

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Stu Russell

Point Environmental Services

Land, Lease, and Utilization Legal Issues
September 28, 2007

National Environmental Policy Act

Environmental Impact Statement (EIS)

Environmental Assessment (EA)/Finding of No Significant Impacts (FONSI)

Categorical Exclusion (CX)

National Environmental Policy Act of 1969

All agencies of the federal government shall “include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment...”

National Environmental Policy Act

- Environmental impact of the proposed action
- Any adverse environmental effects which cannot be avoided should the proposal be implemented
- Alternatives to the proposed action
- Short-term uses vs. long-term productivity
- Irreversible and irretrievable commitments

Procedural Obligations

“NEPA merely prohibits uninformed – rather than unwise – agency action.”

Justice Stevens, 109 S. Ct. 1835, 1849 (1989)

Robertson vs. Methow Valley Citizens Council

EIS Process

- Notice of Intent – Federal Register
- Scoping – public meetings, agencies
- Draft EIS
- Public Review – 45 days
- Final EIS
- Record of Decision

90 days after Draft EIS notice

30 days after Final EIS notice

No EIS Required

Exempt by Statute

- Clean Water Act (511(c))

Functional Equivalent

- Clean Air Act and Resource Recovery Act

Finding of No Significant Impact (FONSI)

Categorical Exclusion

FONSI Based on Environmental Assessment

Concise public document

- Need for the project/proposal
- Alternatives - uses of existing resources
- Environmental impacts of proposed action and alternatives
- List of agencies and persons consulted

Appropriate for site-specific project plans

- Categorical exclusion does not apply
- Need further analysis to determine potential for significant impacts

Categorical Exclusion

Class of actions not requiring an EA or EIS

administrative, routine, educational, modification of fences

Established by regulation by each agency

No extraordinary circumstances

BLM Categorical Exclusions

Oil, gas, and geothermal energy

- Future interest leases on lands in production
- Geothermal unit or participating area agreements
- Suspensions of operation
- Royalty determinations
- Geophysical exploration where no temporary or new road construction is proposed

(August 14, 2007)

Extraordinary Circumstances

- Impact public health or safety
- Unique, natural resources
- Controversial effects
- Uncertain effects
- Establish a precedent
- Cumulatively significant
- National Register of Historic Places
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- Federally-listed species or critical habitat
- Violate federal, state, tribal laws
- Low income/minorities
- Native American religious or cultural sites
- Noxious weeds

Geothermal Approvals and NEPA

BLM Approvals

Leasing

Exploration

Drilling permits

Utilization permit
(commercial use)

NEPA Document

EIS or EA

EA, EIS, or CX

EA or EIS

EA or EIS

August 14, 2007 Federal Register

CX Approved: Geophysical exploration where no temporary or new road construction is proposed

CX Not Approved: Drilling and well operations within a developed field with a LUP or NEPA document.

“No further NEPA analysis required” if analyzed

CX Not Approved: Issuing site license.

Ministerial, covered by analysis of utilization plan.

Type of NEPA Actions for BLM Geothermal Projects

| | EIS | EA | CX |
|------------------------------|-----|-----|----|
| Geophysical Exploration | 18 | 218 | 8 |
| Drilling operations | 1 | 9 | 0 |
| Utilization (commercial use) | 0 | 9 | 0 |

October 1, 2000 through September 30, 2005

Questions

Stu Russell

Point Environmental Services

srussell@pointenvsvc.com

(650) 856-2800