

Geothermal Development and the Use of Categorical Exclusions

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CATEGORICAL EXCLUSIONS (CX)

Action that the agency or Congress has determined does not have a significant effect on the quality of the human environment (individually or cumulatively).

The ability to apply a CX to a particular project may be limited by an agency-defined list of extraordinary circumstances.

EXTRAORDINARY CIRCUMSTANCES (EC)

- Definition** Set of federal agency criteria/resource impacts which can limit the use of CXs (varies by agency).
- Requirements** Usually requires some level of nexus between the resource and the activity (i.e., BLM requires a "significant impact"), and the inability to modify the activity to avoid the impact.
- Example Effect** Cultural/historical site and endangered species/habitat. Can require the completion of an EA or EIS even if a CX applies to the proposed activity.
- Application**
 - Administrative CX:** ECs always apply.
 - Statutory CX:** Can vary based on statute.



Fort Craig Historic Site, New Mexico
Courtesy: BLM New Mexico

2003 NEPA TASK FORCE REPORT to the Council on Environmental Quality (CEQ)

Highlighted Findings for CXs

- Some federal agencies perceived CXs as difficult to develop and revise, which resulted in federal agencies continuing to prepare EAs where a CX was sufficient.
- Most agencies use information from past actions to determine whether a CX is appropriate.
- Most agencies stated that an adequate basis for developing a new CX was based on all past actions in the category resulting in a FONSI.
- "Improving and modernizing categorical exclusions should be addressed through both immediate and long-term actions."

TYPES OF CATEGORICAL EXCLUSIONS

ADMINISTRATIVE CXs

- Created By** BLM Rulemaking
- Description** Specific activities that federal agencies have identified that, based on past experience, do not have a significant effect on the environment

- Notes** Must establish an administrative record and complete rulemaking process to establish new or revised CX

- Example** DOE CX for infill wells (for oil, gas, and geothermal)

- Standardize** Each agency would have to:
 - ✓ develop the same CX, and
 - ✓ complete rulemaking process separately (each must develop their own justification for the CX)
 Could complete concurrently and independently or sequentially and rely on the first agency's justification for the CX when creating its own administrative record through "benchmarking"

- Advantages**
 - Provides each agency with more control when applying the CX
 - Allows each agency to apply agency procedures for extraordinary circumstances

- Challenges**
 - Coordination between agencies
 - Revisions to address public comments
 - Time-consuming if completed sequentially

STATUTORY CXs

- Created By** Legislative Process
- Description** Specific activities identified by Congress to not have a significant effect on the environment

- Notes** Can apply to multiple agencies (depending on statutory language)

- Example** EPAct of 2005; § 390 (oil and gas)

- Standardize** Each chamber of Congress would have to:
 - ✓ pass bill
 President would have to:
 - ✓ sign bill, or
 - ✓ Congress would have to veto override veto with a two-thirds majority vote in both chambers

- Notes** CX would apply equally to all agencies included in the statute

- Advantages**
 - Provides consistency among agencies without the need for agency coordination in drafting
 - Could allow extraordinary circumstances

- Challenges**
 - Limits agency control
 - Legislative process is subject to prevailing political climate
 - May be difficult to pass
 - Potential for repeal

OIL, GAS, AND GEOTHERMAL CXs

Activity	BLM		USFS		DOE
	O&G	Geothermal	O&G	Geothermal	Geothermal
Agency Activities					
Land use Planning	EIS		EIS		---
Leasing	EA/DNA		EA		---
Geophysical Exploration (including TGWs)					
No new roads	CX ¹		CX ¹		CX ⁴
Up to 0.1 mile of new roads	EA/DNA ¹		CX ¹		CX ¹ /EA
Drilling Permits (into the reservoir)					
Exploration wells	CX ²	EA/DNA	CX ²	CX ¹ /EA	CX ⁴ /EA
Development wells	CX ²	EA/DNA	CX ²	EA/DNA ⁷	EA
Infill wells	CX ²	EA/DNA	CX ²	EA/DNA ⁷	CX ⁴
Other Activities					
Off-lease pipeline	CX ²	EA/DNA	CX ²	EA/EIS	---
Utilization/Operation	EA/EIS	EA/EIS	CX ⁶	EA/EIS	CX ^{4,5}
Minor maintenance	CX ²	EA/EIS	CX ²	EA/EIS	CX ⁴

1. BLM Manual 280.02, 280.03, 280.04, 280.05, 280.06, 280.07, 280.08, 280.09, 280.10, 280.11, 280.12, 280.13, 280.14, 280.15, 280.16, 280.17, 280.18, 280.19, 280.20, 280.21, 280.22, 280.23, 280.24, 280.25, 280.26, 280.27, 280.28, 280.29, 280.30, 280.31, 280.32, 280.33, 280.34, 280.35, 280.36, 280.37, 280.38, 280.39, 280.40, 280.41, 280.42, 280.43, 280.44, 280.45, 280.46, 280.47, 280.48, 280.49, 280.50, 280.51, 280.52, 280.53, 280.54, 280.55, 280.56, 280.57, 280.58, 280.59, 280.60, 280.61, 280.62, 280.63, 280.64, 280.65, 280.66, 280.67, 280.68, 280.69, 280.70, 280.71, 280.72, 280.73, 280.74, 280.75, 280.76, 280.77, 280.78, 280.79, 280.80, 280.81, 280.82, 280.83, 280.84, 280.85, 280.86, 280.87, 280.88, 280.89, 280.90, 280.91, 280.92, 280.93, 280.94, 280.95, 280.96, 280.97, 280.98, 280.99, 280.100, 280.101, 280.102, 280.103, 280.104, 280.105, 280.106, 280.107, 280.108, 280.109, 280.110, 280.111, 280.112, 280.113, 280.114, 280.115, 280.116, 280.117, 280.118, 280.119, 280.120, 280.121, 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280.788, 280.789, 280.790, 280.791, 280.792, 280.793, 280.794, 280.795, 280.796, 280.797, 280.798, 280.799, 280.800, 280.801, 280.802, 280.803, 280.804, 280.805, 280.806, 280.807, 280.808, 280.809, 280.810, 280.811, 280.812, 280.813, 280.814, 280.815, 280.816, 280.817, 280.818, 280.819, 280.820, 280.821, 280.822, 280.823, 280.824, 280.825, 280.826, 280.827, 280.828, 280.829, 280.830, 280.831, 280.832, 280.833, 280.834, 280.835, 280.836, 280.837, 280.838, 280.839, 280.840, 280.841, 280.842, 280.843, 280.844, 280.845, 280.846, 280.847, 280.848, 280.849, 280.850, 280.851, 280.852, 280.853, 280.854, 280.855, 280.856, 280.857, 280.858, 280.859, 280.860, 280.861, 280.862, 280.863, 280.864, 280.865, 280.866, 280.867, 280.868, 280.869, 280.870, 280.871, 280.872, 280.873, 280.874, 280.875, 280.876, 280.877, 280.878, 280.879, 280.880, 280.881, 280.882, 280.883, 280.884, 280.885, 280.886, 280.887, 280.888, 280.889, 280.890, 280.891, 280.892, 280.893, 280.894, 280.895, 280.896, 280.897, 280.898, 280.899, 280.900, 280.901, 280.902, 280.903, 280.904, 280.905, 280.906, 280.907, 280.908, 280.909, 280.910, 280.911, 280.912, 280.913, 280.914, 280.915, 280.916, 280.917, 280.918, 280.919, 280.920, 280.921, 280.922, 280.923, 280.924, 280.925, 280.926, 280.927, 280.928, 280.929, 280.930, 280.931, 280.932, 280.933, 280.934, 280.935, 280.936, 280.937, 280.938, 280.939, 280.940, 280.941, 280.942, 280.943, 280.944, 280.945, 280.946, 280.947, 280.948, 280.949, 280.950, 280.951, 280.952, 280.953, 280.954, 280.955, 280.956, 280.957, 280.958, 280.959, 280.960, 280.961, 280.962, 280.963, 280.964, 280.965, 280.966, 280.967, 280.968, 280.969, 280.970, 280.971, 280.972, 280.973, 280.974, 280.975, 280.976, 280.977, 280.978, 280.979, 280.980, 280.981, 280.982, 280.983, 280.984, 280.985, 280.986, 280.987, 280.988, 280.989, 280.990, 280.991, 280.992, 280.993, 280.994, 280.995, 280.996, 280.997, 280.998, 280.999, 300.000

POTENTIAL FOR ESTABLISHING A CX FOR EXPLORATION DRILLING

