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

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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.
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

- 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

- 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 Apeals:
  – “[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
- 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