

CALIFORNIA CATTLEMEN'S ASSOCIATION

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September 19, 2002

CEQ NEPA Task Force
P.O. Box 221150
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To Whom It May Concern:

The California Cattlemen's Association (CCA) and California Public Lands Council (CPLC) appreciate the opportunity to comment on the notice and request for comments (Docket No. 02-17082) pertaining to National Environmental Policy Act of 1969 (NEPA) implementing practices and procedures, as published in the *Federal Register* on July 9, 2002. CCA is a state trade association representing nearly 3,000 California ranchers and beef producers in legislative and regulatory affairs. CPLC is a non-profit CCA affiliate representing the over 1,000 federal grazing permittees in California. Many CCA members are also federal grazing permittees, and NEPA has a substantial effect on how federal land management agencies conduct planning and decision-making processes relative to these grazing permits. Additionally, these agencies, including the United States Forest Service, Bureau of Land Management, and United States Department of Agriculture, have had difficulty fully complying with NEPA to the satisfaction of environmental plaintiffs seeking court orders and/or injunctions of grazing activities. Therefore, NEPA is an extremely significant statute to both CCA and CPLC, and that significance is reflected in these comments.

These comments address several of the questions and categories of issues raised by the NEPA Task Force (Task Force) in its mission to modernize and improve NEPA analyses:

- C.1:** What types of issues best lend themselves to programmatic review?
- E.1:** What information, data studies, etc., should be required as the basis for establishing a categorical exclusion?
- F:** Additional Areas for Consideration.

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Summary of Recommendations

CCA and CPLC suggest that programmatic review and tiering should only be applied where it is appropriate to delay evaluation of a proposed action. In the case of grazing permits, the deferral of NEPA evaluation has resulted in delays and confusion. Improved guidelines from the Council on Environmental Quality (CEQ) regarding application of programmatic review and tiering would help reduce its misapplication.



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CCA and CPLC also suggest that a categorical exclusion require a clear analysis of a defined category of governmental action being considered for NEPA exclusion. Data studies and other gathered information should only be required when deemed necessary as part of the exclusion analysis.

CCA and CPLC also recommend that the Task Force strongly consider requiring Environmental Assessments (EA) and Environmental Impact Statements (EIS) to disclose and consider economic and cultural impacts to the community and affected industries on an equal footing with other environmental impacts.

Finally, the issuance of livestock grazing permits on National Forest System allotments should be looked upon as an excellent opportunity to significantly improve NEPA processes by conducting any required NEPA analysis and evaluation during the development, revision, or amendment of Land and Resource Management Plans (LRMP) and/or initial issuance of grazing permits, not during the routine reissuance or renewal of individual grazing permits, which are merely the continuation of the governmental action.

Background of Livestock Grazing Permits

Livestock grazing permits (grazing permits) are issued within the framework of the National Forest Management Act (NFMA) 16 U.S.C. §§ 1600-1614. CCA and CPLC members utilize grazing permits by grazing in accordance with strict standards and best husbandry practices, in accordance with NFMA, as reviewed below.

NFMA relies upon LRMPs as its core-planning tool. 16 U.S.C. §1604(e). A NEPA review is conducted on LRMPs and an EIS is prepared for their adoption. The LRMP is statutorily tasked with providing for multiple use and sustained yield of forest resources. Livestock grazing is one of these multiple uses and a separate grazing permit is issued, pursuant to the LRMP, for each allotment, usually for a ten year period. An Allotment Management Plan (AMP) is prepared with each grazing permit that is issued. The AMP also contains NEPA documentation. 36 CFR §222.2(b). Finally, seasonal variations, such as the amount of rainfall, and the date of snowmelt, require that a specific annual operating plan be approved.

This complex weaving of varying interests with long-term and annual planning and permit issuance has made the application of NEPA contentious. CCA and CPLC feel that significant improvements should be implemented in the NEPA process as applied to National Forest System use, including grazing. For this reason the Task Force should evaluate and recommend improvements as outlined below. Some of these improvements are systemic and apply universally to other NEPA situations. Approximately

Programmatic Review in National Forest Management Activities (C.1.)

Programmatic review and tiering is allowed as part of NEPA analysis. Programmatic review is ideally suited for tiering circumstances where discreet steps or advances in the action will occur over time. An effective programmatic review conducts

reviews at the appropriate steps. Unfortunately, programmatic review can be misapplied to delay analysis of actions beyond the true approval or planning point. For this reason, programmatic review should be better explained by CEQ such that federal agencies have guidelines as to when and how to apply it.

In the case of the management of National Forest System lands, NEPA analysis must be, and is, completed during the completion of the LRMP. Where complex uses must be balanced, the general extent of each use must be defined in order to establish a balanced use. Thus, the parameters of the later actions are being, by necessity, decided at the first planning stage. For that reason, LRMPs should provide all required NEPA analyses, thus allowing ministerial issuance and approval of permits pursuant to the LRMP. By systematically considering all uses for the land at time of creation of the LRMP, the later administrative approvals, decisions, extensions, or renewals, when made in accordance with the larger LRMP, would not require independent NEPA analysis. Additionally, as explained below, the reissuance of a grazing permit should never require a NEPA review because such reissuance reflects a continuation of the status quo. Thus, LRMPs can and should include all necessary NEPA review. This would eliminate unnecessary, duplicative and inefficient processes and reduce controversy and legal disputes.

Recommendations (C.1.): The Task Force should specify that programmatic review and tiering should not be utilized where various, differing uses and actions must be balanced as the first step in the decision process. Forest and rangeland planning exemplify the situation where all NEPA work should be completed with the development of the plan, not at later stages.

Requirements for Categorical Exclusions: the Livestock Grazing Permit (E.1.)

Categorical exclusions are allowable where it is clear that a category of federal action would not create change in the status quo, change that could affect the environment. For that reason, creating a categorical exclusion does not normally require project specific data; it instead requires a clear, defined category of action capable of being analyzed. Under some circumstances, an agency may feel that data is required to correctly scope the extent of the categorical action. Normally, however, creation of a categorical exclusion should be founded upon responsible, independent analysis that finds a logical nexus between common characteristics of the category and reasons why NEPA is non-applicable. This does not necessarily require new data or particular data, and in fact might not require data at all. The need for data in determining categorical exclusions should be determined on a case-by-case basis.

Categorical exclusions should be encouraged for actions that continue the status quo. An EIS is not required when the subject federal action would not change the status quo. See e.g. Burbank Anti-Noise Group v. Goldschmidt, 623 F.2d 115, 116 (9th Cir. 1980), cert denied, 450 U.S. 965 (1981), and Committee for Auto Responsibility v. Solomon, 603 F.2d 992 (D.C.Cir. 1979). Thus, when an agency can clearly define a

category of action that does not change the status quo, it should create a categorical exclusion for that action.

CCA and CPLC have asserted in the past that federal land management agencies should adopt a categorical exclusion for grazing permits where they continue the status quo. Grazing permits are essentially a ministerial act under an LRMP. Additionally, when a grazing permit is a continuation of the status quo, clear guidelines regarding the role of data in determining categorical exclusions should help establish this needed and appropriate categorical exclusion. At the very least, categorical exclusions should apply to all reissuance of grazing permits and annual operating plans.

Recommendations (E.1.): The Task Force should specify that categorical exclusions must be founded upon clearly defined categories of action and that actions that continue the status quo should be prime candidates for a categorical exclusion. Most grazing permits, all reissuance of grazing permits, and all annual operating plans meet this requirement.

Incorporating Economic and Cultural Resource Impacts in NEPA Review (F.)

NEPA focuses on the "quality of the human environment." 42 U.S.C. §4332(2)(c); 40 C.F.R. §1502.3. Economic and cultural impacts clearly affect the quality of the human environment and should be disclosed and considered in NEPA review of federal agency decisions. Disclosure should be supported by the highest standard (published and peer-reviewed when possible) of social science research and economic analyses. If the NEPA process fails to require the same scientific standards for economic and cultural analyses as it requires for other environmental disclosures, commercial activity will not be treated on the legal grounds called for by NEPA. Commercial activity will be at an inappropriate disadvantage that leads to disproportionate harm to the human environment.

Recommendations (F.): The Task Force should require that equally valid and reliable analysis of cultural and economic impacts to the effected community and industry should be disclosed and considered as is required for analysis of other environmental impacts.

Effectively Applying NEPA to Forest Management and Livestock Grazing Permits (F)

Because forest and range planning is not suited for programmatic NEPA review and tiering, livestock grazing permits should not require a separate NEPA analysis, nor should any other ongoing forest use that has been accounted for in the LRMP. Additionally, a categorical exclusion should apply to grazing that is already allowed under existing LRMPs and grazing permits because the status quo is not being changed.

Thus, each LRMP should ensure that an EIS is prepared that considers increases in the intensity of grazing or that allows grazing on allotments where grazing was suspended or not allowed previously. That analysis should occur at the time the LRMP is created. All other grazing should be excluded and no NEPA analysis should be required at the time of grazing permit issuance or for the annual operating instructions that

accompany each grazing permit for its life, usually ten years. Likewise, reissuance of a grazing permit should require no NEPA analysis.

Recommendations (F.): The Task Force should promote grazing permits as an example of a category of governmental action suitable for a categorical exclusion when they continue the status quo. Additionally, the Task Force should use grazing permits and LRMPs as an example of circumstances where tiering NEPA analysis is inappropriate and confusing.

Conclusions

Programmatic Review

Programmatic review should be used to delay evaluation of actions only where appropriate. Many circumstances require complete evaluation of actions at the beginning. The management of National Forest System lands is one such example. By systematically considering all uses for the land at time of creation of the plan, the later ministerial approvals, decisions, extensions, or renewals, when made in accordance with the larger LRMP, would not require independent NEPA analysis. This would eliminate unnecessary, duplicative and inefficient processes.

Categorical Exclusion

Categorical exclusions should be founded upon responsible, independent analysis which finds a logical nexus between common characteristics of the category and reasons why NEPA is non-applicable. This does not necessarily require new data or particular data, and in fact might not require data at all. The need for data in determining categorical exclusions should be found on a case-by-case basis.

Economic and Cultural Impact Analysis

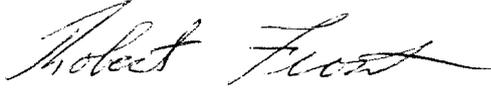
Economic and cultural impacts to the community and affected industries clearly affect the quality of the human environment and should be disclosed and considered in NEPA review of federal agency decisions. Such analysis should be subject to the same standards as other environmental impact analyses.

Livestock Grazing Permits

Livestock grazing permits should not require a separate NEPA analysis. Necessary NEPA analysis should be conducted as part of the adoption of the LRMP. Where allowed grazing under the LRMP will be equal to or less intense than existing grazing, NEPA should not then apply at all. In those cases, grazing permits should be categorically excluded from NEPA review.

Again, CCA and CPLC appreciate the opportunity to comment on NEPA implementing practices and procedures, and we commend the Task Force for undertaking the daunting but absolutely necessary task of reviewing and revising the NEPA process to reflect experience gained in the last 30 years. If you have any questions or concerns regarding these comments, please do not hesitate to contact us.

Sincerely,



Robert Frost, President
California Cattlemen's Association



Willy Hagge, Director
California Public Lands Council