



COLORADO CATTLEMEN'S ASSOCIATION

"Representing the interests of Colorado's cattle industry since 1867"

**United States Forest Service
National Environmental Policy Act
Process Fact Sheet**

**Colorado Cattlemen's Association
Colorado Public Lands Council**

*Compiled by Robbie Baird LeValley with special assistance
from the Rocky Mountain Region of the Forest Service*

INTRODUCTION

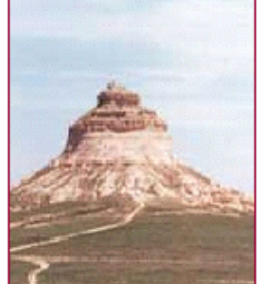
The National Environmental Policy Act (NEPA) requires federal agencies to consider environmental effects of proposed actions and includes impacts on social, cultural, economic resources, and natural resources, among others. The NEPA process begins when an agency develops a proposal to address a need to take action. Based on the need, the agency develops a proposal for action. Once it has developed a proposed action, the agency will enter the initial analytical approach to help it determine whether the agency will pursue the path of an Environmental Assessment (EA), or an Environmental Impact Statement (EIS).

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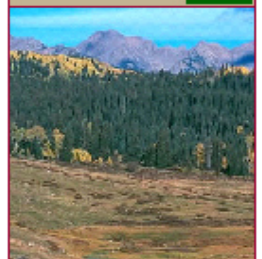
The Colorado Cattlemen's Association and Colorado Public Lands Council have a variety of services available to members in assisting with the NEPA process. Please contact the organizations at an early point in this process for assistance.

COLORADO

Public
Lands
Council



Colorado Cattlemen's Assoc. / Colorado Wool Grower's Assoc.
Working for Public Lands Ranchers
Grasslands ~ BLM ~ Forest Service



What is the NEPA act?

The NEPA Act simply requires that agencies analyze and disclose the consequences of their decisions. It requires them to analyze a range of reasonable alternatives; to do so in a visible and public manner; and to clearly show the relative effects of those alternatives.

However, Forest Service (FS) provides for appeals of grazing decisions and the adequacy of the NEPA analysis.

Where do the Livestock Permittees fit in?

Forest Service Planning occurs at two general levels: Forest Plan level and Project (Allotment) level. The Project (Allotment) analysis includes grazing permits and both are always conducted under NEPA.

The NEPA Process

Step One

Before a district ranger initiates the actual NEPA process, a decision is made to begin work on a set of allotments. The team determines what is known about the area to date; what problems may exist; what issues are known; and what data may already be available.

Step Two – YOU AS A PERMITTEE SHOULD BE INVOLVED IN THIS STEP!

The ranger then will charge the Interdisciplinary Team (IDT) with gathering existing data, talking with interested parties, and conducting needed inventory and data collections on the project area. Ask the ranger how you can contribute information to the IDT.

The team needs a lot of information to deal with potential issues. Background information helps the team determine best management practices to respond to livestock grazing management, sensitive species, recreation, wildlife, and water quality; and also helps the team respond to Endangered Species Act or other consultation needs, as well as permittee needs. Collection of background information happens before the NEPA process actually begins.

Step Three

Once a decision to move forward with NEPA is made, the district ranger will notify the public and the affected permit holders that the Forest Service proposes to conduct a planning process for a given set of allotments or for a given area. This does not start the NEPA process, but simply lets the public know that one is forthcoming. This is called the SOPA, or Schedule of Proposed Actions.

Step Four

With the background information, the ranger and team will start to develop the following:

- Preliminary Issues
- Desired Conditions
- Existing Conditions
- Purpose and Need
- Proposed Action

Step Five

The NEPA process begins when the District Ranger issues a “proposed action” in a scoping letter.

This is not a decision! It is simply a starting point for discussion with the public and with the permit holders. This proposed action will state the initial project objectives and desired conditions; and will generally spell out the proposed management and actions in enough detail that the public (including permit holders) may provide useful comments.

Step Six– YOU AS A PERMITTEE SHOULD BE INVOLVED IN THIS STEP!

The permit holders need to understand what the proposed action means to them, and need to provide comments, suggestions, information, etc.

It is in your interest to become involved as soon as the process begins, and to use the scoping opportunity to make thoughtful, rational presentations on impacts and alternatives. The long-term knowledge of the permit holder regarding the allotment is highly valued. The district ranger must, however, consider all sources of information.

Step Seven– YOU AS A PERMITTEE SHOULD BE INVOLVED IN THIS STEP!

Once the ranger has a proposed action, notice will be sent to the public (and permit holders) about the proposal and will ask for comments. This ‘scoping’ starts the formal NEPA process.

Step Eight– YOU AS A PERMITTEE SHOULD BE INVOLVED IN THIS STEP!

Once the public (and permit holders) have had an opportunity to respond with their thoughts, the IDT will develop a list of key issues as heard from the public, and begin to develop alternatives to the proposed action. Alternatives are simply different ways of getting to where we want to go. They must be legal and achievable. They respond to the purpose and need. They respond to the key issues.

In livestock management, the courts have determined that the FS must fully consider a ‘no-grazing’ alternative even if it does not meet our purpose and need. The Courts have said issuance of permits is a discretionary action – therefore, the no-action alternative required by NEPA is defined as no-grazing (or not issuing permits).

In addition, there will normally be an alternative based on the “current or existing management.” This alternative may or may not be considered in detail, depending on whether or not it meets law, forest plan direction, and so forth.

Finally, there will be one or more additional action alternatives. These alternatives need to be based on the purpose and need statement, and on resolving the key issues. Alternatives can be suggested by anyone, but it is the ranger’s decision as to whether they can or should be fully considered. A suggestion from the public or permit holder can at times be placed within an existing alternative. Permittees should submit alternatives in the scoping process.

In the last few years, at least one adaptive management alternative will be included. This alternative basically builds in flexibility to respond to changing conditions or new information, within the limitations imposed by NEPA itself. This means only adaptive options evaluated in the NEPA document can be implemented. Flexibility can be built into the NEPA document, but it has to be included in the process to be evaluated.

Step Nine

Once the alternatives are developed, the IDT will evaluate the effects of implementing each alternative and the cumulative effects of the project as a whole.

Effects can be environmental, which are considered the most important as a matter of law, as well as social and economic. The effects analysis is based in significant part on the key issues identified earlier.

Step Ten – YOU AS A PERMITTEE SHOULD BE INVOLVED IN THIS STEP!

Once the effects have been analyzed, and appropriate consultation has been completed with other agencies, such as a consultation under the Endangered Species Act, the document is made available for comment by the public and permit holders.

One key distinction between an EA and an EIS is that an EA finds that there are no significant impacts that would require an EIS to be done (e.g., the Finding of No Significant Impact or FONSI), while an EIS simply discloses the impacts.

Both an EIS and an EA have formal public review and comment opportunities.

Step Eleven

Once the final reviews have been made and changes incorporated, the district ranger makes his or her decision – an EA decision comes out as a Decision Notice, and a Finding of No Significant Impact - while an EIS decision - comes out as a Record of Decision.

Step Twelve – YOU AS A PERMITTEE MAY WANT TO BE INVOLVED IN THIS STEP!

The decision is subject to appeal. Basically, anyone who has been involved in the process in any way has the right to appeal under 36 CFR 215; while only permit holders or applicants may appeal under 36 CFR 251. The bottom line is that the appeal process gives almost anyone an opportunity to disagree and to request relief from a decision.

If a decision is upheld upon appeal, the district ranger then moves to implement that decision. If the decision is reversed, the district ranger is normally required to fix the problems and then send out a revised decision, again subject to appeal.

A decision may normally be litigated (taken to court) only after all appeal opportunities have been exhausted.

Step Thirteen - YOU AS A PERMITTEE SHOULD BE INVOLVED IN THIS STEP!

Development of the Allotment Management Plan (AMP). AMPs are simply a clear language version of the decision that was made – they are not decision documents in themselves. Once

signed by the district ranger, they are attached to, and become a part of, the term grazing permit, and are therefore binding.

Step Fourteen

Issuance of the Term Grazing Permit - Once the NEPA analysis and determination are made, the permit may be issued or re-issued with the incorporated Allotment Management Plan and, possibly, new terms and conditions as determined by the NEPA decision.

Step Fifteen

However, NEPA documents do not last forever. Conditions change, new information becomes available; a change in management that was not foreseen in the original analysis becomes necessary.

For permits to continue to be issued, the NEPA analysis and determination must stay current and remain sufficient!

Step Sixteen

This means that, for livestock grazing, NEPA work is NEVER done. The analysis and determination must be periodically reviewed. If it remains sufficient – fine – no action is necessary. If it is found lacking, it must be reworked – which could be as simple as making minor corrections, or which may be as complex as a totally new EA/EIS. Be aware of the status of your allotment NEPA at all times!

Step Seventeen -- YOU AS A PERMITTEE SHOULD BE INVOLVED IN THIS STEP!

Annual Operating Instructions (AOI): Each year, the permit holder and the forest officer will develop a set of operating instructions for the current season – a guide to what we will do, and when, how, and to what standard.

These instructions must come from the Allotment NEPA decision (or at times from higher level decisions). They become part of your term grazing permit and are binding. The AOI is not a decision document itself.

Key Terms

Appeals

For most NEPA-based decisions, appeal opportunities are offered to challenge an analysis or decision. There are two types of appeal authorities.

36 CFR 215 appeals are available to anyone who has expressed interest in, or been involved in a planning project.

36 CFR 251 appeals are available only to permit holders or applicants affected by a decision. A permit holder can appeal under either authority, but not both.

Adaptive Management:

The process of building management flexibility into plans to allow implementation of pre-planned and pre-evaluated options in response to monitoring findings.

Adaptive options must be specified in the NEPA analysis. Monitoring needed to determine if or when to make adaptive changes must be carefully spelled out and implemented.

Simply put, adaptive management is a tool for responding to changing conditions or to uncertainty in planning. As a ranch operator, you do this every day in your operation – the Forest Service must operate more formally to comply with NEPA requirements.

Monitoring - Two General Types:

Implementation monitoring tells us whether or not we are doing what we said we would do in the planning decision. Such as - Are we moving the cattle on time? Are we meeting allowable use standards? -Are the improvements maintained to standard and on time?

Effectiveness monitoring tells us if we are making satisfactory progress toward our desired conditions. Such as - Are we producing more bunchgrass and less bare soil?

Both are critical! Permit holders should be involved in carrying out both types, and may be required to help with the implementation monitoring.

