically institutionalized opportunities for public comment and one institutionalized avenue for filing suit within USFS on EIS projects have emerged. Figure 1 provides a detailed outline of the USFS NEPA project development process as it relates to opportunities for public comment. The first opportunity is during scoping, this creates a space for public feedback early on in project development when a project's purpose is determined, but before analysis is complete. The second opportunity for public comment is on draft EIS (DEIS) documents. This occurs after the agency has completed a full analysis of the proposed project which includes detailed specialist (hydrology, silviculture, roads, recreation, biology, etc.) reports of project impacts, environmental and economic/social outcomes, as well as proposed project alternatives. Once this document is recorded in the federal register and is publicly accessible, the public has between 30 and 90 days to submit written comments. The USFS then edits their DEIS to create a final EIS (FEIS) with the additional information from the public engagement. The FEIS can also be edited to include natural (e.g., if a fire burned in the project location) or reporting changes (e.g., a species was found by the biologist in the project area that was not recorded in the DEIS) that occurred since the DEIS was published. The deciding official (someone with decision-making authority) then writes a draft record of the decision regarding the proposed action. This creates the final public comment opportunity, which is only available to those who previously commented during scoping or on

the DEIS. Here, the public can respond to the draft record of decision through a formal objection.[2] The record of the decision is either maintained and finalized or altered based off of public objections and is then employed by the agency. That is, unless a public commenter files lawsuit against the project, though this is not a comment, this is the final avenue of institutionalized public engagement on USFS EIS projects.

Materials and Methods

To better understand the role that public comments have in affecting USFS projects, I utilized two qualitative approaches: content analysis and interviews. Data for the content analysis were gathered from 129 publicly accessible EIS project documents filed by the USFS between January 1, 2012, and December 31, 2014. Although there was a total of 134 EIS projects filed by the USFS during this period, five documents did not include an appendix with public comments and agency responses to those comments and were thus omitted. The EIS project documents were accessed through the old EPA NEPA website database[3], via USFS project websites, and through direct email and phone contact with agency employees. Restricting the analysis to 3 years provides a current assessment of USFS projects and allows for potential multiyear legal follow-up. Each EIS document includes an appendix, "Response to Public Comments", where public comments are published along with federal responses to those comments. The EIS coding process, as described below, began in April of 2017 and concluded after I was able to gain access to all 129 EIS documents in September of 2018.

I undertook the open coding process manually in a grounded theoretical and inductive approach by first reading through printed "Response to Public Comment" appendices (Glaser and Strauss 1967; Strauss and Corbin 1990; Charmaz 2006). This coding process detected similar justifications for inclusion or dismissal of public comments. After reading through 35 EIS response to comment appendices, totaling over 1700 pages, I had reached theoretical saturation of agency responses, "the conceptualization of comparisons of these incidents which yield different properties of the pattern, until no new properties of the pattern emerge (Glaser 2001, p. 191). Though the projects vary, I found agency justification language to be standardized. I then created lists of common terminology utilized for each form

of justification by the agency and systematically coded the remaining government documents by that terminology through the MAXQDADictio software (contact author for this list). As a reliability check for this method, I ran five of the manually coded EIS documents through the systematized MAXQDADictio software to ensure that documents were coded analogously.

USFS institutional and routine practices for requesting, gathering, and responding public comments are nationally structured. These processes are standardized. Interviews with agency personnel about such practices represent a "modest claim" in the sense that it provides a "plausible and useful level of explanation" rather than a "hefty claim" about broad and debatable topics and logics (Milner 1996, p. 251). Therefore, I am able to achieve saturation with a smaller participant sample size (Charmaz 2006, p. 114). Additional claims provided by USFS personnel, outside of public comment process, are exploratory in nature and additive to the results found through EIS content analysis. I gained entry into the USFS through prior employment and was able to acquire interviews with key informants through connections I had made with USFS personnel, lead contacts on projects, and snowball sampling. Even though this is a convenience sample, it is also a purposive sample as I sought interviewees from across the country with a range of job titles, positions within the USFS hierarchy, and variation in decision-making authority. Interviewees covered the nine USFS regions either through their current or prior positions. Two interviews were conducted in-person, while the remaining 12 were conducted through phone or Skype. Interview length ranged from 45 min to 2 h and 15 min, averaging an hour and a half in length. Interviews began in August of 2017 and concluded in February of 2018.

The following names provided for interviewees are self-generated pseudonyms for participant confidentiality. For additional confidentiality measures, I kept undisclosed the regions where higher-level and recognizable employees work. Table 1 provides descriptive data of the 14 interviewees with pseudonyms, including their job title, level within the USFS hierarchy structure, region in which they work, and the number of years worked for the USFS at the time of the interview. Interviewees ranged between 12 and 40 years of working for the USFS, averaging 23 years. These employees are committed to their employment within the agency and have extensive experience working with the public on multiple projects in various locations and are well institutionalized into agency practices and culture. In addition to institutionalized practices for handling and responding to public comments, interviews also covered work tasks, public engagement and relations, concerns, and suggestions regarding the agency and the NEPA process, USFS policy and cultural practices that affect relations with the public, and how they manage litigation risk. I undertook

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[2] This process is specific to the USFS and has changed over time. The objection process formally replaced an earlier appeal process in 2014. Originally a record of decision was finalized without a previous draft version. Ultimately, this new process allows the USFS to receive an additional round of public feedback before finalizing their decision.

[3] https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search

Table 1 Descriptive interview data

Name	Job title	Agency level	Region	Years with the FS
Jessica	District ranger	District	Great Plains	22
Jelena	Hydrologist	District	Pacific	20<
David	Retired timber specialist	District	Rocky Mountains	30
Leslie	Recreation program manager	Forest	Pacific	20<
Ann	Biologist	Forest	Pacific	24
John	Mineral program manager	Forest	Rocky Mountains	20<
Aaron	Environmental coordinator (NEPA)	Forest	Southwest	12
Jared	Planning specialist	Forest	East	13
James	Environmental coordinator (NEPA)	Forest	East	36
Ron	Environmental coordinator (NEPA)	Region	Pacific	25
Greg	Regional director	Region	Confidential	26
Jaime	Regional forester	Region	Confidential	40
Tom	National entomologist	State and private	Confidential	12
Robin	Acting director	State and private	Confidential	25

Forest Service employee names are self-generated pseudonyms

Table 2 Descriptive US Forest Service EIS Project Data from January 1st, 2012 to December 31st, 2014 ($N = 129$)

| Project type	Examples of project activity	Number of projects in category ($N = 129$)
Timber sale/forest stand health	Fuels reduction/logging, large-scale vegetation management, prescribed burning	60
Minerals and energy	Geothermal, oil, and gas leasing, copper mining, transmission lines	24
Roads and recreation	Travel management, trails	14
Forest management plans	Forest-wide management plans	14
Special use	Ski resort expansion, facilities, land exchange	7
Grazing	Grazing allotments	6
Invasive plant/animal treatment	Nonnative Invasive plant and animal treatment	4

Organized by most frequently occurring project type

the interview coding process in a similarly inductive manner through line-by-line open coding in the analytic software MAXQDA.

Results

This section provides an overview of the main forest issues and public concerns during the project timeline. Then, a discussion is provided for how both mass and individual comments are handled. The former in a process of condensing and the later in a process of individuating. Lastly, an analysis of the discourses used in agency responses to comments identifies the kinds of justifications used to either incorporate or deny incorporation of public comments, which ultimately determine their use in affecting USFS projects.

During the project timeline, there were a few major forest issues that directed EIS documents. These include fixing historic mismanagement of forest ecosystems from fire suppression, clear cuts, pest infestation, and expanse of roads. Securing economic viability was another concern directing project plans. Table 2 outlines the seven different kinds of projects filed, examples of each kind of project, and the frequency at which they were filed. Public commenters tended to write concerns related to biotic factors such as affects to particular animal species, hydrology, and soil erosion. Concerns were presented about the use of abiotic factors, including chemical spraying or treatments, noises or other disturbances from drilling. Other concerns related to the participatory process, such as requesting a vote or presentation of concerns about interpersonal experiences with agency employees. Some comments vocalized a desire to
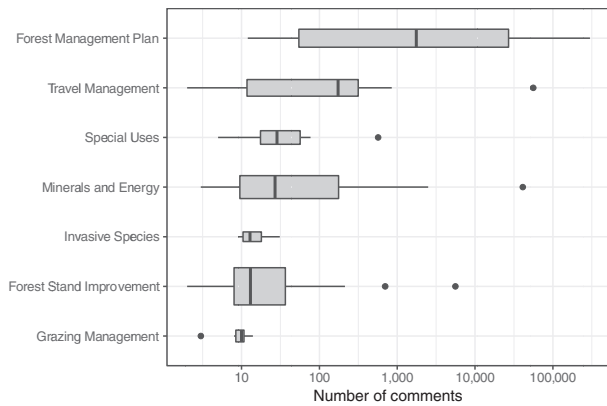
Fig. 2 Public Comment Frequency by EIS Project Type. The height of each box is scaled by the total number of projects filed within each category. Project types are ordered by median number of comments. Developed in R

maintain a local source of income through extraction projects. Others were concerned about access to these spaces. Most comments, even if value laden, were well written, made constructive arguments, outlined relevant laws, and showed a thorough understanding of the project and their specific concerns with it. Some commenters even incorporated findings from scientific articles to support their claims.

Treatment of Mass Public Comments

The number and kinds of comments submitted varied substantially across the seven different project types. Figure 2 provides descriptive information about the frequency, median, and spread of comments received for each project type. The number of comments is dispersed on a logged scale as to be able to visually show the spread of comment frequency across all seven project types. Note that distributions are all right skewed but are not visible on the logged scaled. Therefore, we see a wide range of commenting patterns from as low as two to as high as 300,000 for a given project. The average project receives between 10 and 100 public comments, but some outliers receive 1000 or more public comments. Forest management plans, in particular, receive an average of well over 1000 public comments on any given EIS. This is not surprising given that forest management plans direct the management of a National Forest for 15–20 years. The commenting public is more inclined to provide input in large-scale management directives rather than on individual projects.

The right-skewed distribution of projects that receive a large number of comments typically appear as form letters, petitions, or postcard campaigns. In these cases, a project may receive well over a 1000 postcards or letters that are all written with the same language often organized and solicited by one or multiple environmental organizations. For

instance, the Shoshone Land Management Plan received a total of 23,480 comments, 22,400 of which were form-letter submissions. Within the EIS dataset, there were a total of 13 projects that received over 1000 comments. Four of which did not identify how many of those comments were submitted from form letters, or even who submitted. For the remaining nine projects with comments over 1000, form letters accounted for 87.95 percent of the total comments received. For projects that receive fewer than 1000 comments, when form letters were submitted, they averaged 75.77 percent of the total comments received. Although these form letters only show general and value-laden concerns about a particular project or aspect of a project, due to their volume and frequency, point to public interest and concern.

The USFS, however, does not have a way to categorize these comments as a vote or petition, rather, each form letter, regardless of the number of copies submitted, are treated a one comment. Following the Shoshone Land Management Plan, it treated the 22,400 form letter comments as just one comment. Leslie (forest recreation program manager) articulates that mass or form letter comments are "treated as one comment because they say the same thing". The frequency is not seen as substantive and therefore not germane to a proposed project. In the following excerpt, Jaime (regional forester) explains this distinction for a NAVY sonar-project.

> "[A] lot of the time the public feels like it's a vote. It's not a vote… We are looking for substantive comments. So, a project may have 11,000 comments, but there were only 200 substantive comments… The volume is just, you know, there are a lot of people interested, okay fine… We need to make a legal decision and we're basically implementing a forest plan in the regulations that govern the national forests… The fact that there are people that don't like the Navy using public lands, that's a political issue. It's not germane to what are the resource impacts of the activity that's being proposed."

Here, Jaime clarifies that mass or form-letter comments are not germane in "the regulations that govern national forests" and are not used to affect USFS decision-making. This is fascinating given that form-letter comments offer some of the most easily accessible avenues for the general public to let to USFS know how they would like the land to be managed, or what they would like the outcome of a project to be.

Individuating Process for Handling Comments

The process for handling and responding to public comments on DEIS documents provides insight into how

agency personnel manages the often-extensive feedback received from the public. The USFS organizes and responds to comments by individuating concerns. "Normally, the NEPA Coordinator[4] will go through all the letters that we received from the public. They categorize them in a spreadsheet by the commenter, the resource, and the comment" (Ann, forest biologist)[5]. Substantive comments, those that have meaning rather than hate or love value statement, are drawn out and are individuated into specific concerns by resource type (e.g., wildlife, soils, hydrology, etc.). This document is then sent to the ID (interdisciplinary) Team, personnel who are working on the project. Resource specialists on the ID team respond to concerns relevant to their field. On one EIS project, Jelena (district hydrologist) recalled Recreation Solutions, a third-party team, "screened all the comments and identified the ones that [they] thought should go to different people." Reflecting back,

> "I like to read the actual comment letters so that I'm not just reading the sentence that someone pulled out of a letter so that I can get the whole thing. And I felt like several of them were mischaracterized or were too narrowly defined based on what I got from the letter…. A lot of the letters [I read in entirety] were really wildlife heavy. I would just skim through the wildlife parts. But you can't just skip it because they'll be talking about… fisher habitat in the streams. You have to stay alert."

In discussing this extra, and nonrequired step that she completed to better respond to the public's entire concerns she found that "once [the concern] got put in a box of the theme it matches, if the team members didn't notice actually it's in that box but it's relative to this [other] particular area or this [other] particular route, then that information could have been lost." The separation of concerns within a comment directs agency employees to respond to the aspects that relate to their specialty rather than the comment holistically.

This process for organizing public comments involves dissecting comments and distributing them to different resource specialists for review and response. This filtering process individuates public comments, treating them as a series of unrelatable claims, rather than one collective argument, or public body with collective interests. This filtering process excludes broader narratives, points, and

arguments. This is significant given that the nature of environmental resources and impacts to which these concerns relate have dramatic effects on one another. Even if resource managers review, compare, and adjoin multiple comments during their review or ID team meetings, they are still responded to in an individualized manner.

The Gypsy Moth project (2012), a project designed to treat invasive gypsy moth species as part of the USDA National Gypsy Moth Management Program provides a poignant example of the individuating process. Thirty-four people, organizations, and agencies submitted comments on the DEIS for the Gypsy Moth project. The USFS identified 81 different concerns amongst the letters submitted. Some of the individual concerns presented included (1) not taking necessary precautions to sensitive groups, which include those with multiple chemical sensitivity and sickle cell anemia. (2) Notice of previous aerial spraying pesticide drift goes beyond the documented buffer zones. (3) The spraying is planned to occur in public spaces (parks, schools, residences, etc.) without public warning. (4) The health effects experienced by commenter patients from exposure to gypsy moth spraying including "cognitive impairment (short-term memory deficit), fatigue, headaches, and muscle and joint pain" (Appendix C:25), "neurologic, respiratory, and systemic symptoms" (Appendix C:29, 33). (5) The main "breakdown product associated with diflubenzuron [the chemical in the proposed aerial spraying], is a carcinogen" (Appendix C:29), which was labeled incorrectly in the DEIS but fixed in the FEIS. (6) Finally, that there have been "no long-term epidemiology studies… on the same human populations" (Appendix C:35) using this chemical. All of these individual public concerns taken together, however, show a collective sense of distrust in the project and concern for human health.

Justification Used to Deny or Incorporate Public Comments

When comments are broken down into individual points, resource specialists are better able to respond to and deny or incorporate public comments. After manually coding the 35 FEIS documents, I found the USFS comment response process includes a wide variety of techniques to delegitimate public comments. These forms of justification include legal, bureaucratic, scientific, reiteration, and project centered. The remaining uncoded 94 FEIS documents and the five manually coded reliability-check documents both analyzed systematically in the MAXQDADictio software shared similar results and offered abundant examples of these five main justifications. Table 3 provides textual examples of each form of justification used to deny public comment worth. Sometimes, multiple justifications are utilized in one response. Responses can also be quite lengthy,

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[4] Other job titles include NEPA Specialist, Environmental Coordinator, Planning Specialist, etc.

[5] Aaron (forest environmental coordinator) mention a software called CARA (Comment Analysis and Response Application) to help categorize comments within each within each comment letter, but they typically just use an Excel spreadsheet to organize and respond to public comments.

Table 3 Public comments and agency responses for each form of justification to deny comment worth

Legal

Comment:

"Several commenters expressed concern that timber harvest was given more focus than other resource uses."

Response:

"NFMA requires Forest Plans (not projects) to "provide for multiple use and sustained yield of the products and services" obtained from the National Forest System (16 U.S.C. § 1604(e)(1). Multiple use management is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, including timber, watershed, wildlife, fish, and recreation…" (Big Thorn Project 2013:30)

Bureaucratic

Comment:

"Deciding on the travel management plan should be a vote and not just decided by the forest supervisor."

Response:

"That the forest supervisor makes the decision, called a "record of decision," is decided by law and policy. The Forest Service Manual (FSM 1909.15, Ch.26.2) assigns decision-making authority to the responsible official, which the Code of Federal Regulations defines as "The Agency employee who has the authority to make and implement a decision on a proposed action (36 CFR 220.3)." (Santa Fe National Forest Travel Management 2012:293)

Scientific

Comment: The Lands Council and Alliance for the Wild Rockies, Jeff Juel

"The DEIS indicates that project activities would affect suitable habitat for Canada lynx, so it is not logical that the project would have 'no effect'."

Response:

"A separate biological assessment was prepared and submitted to the US Fish and Wildlife Service after release of the DEIS. The determination of the BA was that the project *may affect but is not likely to adversely affect* the Canada lynx and that there would be no effect to designated critical habitat. The USFWS concurred with this determination." (Pilgrim Creek Timber Sale 2013:25 emphasis in original).

Reiteration

Comment: Karen Coulter, Blue Mountain Biodiversity Project

"The Forest Service declares that peregrine falcon to be "not present" in the project area so as to be able to determine that there would be "No Impact" to them from proposed actions. Yet we saw a peregrine falcon in one of its famous fast dives above a cliff over Deep Creek in a Deep (now Jackson) sale unit. The DEIS admits that sightings have occurred on the Ochoco National Forest but concludes that suitable nesting habitat is not present and that "migratory individuals that may pass through the project area would be able to avoid any potentially disturbing activity." (DEIS p. 159) Therefore it's apparently not considered an issue for the Forest Service—but we think it is for the peregrine—from cumulative effects."

Response:

"The effects to peregrine falcons are addressed in DEIS pg. 158–159, and the Wildlife Report pg 23. No suitable nesting habitat occurs in the project area. There are no known peregrine falcon nests within the project area or on the Ochoco National Forest. There are no sightings recorded within the project area." (Jackson Vegetation Management 2012:409)

Project centered

Comment: 8–51

"How in the world could the Forest list wild horses as a significant issue, but not domestic livestock grazing… where livestock are grazed and trailed over large areas in large numbers over all seasons of the year? Also, are there domestic sheep operations that threaten bighorn herds or prevent bighorns from occupying otherwise suitable habitats due to disease risks? How will this all place further stress on bighorns or potentially displace them? The degree and severity of degradation from chronic livestock grazing disturbance must be assessed. A detailed analysis if carrying capacity, stocking rates, actual use (vs. permitted use), monitoring information, facilities location and impacts, and analyses of land degradation must be provided with and examined in detail in a SEIS. Mitigation must include retirement of grazing allotments."

Response:

"Effects from livestock grazing are beyond the scope of this project. Bighorn sheep are discussed in Chapters 3 and 4." (Geothermal Leasing on the Humboldt-Toiyabe 2012:98)

and the following examples offer brief passages that showcase each form of justification.

Legal justification is determined by laws that guide what is allowed to occur on public land and can even constrain agency decision-making. For instance, the 1872 General Mining Act (GMA) legally allows mining for mineral resources on public land. Neither the public nor agency employees can decide whether a mining claim is allowed. "We cannot say no, no you can't go mine. It is their right to go mine, that is a right of theirs" (Leslie, forest recreation program manager). Bureaucratic justification typically stems from the Washington D.C. office, where handbooks,

Table 4 Public comments and agency responses for each form of justification of comment worth

Editorial

Comment: Lawrence A. Plumlee, Chemical Sensitivity Disorders Association

"One commenter (21) offered a technical presentation of diflubenzuron, tebufenozide, and *B.t.k.*, and included a large number of references. The commenter also pointed out that 4chloroaniline, a breakdown of product associated with diflubenzuron, is a carcinogen."

Response:

"This commenter indicated that the Summary under Effects of Treatments, Diflubenzuron, and Risk to Human Health (Volume I, Section 8) of the draft SEIS erroneously cited the U.S. EPA classification of 4chloroaniline as a "potential carcinogen," but that the U.S. EPA classification is "probable human carcinogen" (Diflubenzuron; pesticide tolerances, Final rule. Federal Register 71:229, p. 69031). This comment is correct… The error was corrected in this final SEIS to read "probable carcinogen."" (Gypsy Moth 2012:29)

Site-specific improvement

Comment: unknown

"Re: level 1 closed roads and temporary roads that will be used during implementation, the department recommends the District have, in place, the necessary regulations to post these roads as being closed to the public and be able to enforce this closure until these roads are physically closed or decommissioned."

Response:

"The use of carsonite signs has been added to Appendix E strategy as a possible means of improving road closure effectiveness." (West Bend Vegetation Management 2013:660)

best practices, and agency processes are systematized. This office and its documents guide organizational culture and practices. Scientific justification is a little more complicated as "science is competing" (Jaime, regional forester). USFS scientific responses usually involve citing a source, presenting newly acquired EA, or devaluing the study or source cited by the commenter. Reiteration justification directs the commenter's concern back to the location within the DEIS where the particular aspect they are concerned about is addressed. I found that this strategy appears as an accusation that the commenter did not read the DEIS and it often does not fully address or remedy the commenter's concern. Lastly, project-centered justification denies the need to address a particular concern and will often reclarify the intent/goal of the project.

In some cases, agency personnel will incorporate editorial and site-specific comments to affect their final analysis. Table 4 provides textual examples of each form of justification used to incorporate public comments. Editorial comments range from grammar and language to technical corrections. Site-specific improvements to a project provide more detail, specificity, and are argued by interviewees as being the most helpful comments for agency employees. These comments focus on one particular aspect of a project and suggest an improvement to that aspect.

Discussion

The USFS interpretation of NEPA law has led to three legally institutionalized avenues for public comment on EIS projects and one institutionalized avenue for filing suit. Public participation can be used to improve agency decision-making by identifying public preferences, improve

decisions through consideration of local knowledge, expanding the scope of who can participate in EIA, and it legitimizes agency activities (Innes and Booher 2004, pp. 422–423). For the agency, seeking and considering this input, hopefully, limits the risk of a lawsuit and the liability of losing in court. However, lawsuits are still prevalent within the USFS (Miner et al. 2010). The accountability seeking and distrust present in public lawsuits questions the extent of public inclusion in USFS decision-making.

The treatment of mass or form-letter comments as one comment rather than a petition, vote, or measurement of public interest, ultimately delegitimizes the vocalization of thousands of commenters (Boltanski and Thévenot 2006). The interview data did not point to why this was the case but used more broad language based off of comment substantivity. In addition, there is no clear policy indicating best practices for handling and responding to mass comments, therefore, it appears to be a result of culturally developed and institutionalized practices. This finding points to Purdy's (2012) framework of power nestled in authority to describe which comments are to be considered and how they are to be considered. Given the limitations of the dataset, I cannot make claims as to how or why this practice resonates within the agency, however, it would prove fascinating for future research.

The individuating process for responding to public comments is a practice of "antipatterning" (Ibarra and Kitsuse 1993; Cobb and Ross 1997) and creates the bureaucratic space for agenda blocking through discursive legitimacy to either delegitimize or incorporate public comments (Purdy 2012, p. 411). Comments that question USFS projects, bureaucratic practices, scientific reasoning, EIS language, etc. are responded to with legal, bureaucratic, scientific, reiteration, and project-centered discursive logics

that deny comment worth (Purdy 2012). This approach to public comments attempts to resolve or defuse public scrutiny (Boltanski and Thévenot 2006) while simultaneously legitimize USFS projects. Although editorial and site-specific public comments are incorporated into FEIS documents, the majority of public comments are not, creating a disparity between public participation and inclusion. I infer that the public comments not incorporated are consequently "nondecisions" as the discursive responses reflect agency values, myths, procedures, requirements, and rules, ultimately, incapable of influencing decisions and management documents at this level (Bachrach and Baratz 1962) and are therefore blocked from further consideration. The data demonstrate that the frequency of public participation opportunities does not signify the frequency of public inclusion.

Interviews with USFS agency personnel pointed to tensions they experienced while working with the public. They all referred to themselves as public servants and showed unanimous support for the public comment process, often requesting more people to get involved. How can we make sense of this perception given the lack of comment inclusion into project documents? Though agency employees from different district stations and regions experienced different kinds of relationships with their local and national public, they, and the EIS data conclude that public concerns were secondary to existing laws and economic considerations that shaped USFS projects. Legal and economic agenda setting mechanisms are developed and lobbied by powerful constituents who are deeply embedded in federal decisions prior to the formation of station or regional-level project development (Cobb and Ross 1997). In essence, they take place on a different plane than what is offered to the general public as depicted in Fig. 1.

USFS land management directives, though based on science, are budgeted by Congress are framed and developed in ways that favor political and economic requirements. The USFS receives income from the federal government which is allocated to specific budgets and affects station funding. Congress is heavily influenced by extractive lobbying organizations that may influence their public land budgets and directives (Culhane 1981; Steen 2013) and congressionally budgeted projects will be promoted. Agency personnel also need to promote and defend these projects, even if they privately disagree with them, which can be theorized through Lukes third-dimension of power (Lukes 1974). Laws such as the 1872 GMA and the 1960 Multiple Use and Sustained Yield Act, for instance, legally require particular kinds of extractive projects.

Also, there are longstanding economic incentive structures of the USFS based on specific land management treatment targets of timber harvest that also lead to this tension (Jesse Abrams, personal communication). If the participatory public is concerned about mining or logging on public land, then agency personnel are forced to navigate oppositional agendas. This complexity increases for agency personnel as extractive projects are necessary to financially support the stations and specialists themselves (Vilsack 2014)[6]. With the decrease of timber production since its boom between the 1940s and 1960s (Hirt 1996) and the increase in severity and cost of wildfires, districts are economically dependent on projects that generate revenue.

Conclusion

This paper sought to answer how the USFS handles, responds to, and incorporates public comments in EIA, to understand how public participation is utilized by decision-makers. This is an important intervention given the lack of institutional analysis of public comments and the suggested changes to the USFS NEPA compliance. I utilized qualitative content analysis and in-depth interview methods to answer these questions. The content analysis of USFS responses to comments published in FEIS documents points to ways that the agency makes sense of which comments are or are not something the agency can work with and their justifications for why that is the case. In-depth interviews with agency personnel from across the country point to the processes they utilize to handle and respond to these comments.

This study suggests several key findings. First, comments are handled in a way that individuates interrelated concerns and condenses shared comments into one. By individuating submitted comments into separate concerns by resource type, it becomes easier for ID Team members to respond to the particular concern relating to their field of expertise. However, this process can also result in a mischaracterization of concerns, as pointed out by one of the interviewees. Broadly, this individuating process also results in "antipatterning", whereby concerns are isolated and not seen, at least in FEIS response to comments, as a larger pattern of shared public concerns or interrelated resource-type concerns. Mass, form letter, and petition type comments, though individuated by concerns, are simultaneously handled as one substantive comment. This reduces the burden of having to consider a mobilization of land management interests or some kind of democratic vote.

Second, this individuating process creates the capability for agency personnel to respond to comments in ways that either justify the use or dismissal of those concerns to affect project documents. This research identifies five forms of

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[6] There is also a local community financial dependence on such projects that include loggers, mill workers, pipefitters, etc.

authoritative and discursive justifications used to deny comment worth from affecting projects and two forms of justification that validate comment worth and are used to influence project documents. By addressing individual concerns through these instituted forms of justification, we witness a point at which the USFS purports their values and logics against the values and logics of the commenting public.

Third, public comments tend to not substantively affect FEIS documents. As mentioned previously, mass comments, regardless of quantity, are considered to be one substantive comment and are responded to as such. Although these kinds of petition comments are the most easily accessible avenue for the commenting public to participate in this process, the frequency of comments that say the same thing are treated as insignificant. Comments that are categorized as substantive and are responded to by USFS personnel, to a large part, still do not affect project documents. This is due, in part, to the handling and response justification processes. These processes allow agency personnel to respond to individuated concerns in a manner that fits within their existing authority and discursive legitimacy. This process simultaneously legitimizes agenda controlling on behalf of the agency and other industries that are closely networked at the Washington D.C. office in tandem with the agenda blocking of public scrutiny. Although economics was not a justification used in responding to public comments, we know through previous research and the project interviews that economics and Congressional budgetary requirements also impact USFS projects. The data suggests that levels or frequency of public participation, at least in the form of comments, does not necessarily lead to public inclusion as other powerful concerns are prioritized above those of the public.

Public participation in EIA appears as a way to influence public land projects through public consideration but are denied worth when they challenge economic, legal, or political directives. By incorporating comments that agency personnel can work with, the process can appear as effective. However, federally sanctioned legal and economic directives make it difficult, if not impossible, to substantively change projects based off of public concerns at the agency level. The best evidence of the power to agenda set comes from USFS personnel caught in particular legal and economic requirements. These are people who routinely support the commenting process for its ability to improve decision-making but respond to public comments in manners that block them from further consideration or incorporation.

Although this project was able to systematically analyze the response to public comments on USFS EIS projects, it was limited in scope due to the number of interviews and focus on one government agency. Further research on policy implications relating to public comments would be useful for discussion around improving public efficacy. As mentioned previously, examining how and why mass comments are treated in the manner they are would provide useful information to organizations that solicit and send out those comments. In addition, a comparative analysis among other land management agencies such as the Bureau of Land Management or the National Park Service would offer fitting comparative cases of the NEPA process and challenge or support underlying power dynamics and arguments presented in this paper.

Compliance with Ethical Standards

Conflict of Interest The author declares no conflict of interest.

Ethical Approval All procedures performed in studies involving human participants were in accordance with the ethical standards of the institutional and/or national research committee and with the 1964 Helsinki declaration and its later amendments or comparable ethical standards. This article does not contain any studies with animals performed by any of the authors.

Informed Consent Informed consent was obtained from all individual participants included in the study.

Publisher's note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

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