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Idaho Cattle Association

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VIA Facsimile: (801) 517-1021
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NEPA Task Force
PO Box 221150
Salt Lake City, UT 84122

To Whom It May Concern:

Thank you for allowing us to participate in your attempt to improve and modernize the National Environmental Policy Act (NEPA) analysis and documentation process. These comments are submitted on behalf of the Idaho Cattle Association (ICA), a non-profit organization with over 1200 livestock producers, feeders and business members.

A major portion of our members are routinely involved with federal agencies and programs. Because of this relationship, NEPA requirements have a significant and lasting affect on our operations. Unfortunately, these same NEPA requirements have evolved into being one of the most onerous federal burdens we face. They are also debilitating to the workforce of the federal agencies and contribute significantly to the problem of "paralysis by analysis" currently facing the agencies. Federal employees, charged with managing natural resources in such agencies as the BLM, Forest Service, Wildlife Services, and others, are forced to spend the majority of their time behind a desk plowing through procedure rather than actually focusing on the actual resource they are charged to manage. It is our sincere hope your task force will help remedy this problem.

The following paragraphs, in reply to your questions, highlight the areas of NEPA where we believe the most important changes must occur in order to make the NEPA process less cumbersome and less open to petty litigation.

B. Federal and Intergovernmental Collaboration

Decisions made as a result of NEPA analyses have significant impacts at the local level—both on local governments and on the local population. This is particularly in Idaho and other western states where the federal government owns such a high percentage of the

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land. State and local governments are often the best representatives of the social and economic fabric of the community. State and local governments should be given the opportunity to participate more fully in the NEPA process. They should be provided the opportunity to participate as "cooperating agencies" for any NEPA analyses conducted within their jurisdiction.

C. Programmatic Analysis and Tiering

NEPA analysis of repetitive or routine actions or projects, for which the agencies have developed standard operating procedures to mitigate any known or suspected negative environmental impacts, should not be required at the site-specific level. For example, if land management agencies (US Forest Service or Bureau of Land Management) prepare an EIS for their Land Use Plans that recognize and call for construction of various range improvements, the requirement for an Environmental Assessment for each individual improvement should be eliminated if impacts are mitigated through normal construction standards.

Actions that are consistent with the Land Use Plan should not require a repeat of NEPA. An Environmental Analysis should not be required for the continuance of a historically permitted action. Specifically, if a Land Use Plan and its companion EIS allow for livestock grazing on federal lands under certain terms and conditions, the requirement for an Environmental Assessment to analyze the impacts of re-issuing a grazing permit on a specific federal grazing allotment should be eliminated.

Another example that lends itself to a discussion of this issue is the situation that exists with the U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (USDA-APHIS-WS) program. WS is a request-based service oriented program, similar in some respects to a local fire department, in which most or many of the requests are of an "urgent" need for immediate assistance. For example, if a livestock producer, state wildlife agency, or local government agency calls and requests assistance to capture a bear or cougar that is threatening domestic animals or human safety, WS is expected to provide assistance immediately or at least within a short period of time. To meet such requests, it would obviously be impractical to prepare an EA or EIS before action must be taken. Prospective service recipients would quickly learn to stop asking for WS assistance and would be left with no options for resolution to a problem. In some instances, they may go elsewhere for help or resort to their own means to resolve wildlife damage problems, in some or many cases with less selectivity and increased likelihood of environmental effects than with the professionally-run WS program. Therefore, if NEPA applies to such actions (and see our response to question E.3. below on why, in many cases it perhaps should not apply to WS actions), then WS should at most only be required to prepare programmatic documents that address environmental issues associated with actions that could occur anywhere in a broader defined area, say, a "District" or other defined area within a state, an entire state, or perhaps even multi-state areas. This would seem to be the most efficient and practical way for a Federal program such as WS to fully comply with the intent of NEPA while also most effectively carrying out the mission given them by Congress. Therefore, to sum up here, request-based

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“service type” programs that have an element of “urgency” to the need for action lend themselves to programmatic review.

E. Categorical Exclusions

The same items listed above could be used to expand the basis for establishing categorical exclusions. They are: (1) Repetitive or routine actions or projects for which the agencies have developed standard operating procedures to mitigate any known or suspected negative environmental impacts; and (2) Continuance of a historically permitted actions. The NEPA process would be greatly improved if categorical exclusions were allowed for actions such as renewing grazing permits where land use is the same, has been the same, and will have little significant effect or change on the environment. A grazing permit is usually part of an overall land management plan; therefore many of the environmental impacts have already been assessed and no further action is required to renew the permit.

The intent of NEPA would be streamlined by allowing broader categories of categorical exclusions that have been justified by substantial or repeated environmental analyses that have all reached the same conclusion of no significant impact, or for which the agency determines there are enough mitigating factors built in to the actions so that significant impacts are avoided in virtually all cases in which such actions would be taken. CEQ has indicated support for this concept in its guidance memorandum to federal agencies dated July 22, 1983 (48 FR 34263, July 28, 1983). In that memorandum, CEQ stated:

The Council encourages the agencies to consider broadly defined criteria which characterize types of actions that, based on the agency experience, do not cause significant environmental effects.

Again, we raise the example of the USDA-APHIS-WS program which has determined “no significant impact” repeatedly in environmental assessments for most wildlife damage management actions across the country. To continue to require detailed environmental analysis of new and ongoing similar actions is a waste of resources, and we encourage the establishment of broader categorical exclusions for that agency as well as for the U.S. Forest Service and other agencies that have made similar repeated determinations for various types of actions.

Another type of situation that should be categorically excluded is federal wildlife management actions that are consistent with the wishes and desires of a state with respect to management of state-resident wildlife species or that, at a minimum, clearly fit within established state plans for managing resident wildlife species. The States have traditionally maintained management jurisdiction and responsibility over such resident wildlife species and exercise broad authority over management actions. The environmental *status quo* in such cases is what the states decide for management of these resident species. Federal actions that are consistent with the states’ management desires do not typically result in a change from the *status quo* because the state agencies would

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generally carry out or authorize to some other entity the authority to carry out the actions even in the absence of federal action or assistance. In these situations, the federal entity has no ability to affect the environmental outcome which means environmental analysis is meaningless. We think such categorical exclusions should clearly apply to federal actions that do not affect habitat and are conducted in areas where the states maintain jurisdiction and management authority. Thus, they might not be appropriate for areas such as National Parks.

Still another type of situation that should merit categorical exclusion also applies to the APHIS-WS program but may have broader implications. For example, WS is frequently requested by state or local government agencies to provide assistance *after* such agencies have made decisions on the actions to be taken. Because WS has no regulatory authority over such agencies or entities and is only a request-based service program, WS' decision-making space is limited to conducting the action or not and they have no latitude to select other alternatives. In such cases, WS clearly has no ability to change the environmental status quo and such actions should be categorically excluded. In other words, because the responsible entity for making the decision to act has already decided to take the action with or without the federal assistance and has clear authority to do so, then the environmental outcome will be the same for any alternative the federal entity may wish to analyze. This would be true even for the *no federal action* alternative. Thus, the very heart of the NEPA process – alternatives analysis – is rendered moot in these situations, and NEPA therefore should not apply.

F. Additional Areas for Consideration.

Another way to improve NEPA and safeguard against unnecessary litigation is to amend the definition of "affected interest". Currently, anyone can appeal a federal agency decision during the NEPA process, regardless of how the agency decision may affect them. Only individuals who have an economic stake in the outcome of a NEPA decision, or those who are directly affected, should be given such consideration.

NEPA Compliance has become the "weapon of choice" for those who wish to disrupt or stall active federal land management. In order to circumvent this problem, federal decision makers should be given broad discretionary authority to determine the appropriate level of adequate NEPA analysis.

Once again, thank you for the opportunity to participate in this process. Please contact Karen Marchant Williams at 208-343-1615 or karen_ica@rnci.net if you need any clarification on the points we have made.

Sincerely,


Dave Nelson, President
Idaho Cattle Association