The National Environmental Policy Act

The National Environmental Policy Act (NEPA) has, since its creation, evolved into both the most impactful federal process to the western ranching industry and the most effective weapon in the arsenal of radical environmental activists. Through relentless, process-based litigation across the range, these groups have transformed NEPA from its original purpose – analysis of potential impacts stemming from a major federal action – into a black hole of endless fear-driven processes initiated by federal agencies in the hope that such analysis might prevent legal challenge to otherwise proper and appropriate science-based decision-making. The reality is that no amount of NEPA will satisfy these groups. Rather, they have mastered the use of litigation to force their way into the process as a stakeholder – often with a much more influential voice than that of ranchers or others with an actual interest/impact. The result is that these processes are postponed or extended years beyond their original schedule, or in some cases derailed all together. Obviously, this pattern runs counter to the BLM's multiple use mission and serves as a deterrent to responsible land management decision-making.

The Public Lands Council, consisting of state and national cattle and sheep affiliates throughout the West representing approximately 22,000 federal grazing permit holders, wishes to provide our collective input regarding the key areas of NEPA in need of reform to restore this process to functioning condition and ensure its proper application.

In an effort to simplify our industry's input in to a very complicated subject, we suggest to following areas of focus as the Department proceeds with its review and potential reform efforts:

1. Expand the number and kind of grazing permit renewals for allotments that will qualify for a categorical exclusion. New or additional NEPA analysis is unnecessary for the renewal of a grazing permit with a continuing use that is exhibiting satisfactory conditions or positive trend. Enhanced use of this authority will serve several purposes. First, it will greatly reduce the NEPA workload for agencies – allowing resources to be directed to projects truly in need of analysis. Second, appropriate use of Categorical Exclusion authority will reduce opportunities for litigation abuse by NGOs seeking to disrupt the Agency's multiple use mission.

2. Enhance and clearly define the role of impacted parties. Parties with business relationships, contractual agreements, or preference grazing rights must be recognized as the stakeholders that they are. This should not be to the detriment of rightful general public input into the NEPA process, but should seek to protect the interests of individuals or entities that are invested in the process and consequently possess irreplaceable substantive first-hand knowledge. Currently, those critical voices are

diluted by thousands or tens of thousands of form or modified form comments submitted by disconnected national or international supporters of activist groups, most of which should fall under the NEPA definition of a bulk comment. While this is certainly the right of any U.S. citizen, the process must account for their limited knowledge of the issue under analysis. The agencies must ensure that activist groups engaged in habitual manipulation of the NEPA process through threat or litigation are not rewarded with status that is equal to true stakeholders. Required identification and direct notification of adjacent landowners, permittees and and/or other affected parties early in the process would help to alleviate this issue.

3. Enhance the role of state and local governments in the NEPA process. State and local governments are essential to proper analysis and must be treated accordingly. These units of government qualify as cooperating agencies due to jurisdiction by law and/or special expertise. The agencies must ensure adequate time for evaluation and comment preparation from these qualifying government entities. Additionally, the agencies must require that proper NEPA implementation include substantive answers to substantive comments made by cooperating agencies during the administrative review period.

4. Clarify that the amount and type of data and information needed in an EIS is only that which is essential for a reasoned choice among alternatives. Part of the large expense and time required to prepare an EIS is all the data collection and inventory conducted by the various resource specialists. Several courts have held that an agency need only collect information required to make a reasoned choice among alternatives. For example, if cattle are not on an allotment during the fish spawning season, information about the number of fish spawned should not be relevant or necessary.

5. Revise the NEPA Handbook and regulations to direct using a narrow "purpose and need" for a project. A broad purpose and need requires many more alternatives to be considered in the NEPA document and expands the required analysis. If the purpose and need of an EIS is to determine "whether to allow continued grazing or change use" on an allotment, then many more alternatives and related environmental consequences will have to be considered. If instead, the purpose and need is a NEPA document for "Renewal of the 10-year grazing permit on the XYZ allotment," then only two alternatives need to be considered an environmental analysis can be more focused.

6. Revise guidance regarding use of "reasonable alternatives," establishment of baselines, and definition of "no action" alternative. Departmental Manuals, Council on Environmental Quality (CEQ) guidance, and BLM handbooks should be revised to provide clear guidance on the development of the range of reasonable alternatives to be analyzed, the establishment of appropriate baselines for assessing impacts, and identification of "no action" alternatives that are reflective of on-the-ground realities.

7. Ensure that socioeconomic impact is weighed in a manner that is equal to other evaluated impacts. All too often, economic impacts to stakeholders or effected communities are given less weight in the process that environmental impacts. The original intent of NEPA was for all impacts to be evaluated. Reestablishment of this principle will provide much needed balance to the process.

4. For the US Forest Service, emphasize that Annual Operating Instructions are not new or final decisions subject to NEPA or the objection process. In some areas, environmental groups are challenging grazing on allotments multiple times over the life of permit by maintaining that each Annual Operating Instruction (AOI) is a new final decision that is subject to litigation. It should be clarified in the NEPA Handbook or regulation that an AOI is not a new and final decision and that the final decision is the allotment management plan and/or permit approval.