

Categorical Exclusions (CXs) Fact Sheet

June 2009

What they are:

Activities conducted on public lands (primarily oil and gas development activities) that are excluded from environmental review and impact analyses. These activities and their potential impacts are normally reviewed and analyzed, with adequate public input, according to the requirements of the National Environmental Policy Act (NEPA). Analysis is conducted and contained in NEPA documents such as the Pinedale Anticline Environmental Impact Statement (EIS). Applicability of CXs is presumed for all oil and gas development, but subject to rebuttal (called a rebuttable presumption).

How they came to be:

CXs were established in Section 390 of the Energy Policy Act of 2005.

What they say:

If a proposed oil and gas activity fits into one of these five categories, then the application of a categorical exclusion shall be presumed if:

- (1) Individual surface disturbances are less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.
- (2) An oil or gas well is drilled at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of “spudding” (beginning to drill) the well.
- (3) An oil or gas well is drilled within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.
- (4) A pipeline is placed in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.
- (5) There is maintenance of a minor activity, other than any construction or major renovation of a building or facility.

Why the use of CXs has raised concerns in the Pinedale BLM Field Office:

In both the Jonah and Pinedale Anticline EISs, BLM has made commitments to conduct additional, site-specific environmental analyses when Applications for Permit to Drill (APDs) are filed. “The Authorized Officer will review and authorize each component of the project that involves disturbance of federal lands on a site-specific basis.” (Jonah ROD, pg. 3.)

However, BLM has used CXs to circumvent site-specific review, so impacts have not been thoroughly analyzed, and the public has been deprived of the opportunity to examine or comment on impacts, as required by NEPA.

Simply put, complete and accurate federal agency analysis and public oversight of impacts from oil and gas development to public resources is inadequate or missing altogether.

What are the problems with authorizing development under CXs?

As we have seen in Pinedale, water quality, air quality, and wildlife impacts have grown exponentially since natural gas development began:

Water Quality Contamination

- 89 industrial water wells & 1 livestock well have been contaminated w/ hydrocarbons;
- ~ 14 contaminated wells have been plugged by the operators, preventing further monitoring;
- 13 water wells have low levels of methane present at the surface, making them too dangerous to monitor;
- Some high-elevation lakes monitored in the Wind River Range are experiencing decreasing acid neutralizing capacity (indicating a tendency toward acidification).

Air Quality Contamination

- Ozone levels have exceeded the federal, 8-hour standard over a three-year period, prompting the Governor to request a “non-attainment” designation from the EPA;
- Visibility impacts in the Bridger Wilderness Class I airshed have exceeded the Forest Service and BLM standards of no more than 0 days of visibility impairment above (respectively) the 0.5 and 1.0 deciview change thresholds. Visibility impairment in the Bridger Wilderness is predicted by BLM to occur ~67 days per year.

Wildlife Population Declines

- 30% reduction in mule deer populations on the Anticline over a 7-year study period, compared to the control area (46% decline during the first 4 years of the study);
- 51-89% decline in sage-grouse male lek attendance in the Anticline and Jonah Fields, with a predicted local extirpation of the bird within 19 years, contributing to the need to list the greater sage-grouse as an endangered species;
- Habitat fragmentation of previously undisturbed lands may lead to reduced pronghorn usage and ultimate abandonment of habitat.

How many Applications to Drill are approved with the use of CXs in the Pinedale BLM?

Here are counts for the categorical exclusions used over the past few years in the BLM Pinedale Field Office. It appears that BLM is now processing *a majority of APDs as CXs.*

2007 (10/01/06 through 09/30/07)

Total CXs used: 540

Total APDs approved: 648

Percentage of total CXs used compared to total APDs approved: 83%
(Breakdown by category not available)

2008 (10/01/07 through 09/30/2008)

Cat. 1	Cat. 2	Cat. 3	Cat. 4	Cat. 5
50	320	294	1	5

Total CXs used: 670
Total APDs approved: 762
Percentage of total CXs used to total APDs approved: 88%

2009 (10/01/08 through 05/19/2009)

<u>Cat. 1</u>	<u>Cat. 2</u>	<u>Cat. 3</u>	<u>Cat. 4</u>	<u>Cat. 5</u>
5	7	518	1	1

Total CXs used: 532 (but not all are applied to APDs; they also apply to sundry notices and realty actions).
Percentage of total CXs used to total APDs approved: ~85-90%

What are the solutions?

1. EPA could initiate discussions with Council on Environmental Quality (CEQ) to amend the Energy Policy Act and rescind all statutory CX provisions.
2. APDs could be issued with a "contingency rights" clause, so that permits that may cause environmental damage are not grandfathered in.
3. If used, all proposed categorical exclusions authorized by Sec. 390 of the Energy Policy Act of 2005 should conform with 40 CFR 1507.3, which states that BLM must, (a)... utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the human environment. (b) Identify methods and procedures ... to insure that presently unquantified environmental amenities and values may be given appropriate consideration.
4. If used, all proposed categorical exclusions authorized by Sec. 390 of the Energy Policy Act of 2005 should conform with current Department of the Interior policies for applying the "extraordinary circumstances" screen to categorical exclusion proposals found at 69 FR 10878, in which: "a normally excluded action may have a significant environmental effect thus requiring additional analysis and action. ... Any action that is normally categorically excluded must be subjected to sufficient environmental review to determine whether it meets any of the extraordinary circumstances, in which case, further analysis and environmental documents must be prepared for the action."
5. Promote better planning and use of superior strategies for evaluating landscape-scale cumulative impacts to wildlife habitat and ecological communities while minimizing the amount of well-by-well consultation and mitigation planning. Instructional Memorandum IM 2003-152 (April 13, 2003), outlines the use of geographic area NEPA analysis and comprehensive development plans and strategies.

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