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NEPA and Public Participation in Grazing Management on Federal Public Lands: The 40-Year Struggle

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Scope of Grazing on Federal Public Lands

- In the western states, livestock grazing is authorized on
 - 165 million acres (95%) of BLM land
 - 100 million acres (50%) of National Forests and National Grasslands
 - some National Wildlife Refuges
 - some National Parks

Potential Impacts of Livestock Grazing on Arid and Semi-Arid Rangelands

- loss of native vegetation
- spread of exotic and invasive species
- watershed degradation
- soil erosion
- loss of food and cover for wildlife
- destruction of archaeological resources
- water pollution
- degradation of scenic resources
- conflicts with recreational uses









The Details

- The effects of grazing on an area of the public lands depend on The Details:
 - whether area is grazed or not
 - number of livestock
 - length of grazing period
 - season
 - frequency of grazing (annual, every other year, etc.)

The Buzz

- The effects of grazing on an area of the public lands are unaffected by:
 - which paradigm the cows are grazing under
 - whether the cows are holistic or ordinary
 - whether the cows are collaborating or commanding and controlling

The 40-Year Struggle

- The Details have historically been a matter of private negotiation between agencies and ranchers.
- Since the enactment of NEPA (1969), environmental activists have sought to make The Details a subject of environmental analysis and public input.
- To this day, the BLM and the Forest Service have sought to separate The Details from environmental analysis and public input.

National Regulations
and Guidance

Land Use Plan

Land Use Plan

Land Us

10-year Permit/AMP

10-year Permit/AMP

10-year Permit/AMP

Annual Authorization

Annual Authorization

Annual Authorization

Annual Authorization

First Agency Gambit (early 1970s)

- BLM produced single, national EIS for grazing on all 165 million acres of BLM grazing lands
- The Details, of course, were absent

Natural Resources Defense Council v. Morton,
(D.D.C. 1974, aff'd by D.C. Cir. 1976)

- Single, national grazing EIS inadequate to meet requirements of NEPA
- Grazing EISs must assess “the actual environmental effects of particular [grazing] permits or groups of permits in specific areas”

Second Agency Gambit: (1980s – early 1990s)

- New land use planning requirements imposed by Federal Land Policy and Management Act of 1976 (FLPMA) and National Forest Management Act of 1976 (NFMA)
- Agencies merged NEPA implementation required by Morton with land use planning required by FLPMA and NFMA
 - land use plans typically cover 1 - 2 million acres
 - EISs accompanying land use plans purported to analyze environmental impacts of all land uses, including grazing

BLM Land Use Plans of the 1980s and early 1990s

- “ a non-plan . . . a confused melange of do-nothing motherhood statements which offered neither managers nor users much useful guidance on future management”

George Coggins, Public Natural Resources Law

- EISs accompanying these land use plans do not contain site-specific information about environmental conditions, grazing management, or grazing impacts on individual allotments
- most BLM land use plans in effect today (and their accompanying EISs) are of this type

Natural Resources Defense Council v. Hodel, (D. Nev. 1985) (aff'd 9th Cir. 1987)

- affirmed typical 1980s/1990s BLM land use plan against challenge by environmental groups
- land use plan need not make specific decisions about grazing levels and grazing management on individual allotments
- “the scope of the EIS is determined by the scope of the proposed action”: since land use plan does not make site-specific decisions, EIS need not contain site-specific information

National Wildlife Federation v. BLM (IBLA, 1997) (the Comb Wash Case)

- Administrative appeal of a single BLM grazing permit
- BLM relied on EIS accompanying land use plan for the area
- Interior Board of Land Appeals:
 - “[Reliance on] a previously completed EIS simply raises the question whether the EIS adequately addresses the environmental effects of the proposed actions, or a supplemental EIS is required because the EIS’ analysis is broad and does not address specific impacts.”
 - EIS accompanying land use plan was too broad, non-specific to satisfy NEPA w/respect to grazing on specific allotment
 - Additional NEPA compliance required for grazing permit

Mid 1990's

- BLM and Forest Service recognize that grazing permit renewals require NEPA compliance and public input
- Forest Service instruction memorandum citing Comb Wash case
- BLM Rangeland Reform regulations (1995) required public consultation on issuance and renewal of grazing permits
- Environmental assessments (EAs) prepared for grazing permit renewals

Late 1990's – 2006: The Cowboys Strike Back

- Appropriations riders authorize renewal of BLM and Forest Service grazing permits without NEPA compliance
 - Latest rider covers FY 2004 – 2008
- 2005: Rider authorizes Forest Service to issue categorical exclusions for 900 permits/year for two years
- 2006: New BLM grazing regulations delete requirements for public consultation on issuance, renewal, and modification of grazing permits
- 2006: BLM proposes to categorically exclude most grazing permits from NEPA analysis

A New Gambit by the Forest Service

- Issue grazing permits and accompanying EAs or EISs that contain no details about grazing management
 - “blank check” authorization for large number of livestock
 - vague description of grazing management systems that might be employed
- All details, including actual number of livestock, to be decided in Annual Operating Plans
 - negotiated between agency and permittees
 - no NEPA
 - no public input

Is the Tide Turning Once Again?

- August, 2006: U.S. District Court (Idaho) preliminarily enjoins new BLM grazing regulations that exclude public input from grazing permit decisions
- November, 2006: New Democratic Congress elected:
 - Nick Rahall chairman of House Resources Committee
 - Raul Grijalva chairman of subcommittee on Parks, Forests, and Public Land
 - unclear whether Congress will renew expiring riders for grazing permits
- June, 2007: Enviro activists preparing to challenge Forest Service use of Annual Operating Plans to circumvent NEPA and public input

