

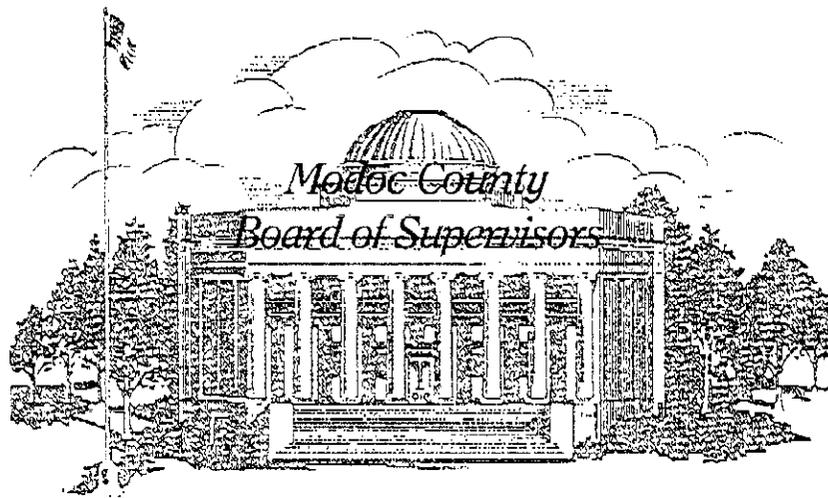
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September 23, 2002

Council on Environmental Quality
NEPA Task Force
P.O. Box 221150
Salt Lake City, UT 84122

CQ636

Dear Sirs:

RE: Comments on Review of NEPA Regulations

The Modoc County Board of Supervisors (County) applauds the establishment of the NEPA Task Force and appreciates this opportunity to comment on the workings of the NEPA regulations and how the environmental review process can be improved.

Modoc County is in the northeast corner of California and is seventy percent owned by the federal government. An additional twenty percent is dependent on a federally managed watershed for irrigation water.

Modoc County is a "planning county" in that the County adopted the "Comprehensive Land Use and Management Plan for the Federally and State Managed Lands in Modoc County" under 16 U.S.C. Section 1604, 36CFR Section 219.7 and other statutes. The County has been designated a "cooperating agency" several times in the recent past while working with many federal land management agencies including Forest Service and the Bureau of Reclamation. The County has a review process for all federal land management agency proposals and comments on many. The County is well situated to comment on improvements to NEPA.

GENERAL COMMENTS

1. Federal land management agencies are drowning in a sea of planning paperwork. The symptoms are everywhere.
 - a. A simple Notice of Intent for an EIS on a fire rehab on the Modoc National Forest took several months just to get in the federal register.

- b. In twenty one years the Lassen National Forest was unable to complete one grazing allotment management plan.
 - c. The Bureau of Land Management is in its fourth year of having to renew grazing permits without the environmental assessment because they cannot do the paperwork.
 - d. In 1995 the Forest Service was given a clean slate to reissue grazing permits because the workload was so great that the EA's could not get done before the expiration of the permits. They were given a fifteen year schedule for the reissuing of ten year permits. They are already so far behind this schedule of work that this year they had to be given the same annual bailout granted the BLM.
2. It is vital that county governments be key players in the federal planning process. It is very ironic that those counties whose very existence depends on how their county's federal land base is managed are generally so poor that they do not have the resources to participate meaningfully in the planning process.

SPECIFIC COMMENTS

Technology, Information Management and Information Security

1. Despite fairly clear language in their regulations on dealing with local governments, the agencies at the local level do not, as a rule, routinely provide data to county governments. They rely on a web site for dispersing planning information. Most counties have no staff to monitor for this information. Given the lack of resources in most small rural counties, there is no substitute for the timely dispensing of hard copy data.
2. The federal register is the vehicle of choice for all proposals, especially at the national level. It is almost impossible to monitor the federal register effectively.
 - a) This proposal is an excellent case in point. It was published June 23 in the federal register. Our county network includes state and national organizations representing general agriculture, cattlemen, public land grazers, timber associations and associations of county governments in three states. No one was aware of this notice until mid-August. National and regional proposals and proposed rulemakings should be dispensed locally by the appropriate agencies to county governments in a fashion that allows time for constructive comments.
 - b) Several years ago the Fish and Wildlife Service published a rulemaking defining a new process called a compatibility determination. This had the potential to severely alter traditional activities occurring on wildlife refuges. The impact could have been especially difficult on the Tulelake Wildlife Refuge in our county because it is the only refuge in the nation with mandated farming, a very contentious issue with the Service. This was published for comment in the federal register and no one except the Service was aware. The County was able to comment only by creating enough uproar that a comment extension was granted. This proposal should have been

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specifically delivered to the County by the local Fish and Wildlife Service representative.

Federal and Inter-governmental Collaboration

1. There is already some good regulatory language requiring the federal government to cooperate with state and local governments in the NEPA process. The problem is the agencies, for the most part, ignore these regulations unless the counties bring them kicking and screaming to the table. Until just a couple of years ago, the agency lawyers were telling the agencies that the counties had no special standing at all.
2. Many counties are unaware that they have a special place in the planning process that is unique and different than the general public, therefore they don't take advantage of their status.
3. Cooperating status has some real drawbacks, especially for the normal rural western county. While they have the expertise, especially in the socio-economic area, to contribute to the planning process, they lack the resources to dedicate to this process.
4. The agencies are usually very reluctant to grant cooperating agency status to counties, particularly if the planning is being done above the local level.

SUGGESTIONS

- A) CEQ should clearly delineate what the cooperation and coordination language which exist in almost all resource statutes means and monitor agency compliance.
- B) CEQ should work with the existing network that is trying to bring counties up to speed on their opportunities to participate fully in the planning process but is hampered by a lack of resources.
- C) CEQ should highlight for the agencies the ability of existing regulations to pay for these county contributions to this process. This payment should be an accepted planning expense, just as the national burden transfers money between federal agencies.
- D) The burden should be on the agency to show why a county should not be granted cooperating agency status and a refusal should be a decision that can be appealed.
- E) CEQ should eliminate the phrasing in the regulations that indicate that the primary reason for this cooperation is to eliminate duplication. While this is one reason, the emphasis should be on giving local government a right to meaningful participation at the planning table. This participation should be on an equal footing, particularly if the county has developed a local resource plan.
- F) CEQ should make it very clear that the agencies must honor and work with existing resource plans at the state and local level.
- G) CEQ should clarify that this joint planning also applies to US Fish and Wildlife Service critical habitat designation and recovery plans. They should also coordinate and plan with any existing local recovery plans.

- H) Local governments are at a severe disadvantage when it comes to accessing federal planning at any level. The taxpayers are funding the environmental groups, who traditionally oppose local involvement, through tax breaks, legal fees and grants. CEQ should explore what funding tools are needed to bring full participation from local government into the process.

Programmatic Analysis and Tiering

1. Planning at all levels is out of hand. The more levels there are, the more likely there will be procedural mistakes that will invite litigation that have nothing to do with whether there is good resource planning being done.
2. Programmatic EISs should not contain site specific standards and guidelines. The Sierra Nevada Framework, a regional document that pretended to be programmatic, covered a vast and diverse landscape and contained standards and guidelines more specific than the standards and guidelines in the eleven forest plans it affected.

SUGGESTIONS

- A) CEQ should require that any EA for a project underneath a programmatic NEPA document does not have to be a "stand alone" document or repeat any analysis.
- B) CEQ should develop some criteria that defines and protects the timeliness of programmatic documents for tiering purposes.
- C) CEQ should develop clear guidance for the mandatory list of things that must be checked off in the NEPA process. Many of these are contained in executive orders and cause no end of frustration for local decision makers. Two of these that the County is aware have caused concern are environmental justice and wetlands.
- D) CEQ should set criteria for the "convincing statement of reasons" why no EIS is required that some courts are requiring of a FONSI.
- E) CEQ should provide some general guidelines on how long various NEPA documents should take to prepare.

Adaptive Management/Monitoring and Evaluation Plans

SUGGESTIONS

- A) CEQ should develop a standard definition for adaptive management that clearly allows for an uncertain outcome to be tested if the planned approach needs to be changed.
- B) Adaptive management should be different than research. For example adaptive management in the Sierra Nevada Framework calls for a five year research project before implementation.
- C) Monitoring should be practical and implementable over time. The failure of the agencies to meet their planned monitoring requirements has left projects exposed to unnecessary litigation. The landscape is littered with monitoring points

abandoned because the monitoring plan was too ambitious for the available staff and funding.

- D) The previous administration's proposed new planning regulations for the Forest Service called for full funding of monitoring before a project could be implemented. This provided an additional tool for project opponents to kill a project by overloading the monitoring component. Important projects should move forward and a practical means of conducting the minimum amount of necessary monitoring be developed.
- E) Monitoring or rather "over monitoring" is a way for "ologists" to conduct research that could not otherwise get funded, often at the expense of the project.

Categorical Exclusions

- 1. The County wishes CEQ good luck in trying to provide direction on common sense to the agencies on what should constitute a CE. We have experience with several basic candidates for CEs that the agencies are unwilling to tackle. They include removal of junipers to protect and regenerate aspen stands, removal of hazard trees along roads and the renewal of grazing permits when there are no changes proposed.
- 2. It is true that pictures can speak louder than words. Attachment I is a statement from a grazing permittee discussing his frustration over the inability to protect the environment. This is CE material.
- 3. The task of renewing term grazing permits in a timely fashion is overwhelming the range program of the agencies, much to the glee of those who oppose all grazing on federal land. If no changes are being proposed, it is merely the continuation of an ongoing activity and should be a CE. The determination of the grazing suitability of that area has already gone through the public review process during the development of a forest plan or resource management plan. If and when changes to the grazing strategy or major improvements are anticipated, further analysis may be warranted.

SUGGESTIONS

- A) CEQ should reconsider fully the "kick out" criteria and develop a narrower set of criteria for excluding CEs based totally on science and the expected degree of adverse effects.
- B) CEQ should remove the confusing references to "controversial".
- C) CEQ should develop a checklist that is not subjective in order for agencies to determine whether an action or class of actions is eligible for a CE.

Additional Areas for Consideration

- 1. NEPA was never intended to focus on environmental protection to the exclusion of economic and social considerations. Rather it was to consider

how best to develop compatibility between human use and enjoyment of resources and the conservation of resources for the long term.

2. The agencies are notorious for botching the socio/economic analysis, especially when it comes to assessing the rate and magnitude of effects at the local level or the scale of analysis.
3. The agencies do not know how to conduct the distributional effects requirements for assessing disproportionate effects.
4. The agencies act on the erroneous assumption that there are no negative effects to the environment, let alone the socio/economic side, to the acquisition of land and property rights by the government.
5. The agencies believe it is not necessary to do any form of analysis if they are given the ownership or management of land or other property rights.

SUGGESTIONS

- A) NEPA is a procedural law and does not dictate the decision outcome, but it does tell the agencies what factors to consider. CEQ should make it clear economic and social impacts should be analyzed closely, thereby making the agencies subject to lawsuits for failing to document sufficiently the human impact.
- B) The agencies begin the socio/economic planning by wanting it to have as little impact as possible. To accomplish this they adjust the scale of analysis. The Klamath Basin water crisis was in the news all of the summer of 2001. Several years prior to that, the Fish and Wildlife Service proposed a project that would have eliminated tens of thousands of acres of farming in the basin. This was land that traditionally had been used by young farmers trying to get established. In order to eliminate any possible economic or social impact they analyzed the production at the world market level. CEQ should provide direction that the level of analysis must begin locally and then broaden out if appropriate.
- C) The assessment of disproportionate effects is the key for displaying full disclosure in the NEPA document. This is where the analysis is done to determine if there are potential effects on property rights or any takings. CEQ should close the standard escape clauses the agencies use for not doing an appropriate Taking Implication Assessment.
- D) CEQ should consider appropriate direction to the agencies that acquisition of land and property rights has the potential to have significant negative impacts to the environment and some level of planning must be accomplished to factor in this. For example, changes from farm ground to unmanaged habitat can reduce wildlife food supplies, increase noxious weeds and predators and change water patterns.
- E) CEQ should provide clear direction to the agencies that the means of acquisition does not change their responsibility to analyze the impacts of this government

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action. The agencies tend to develop a NEPA document when they purchase land directly, but not when a third party (usually non-profit) gifts them the land or holds the title but cedes them the management. The avoidance of the public review process with these kinds of dealings is frustrating to rural counties that need to keep what private land still remains on the tax rolls and producing economic activity.

- F) CEQ should reexamine the period available for public comment. While there is a need for timeliness, a planning document that takes seven or eight years to complete could not be harmed by allowing the public more than 30 or 60 days to review it.

SUMMARY

From the County's perspective the planning process needs to be more user friendly. There needs to be early awareness and participation by local government in federal planning. This participation needs to be encouraged and funded by the agencies. Comment periods, information transfer and socioeconomic considerations need to approach with local government in mind. Simplicity should be the key. The goal has to be to get good resource management implemented on the land.

The County appreciates this opportunity to comment on NEPA procedures. It is an important area of reform.

Sincerely,



WILLY HAGGE
Chairman

CQ 630

Before Vowell Springs can be protected from the current 365 day a year trampling it is getting an Environmental Analysis and an archeological survey will need to be completed. The E.A. will disclose that about a quarter mile of fence would be constructed, and a pipe installed to allow water to be delivered outside the enclosure, thereby protecting the spring from trampling. The net effect will be to allow expression of riparian vegetation suitable for neo-tropical songbirds and other riparian dependent species. Increased flows will result from reduction in soil compaction, extending the period of the year when water will be available away from the currently occupied endangered fish spawning stream a half a mile away.

Informal conferencing with the USFWS, would be required to determine if formal consultation on the project is necessary.

The project would require a budget proposal to be developed and run through the forest prioritization process to provide for the materials, manpower, and overhead.

Some of the overhead expenses could include wildlife biologist, ecologist, and range management study and documentation time to back up answers to issues raised in public scoping.

The archeological survey will quite likely document more than ten obsidian chips (lithic scatter of spoils from pre-historic projectile manufacture) per 10,000 square feet . At that point to fully comply with the law a dig, collection, and interpretation project costing thousands of dollars will be required. The end result of that could be a decision to stop the project and let the horses trash any remaining prehistoric cultural resources.

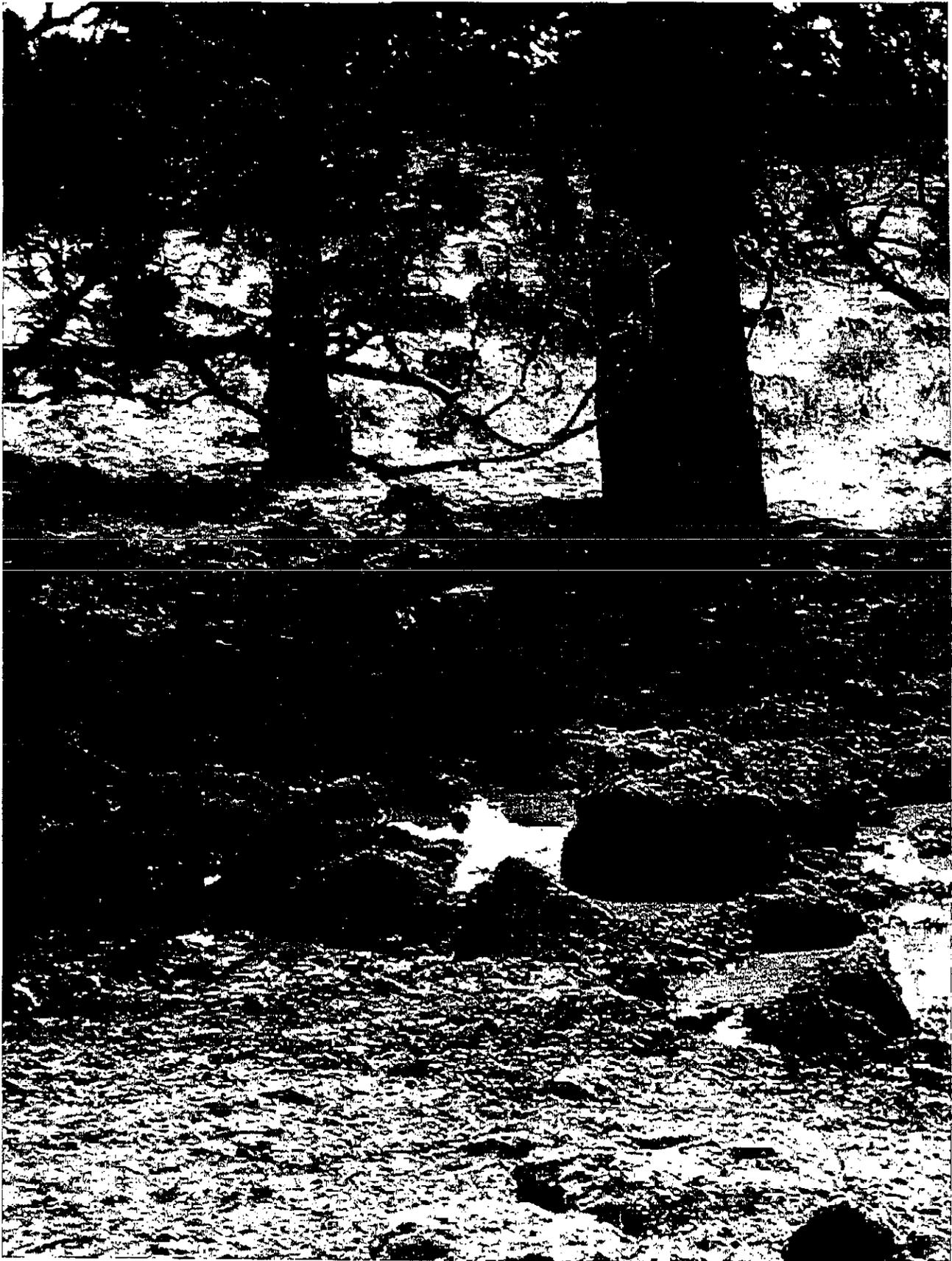
In the meantime I hope I don't have to see any more dying yearling horses stuck in the mud in search of water. I hope our grazing permit is not cut in a response to degraded riparian conditions

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caused by overutilization by the feral horses. I hope some common sense Categorical Exclusion process is developed which would allow a range manager with cultural resource training to permit such a project to be completed.

In my fantasy world our local resource officer with over twenty years experience on this district could take a morning, look at the site, determine if any evidence of prehistoric religious or significant cultural resources would be degraded by the project, determine if the project as proposed would further the attainment of desired future condition described in the existing controlling programmatic, NEPA compliant documents, and determine if the projects net effect on the habitat for the endangered fish was positive, as described in the completed formal consultation. If so he could authorize two volunteers to gather up about \$500 of materials to be donated by the grazing permittee and spend two days to build it. We all could avoid spending thousands of dollars, endless meetings, and needless resource degradation. The wild horses would thank you.

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9/23/2002