

# Controlled Burning of Rangeland in California: Should CEQA Apply?

*Presently, the California Department of Forestry and the Air Resources Board do not require environmental impact reports prior to issuing permits for controlled burning of rangeland in California. This article examines the purposes of the California Environmental Quality Act in relation to the effects of controlled burning on the environment, and concludes that programmatic environmental impact reports should be prepared before the agencies issue permits for controlled burning of rangeland in the state.*

Controlled burning<sup>1</sup> is a common and effective way to remove non-productive brush, debris and slash from public or privately owned rangelands. Throughout California's history, farmers have burned freely to clear brush and timber for the cultivation of crops,<sup>2</sup> loggers have used fire to remove slash from the woods,<sup>3</sup> and cattle and sheep ranchers have burned to remove brush and improve feed for their domestic animals.<sup>4</sup> Today, most controlled burning is done on privately owned lands for range improvement.

The ecological impact of controlled burning is substantial. Many of the effects of fires are highly detrimental to soil, water, wildlife habitat, livestock forage, and air quality. In addition, the risk of escape, with its unanticipated and sometimes disastrous environmental consequences, is always present.

The use of fire currently is subject only to the management policy of the landowner, and the permit discretion of two state agencies, the Department of Forestry and the Air Resources Board. The California De-

---

1. Controlled burning is the planned application and confinement of fire to a pre-selected land area to achieve some specific objective or objectives in land management. It includes, for purposes of this article, the terms "light burning," "prescribed burning" and "planned burning." See Phillips, *A Review of Prescribed Burning on State and Privately Owned Lands in California*, in CALIFORNIA DIVISION OF FORESTRY, FIRE CONTROL NOTES, No. 37, at 2 (September, 1976).

2. *Id.* at 3.

3. DeBano & Rice, *Fire In Vegetation Management: Its Effects on Soil*, in PROCEEDINGS OF THE SYMPOSIUM ON INTERDISCIPLINARY ASPECTS OF WATERSHED MANAGEMENT, AMERICAN SOCIETY OF CIVIL ENGINEERS 327 (1970).

4. II C. CLAR, CALIFORNIA GOVERNMENT AND FORESTRY 275 (1969).

partment of Forestry issues permits for brush burning in areas where fire protection is primarily a state responsibility.<sup>5</sup> Since 1945, when the regulatory program was enacted, the Department has processed nearly 9,000 applications and a total of 2.5 million acres have burned under such Forestry permits.<sup>6</sup>

The Air Resources Board has concurrent authority to issue burning permits through local air pollution districts.<sup>7</sup> The permit processes of the two agencies, however, are not coordinated. As each agency has a different environmental responsibility to protect, conflicts of authority are inevitable. Thus, for example, while the Department of Forestry might not issue a burn permit unless the wind is blowing at less than twelve miles per hour so that the hazards of fire escape are minimized, the Air Resources Board may not permit burning unless the wind is blowing at seven miles per hour or faster to lessen air pollution. This narrow margin of flexibility may preclude burning entirely.

The use of controlled burning by ranchers is a classical problem for the application of the California Environmental Quality Act (CEQA).<sup>8</sup> Controlled burning has a substantial impact on the environment. The purpose of the Act is to insure that agencies give major consideration to preventing environmental damage when they make decisions. The primary tool in this process is the environmental impact report (EIR) which every public agency must consider prior to the approval or disapproval of a "project." "Project" by statutory definition includes the issuance of permits.<sup>9</sup>

Although environmental impact reports are required whenever a project potentially may degrade the environment,<sup>10</sup> under current agency procedures environmental impact reports are not required prior to the issuance of controlled burn permits. The Department of Forestry exempts ordinary burning permits and project-type burning permits from the EIR requirement of CEQA. The Air Resources Board also does not require impact information from permit applicants. The Board determines on the basis of meteorological data that on certain days agricultural burning is to be prohibited within certain air basins in the state, and issues general permits to burn applicants for days when burning is not prohibited. An EIR is not required before the Board makes such decisions.

---

5. The state is responsible for approximately 28 million acres, of which 15 million are brush-covered. Phillips, *supra* note 1, at 4.

6. GUNTER, CONTROLLED BURNS FOR ENVIRONMENTAL PROTECTION ON WILDLANDS OF CALIFORNIA (1972) (Dep't of Conservation, Division of Forestry).

7. CAL. HEALTH & SAFETY CODE §§ 41850-41864 (West Cum. Supp. 1974-1977).

8. CAL. PUB. RES. CODE §§ 21000-21176 (West 1977 & Cum. Supp. 1978).

9. CAL. PUB. RES. CODE § 21065(c) (West 1977).

10. CAL. PUB. RES. CODE § 21100 (West Cum. Supp. 1978).

One agency thus considers its operations exempt from CEQA, and the other agency only considers certain general factors not particularized to any specific burn application. This article discusses the necessity and feasibility of incorporating the environmental impact report mandate of the California Environmental Quality Act into the permit procedure required for controlled burning of rangeland in California.

### I. THE CURRENT REGULATORY FRAMEWORK

California's sizeable livestock industry has thrived for nearly two centuries. About 35 million acres are grazed in California each year,<sup>11</sup> and the sale of livestock and livestock products accounts for over twenty-five percent of the agricultural income of the state.<sup>12</sup> The state has recognized a public interest<sup>13</sup> in range improvement and participates in such improvement in various ways. Cooperation by the state in controlled burning for converting brush into forage land began in 1945, when a series of laws was passed by the state legislature authorizing controlled burning only under permit from the State Division of Forestry (now the Department of Forestry). The Department is now additionally authorized to provide applicants for controlled burning permits with advisory service as to precautions to be taken by the applicant to prevent damage to the property of others by reason of such burning, and standby fire protection to the extent personnel, fire crews, and fire-fighting equipment are available.<sup>14</sup>

A wildland burning permit will be issued by the Department of Forestry upon application, provided that the applicant either owns the property to be burned or has the permission of the landowner to ignite the fire.<sup>15</sup> The permit application itself need only contain basic information about the land to be burned.<sup>16</sup> The Department does not require

---

11. The California Cattlemen's Association estimates that the current number of acres grazed in California annually is 35 million. Interview with Marsha Johnson, of the California Cattlemen's Association in Sacramento, Cal. (April 13, 1978). The last estimate of the State Department of Natural Resources was 37 million acres annually. DIVISION OF FORESTRY, CAL. DEP'T OF NATURAL RESOURCES, *THE BRUSH PROBLEM ON CALIFORNIA LIVESTOCK RANGES* 9 (1960).

12. CAL. DEP'T OF FOOD & AGRIC., *CALIFORNIA PRINCIPAL CROP & LIVESTOCK COMMODITIES BULLETIN* 14 (1976).

13. CAL. PUB. RES. CODE § 4491 (West 1977).

14. This authorization is explicitly set forth in § 4491 of the CAL. PUB. RES. CODE (West 1977). State responsibility areas are defined in CAL. PUB. RES. CODE § 4102 & § 4106 (West 1977) to include lands in areas principally used or useful for range or forage purposes.

15. Raymond, *Fire Safety & the Use of Fire* (July 19, 1967) (presented as part of panel on "The Brush Range Problem," to the American Society of Range Management at Santa Barbara, California).

16. Under CAL. PUB. RES. CODE § 4492 (West 1977) the permit application must contain such description of the lands and other pertinent information as the Department of Forestry may require.

information about the ecological impact of the fire. In fact, the Department categorically exempts burning permits from the report requirement in its EIR Guidelines,<sup>17</sup> claiming that the issuance of burn permits is a "regulatory action for the protection of the environment."<sup>18</sup> Actions taken by regulatory agencies to assure maintenance, restoration, enhancement, or protection of a natural resource where the regulatory process involves procedures for the protection of the environment are specifically exempted from the requirements of CEQA.<sup>19</sup> The Department's position is that controlled burning falls within this exemption.<sup>20</sup>

The Air Resources Board (ARB) also regulates agricultural burning.<sup>21</sup> In cooperation with the National Weather Service, the Board daily announces whether or not prescribed burning can occur within each air basin in the state. The ARB regulations pertaining to the use of prescribed burning are intended primarily to keep large accumulations of wood smoke or smoke from other cellulosic materials away from populated areas. The Board must consider various factors when implementing regulations for each air basin, including population, geography, meteorological conditions, the economic and technical impact of the regulations, and the importance of maintaining a viable agricultural economy in the state.<sup>22</sup> The Board has authority to issue burning permits,<sup>23</sup> and although a permit may be issued to an applicant, it is valid only on those days during which agricultural burning is not prohibited.<sup>24</sup> The Board, however, may not prohibit burning entirely in any area.<sup>25</sup> Even on days designated by the ARB as nonburning days, a local air pollution district may issue a permit to authorize agricultural burning when denial of such a permit would threaten imminent and substantial economic loss.<sup>26</sup>

The Air Resources Board does not require a permit applicant to file an environmental impact report prior to issuing a burn permit. By statutory mandate, however, the Board already has compiled information on burning in particular air basins and thus fulfilled many of the same investigative functions that an environmental impact report is designed to fulfill. The Guidelines<sup>27</sup> promulgated by the Board state that meteorological data, the nature and volume of materials to be burned, the prob-

---

17. CAL. ADMIN. CODE tit. 14, § 851, app. A.

18. *Id.*

19. *Id.* tit. 14, § 15107.

20. *Id.* § 851, app. A.

21. CAL. HEALTH & SAFETY CODE §§ 41850-41864 (West Cum. Supp. 1974-1977).

22. *See id.* §§ 41850, 41856, 41858.

23. *Id.* § 41852.

24. *Id.* § 41854.

25. *Id.* § 41850.

26. *Id.* § 41862.

27. CAL. ADMIN. CODE, tit. 17, §§ 80100-80180.

able effect of agricultural burning on ambient air quality, on agricultural production, and on range and forest management within the air basins have been considered in setting each basin's air quality standards.<sup>28</sup> No formal process exists, however, for coordinating Board decisions with Department of Forestry decisions on individual burn applications.

## II. APPLYING CEQA TO CONTROLLED BURNING OF RANGELAND

The California Environmental Quality Act, enacted in 1970 in response to a growing public concern over the deterioration of the environment, constitutes a declaration of policy favoring the broadest possible protection for the environment whenever governmental agencies make decisions.<sup>29</sup> The Act requires all state agencies to regulate the activities of private individuals and corporations so that major consideration is given to preventing environmental damage, especially with a view toward long term protection of the environment.<sup>30</sup>

The heart of the Act is the environmental impact report (EIR) requirement.<sup>31</sup> The agency responsible for a proposed project must prepare an EIR which includes detailed information about the potential effect of the project on the environment. Additionally, it must state how any adverse effects of a project may be minimized; it must consider the growth inducing impact of the proposed action and any irreversible environmental changes that may result if the project is implemented; it must compare local short term uses of the environment to the maintenance and enhancement of long term productivity; and it must suggest alternatives to the proposed project.<sup>32</sup> An environmental impact report should be filed whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant effect on the environment,<sup>33</sup> or that there is serious public controversy concerning the

---

28. *Id.* § 80101(c).

29. Until the decision in *Friends of Mammoth v. Board of Supervisors of Mono County*, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972), only public projects with a significant impact on the environment were subject to CEQA's requirements. In *Friends of Mammoth*, an action was brought to set aside a county planning commission's issuance of conditional use and building permits to a private corporation constructing condominiums. The issue was whether CEQA applied to private activities for which a permit was required from a governmental agency. The court found within the Act a strong legislative intent favoring the broadest possible protection for the environment and declared that CEQA required governmental agencies to prepare EIRs for private activities which they regulate through the issuance of permits. The case set the parameters of judicial review for agency decisions made pursuant to CEQA. See note 34 *infra*.

30. CAL. PUB. RES. CODE § 21001(d), 21001(g) (West 1977).

31. CAL. PUB. RES. CODE § 21061 (West Cum. Supp. 1978).

32. *Id.* § 21100.

33. CAL. ADMIN. CODE, tit. 14, § 15084(b).

environmental effects of a project.<sup>34</sup>

The threshold problem to be solved in deciding whether an EIR is required for agency action is to determine whether the proposed action is a "project" for purposes of applying the requirements of the Act. An EIR is required for any "project" an agency proposes to carry out or approve.<sup>35</sup> "Project" is defined by the Act to include activities involving the issuance of a permit to a person by one or more public agencies.<sup>36</sup> To qualify as a "project" within the terms of CEQA, the proposed activity thus need have only some minimal link with a public agency, either because the agency has a direct proprietary interest in it, or because the agency permits, regulates or funds private activity.<sup>37</sup>

Two exceptions to the requirements of CEQA exist. The Act does not apply to mere ministerial<sup>38</sup> undertakings of a public agency. That is, CEQA does not apply where the issuance of a permit would be mandatory under the circumstances rather than subject to agency discretion.<sup>39</sup> The requirements of the Act also are not applicable to certain projects falling by definition within the categorical exemptions published in the Resources Agency Guidelines.<sup>40</sup> One such exemption is a "regulatory action for the protection of the environment," encompassing actions taken by regulatory agencies to maintain, restore, enhance, or protect natural resources where the regulatory process involves procedures for the protection of the environment.<sup>41</sup>

---

34. The judiciary will interpret CEQA with the broadest possible protection for the environment in keeping with the legislative intent. *Friends of Mammoth v. Board of Supervisors of Mono County*, 8 Cal. 3d 247, 259, 262, 302 P.2d 1049, 1056, 1059, 104 Cal. Rptr. 761, 768, 771 (1972). The Resources Agency Guidelines state that an EIR should be prepared when there is serious public controversy concerning the environmental effects of a project. CAL. ADMIN. CODE, tit. 14, § 15084(c).

35. CAL. PUB. RES. CODE § 21080 (West Cum. Supp. 1978).

36. CAL. PUB. RES. CODE § 21065(c) (West 1977).

37. *Friends of Mammoth v. Board of Supervisors of Mono County*, 8 Cal. 3d 247, 262-63, 502 P. 2d 1049, 1059, 104 Cal. Rptr. 761, 771 (1972).

38. CAL. PUB. RES. CODE § 21080 (West Cum. Supp. 1978).

39. *Simi Valley Recreation & Park Dist. v. Local Agency Formation Comm.* 51 Cal. App. 3d 648, 666-67, 124 Cal. Rptr. 635, 648 (1975). (Action brought to nullify the Board of Supervisors decision to detach 10,000 acres of undeveloped land from the district. The Court of Appeal affirmed the Supervisors' resolution, rejecting the contention that the detachment was a "project" requiring the filing of an EIR on the grounds that the Board's decision was ministerial in nature.) A project of mixed ministerial-discretionary character should usually be treated as a discretionary project, which requires the filing of an EIR. *See Natural Resources Defense Council, Inc. v. Areata Nat. Corp.*, 59 Cal. App. 3d 959, 970, 131 Cal. Rptr. 172, 179 (1976). (Suit to set aside timber harvesting plans filed with the State Forester without EIRs. The court held that CEQA is a part of the state Forest Practice Act and that because timber harvesting is a project with significant impact on the environment, EIRs must be prepared in conjunction with timber harvesting plans.)

40. CAL. ADMIN. CODE, tit. 14, §§ 15100-15120.

41. *Id.* § 15107.

Once the activity in question qualifies as a "project" for the purposes of CEQA, whether an EIR is required further depends on whether the proposed project will have a "significant effect on the environment."<sup>42</sup> This phrase is defined in the Act to mean a substantial, or potentially substantial, adverse change in the environment, including the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.<sup>43</sup>

Government agencies should assess the impact on the environment of a proposed project as early as possible in the planning process.<sup>44</sup> Agencies are thus required to conduct an initial study to determine if the project may have a significant effect on the environment.<sup>45</sup> If any aspects of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an EIR must be prepared.<sup>46</sup> If, however, the agency determines that the project will entail no significant effect on the environment, it must render a "negative declaration,"<sup>47</sup> state the reasons for its decision, and provide an opportunity for public comment.

The California Environmental Quality Act should be applied to the controlled burning permit process in California. Controlled burning unquestionably can be considered a "project" within the terms of the Act, and it certainly has a "significant effect on the environment." Moreover, CEQA's requirements feasibly can be integrated into the existing regulatory framework without imposing unsolvable problems.

Controlled burning may be considered a "project" within the meaning of CEQA because the Act's definition of that term expressly includes activities for which a permit is required to be issued.<sup>48</sup> Both the Department of Forestry and the Air Resources Board issue permits for controlled burning. This regulatory function clearly brings controlled burning within the term "project" for the purposes of CEQA. Since both agencies can exercise discretion in granting or denying permit applications, moreover, neither acts "ministerially" in issuing such permits. Thus the ministerial undertaking exception set forth in the Act should not operate as a bar to regarding controlled burning as a "project" under the Act.

---

42. CAL. PUB. RES. CODE § 21100 (West Cum. Supp. 1978).

43. *Id.* § 21068 & § 21083(a).

44. CAL. ADMIN. CODE, tit. 14, § 15080 (b) (4).

45. CAL. ADMIN. CODE, tit. 14, § 15080.

46. *Id.*

47. *Id.* § 15083 (a).

48. CAL. PUB. RES. CODE § 21065 (West 1977).

Perhaps the greatest obstacle to finding controlled burning to be a "project" under CEQA is the current practice of the Department of Forestry in viewing its actions as outside the scope of CEQA because of the Department's belief that burning falls under the categorical exemption of "actions taken by regulatory agencies to assure maintenance, restoration, or enhancement of a natural resource." But while the agency's actions do seem to fall within the literal terms of this exemption from CEQA, nonetheless the regulatory process must itself involve procedures for the protection of the environment for the exemption to apply.<sup>49</sup> The procedures followed by the Department of Forestry in issuing permits do not approximate the function of an EIR. The agency assesses virtually no information concerning the potential ecological effect of a particular fire prior to the issuance of a permit.

The procedures followed by the Air Resources Board also do not approximate the function of an EIR. The Board does not evaluate the potential effects of an individual burn application, but rather issues a general permit subject only to the daily ARB postings based on meteorological data relating to ambient air quality standards. Thus, the current regulatory practices of neither the Department of Forestry nor of the Air Resources Board substitute for the full assessment of the environmental effects of a burn that would be achieved in an EIR. Arguably, therefore, the current practice exempting controlled burning from the CEQA mandate is improper.

The strongest argument for subjecting controlled burning to the requirements of CEQA is that controlled burning has a "significant effect on the environment" within the meaning of the Act. The use of fire as a land management tool has the potential of degrading the environment through its impact on soil, water, wildlife, forage and air pollution.

Brushlands are important as watersheds. Loss of brush cover due to fire can result in heavy flood runoff, deposition of mud and debris in reservoirs and low-lying areas, and, not infrequently, in loss of human life.<sup>50</sup> Plant communities also can be damaged or destroyed by fire or may change in composition. For example, the frequent use of fire has resulted in continuous stands of brush occupying areas formerly held by grasses and herbs in woodland areas. Chaparral likewise has extended into adjacent woodland and grassland areas.<sup>51</sup>

The effects of fire on the chemical, physical and biological properties of wildland soils are varied and well documented.<sup>52</sup> For example, repeated burns on a ranch in the north coastal area of California resulted

---

49. CAL. ADMIN. CODE, tit. 14, § 15107.

50. See DEPT OF NATURAL RESOURCES, DIVISION OF FORESTRY, THE BRUSH PROBLEM ON CALIFORNIA LIVESTOCK RANGES 9, 16 (1960).

51. Phillips, *supra* note 1, at 9.

52. DeBano & Rice, *supra* note 2, at 327.



in sparse vegetation, limited soil humus, and heavy packing of the soil. Such hardening of the soil promoted surface run-off and soil erosion.<sup>53</sup>

Using fire to remove vegetation also has many diverse effects on water flow and quality. The capacity of the soil to store and transmit water may be affected.<sup>54</sup> Where brush has been converted to grass, significant increases in total water yield can be expected from deeper soils.<sup>55</sup>

A final ecological consideration is the risk involved in using fire. It has been estimated that about one out of eight controlled fires escapes<sup>56</sup> with disastrous effects on neighboring land.

It is thus clear that controlled burning of rangeland can have a significant effect, whether beneficial or harmful, on the environment. Such burning, therefore, should be subject to the requirements of CEQA.<sup>57</sup>

Besides these strong reasons supporting the application of CEQA to controlled burning, one further reason to bring controlled burning under the protections of the Act is that it would be feasible to incorporate the requirements of CEQA into the existing regulatory framework. Applying CEQA to controlled burning would require that the Department of Forestry and the Air Resources Board integrate their current permit procedures to coordinate the receipt of information regarding proposed burns.<sup>58</sup> This could be achieved in either of two ways. One of the agencies could be designated as the "lead agency,"<sup>59</sup> and it could require either that separate EIRs be prepared for each individual applicant for a controlled burning permit or that the lead agency prepare a single environmental impact report for the entire regulatory program (a so-called "programmatic EIR").

Requiring a programmatic EIR would probably be the most practical way to integrate the EIR mandate of CEQA into the current permit

---

53. Phillips, *supra* note 1, at 11.

54. *Id.* at 13.

55. *Id.*

56. Raymond, Controlled Burning on California Wildlands, Proceedings of the California Tall Timbers Fire Ecology Conf. 151, 160 (1967).

57. A recent case, *Wildlife Alive v. Chickering*, 18 Cal. 3d 190, 553 P.2d 537, 132 Cal. Rptr. 377 (1976), discussed the same issues present in the controlled burn situation with respect to actions taken by the State Fish and Game Commission. The Commission was attempting to exempt its declaration of the beginning of the black bear hunting season as a preservation activity. The court held that the Resources Agency's Guidelines can exempt only activities which do not have a significant effect on the environment.

58. CAL. PUB. RES. CODE § 21003 (West Cum. Supp. 1978).

59. Both agencies are authorized by statute to regulate rangeland burning, and CEQA provides a procedural mechanism for coordinating the two permit processes. Logically it would seem that the Department of Forestry should be designated "lead agency" pursuant to CAL. PUB. RES. CODE § 21067 (West 1977) for the preparation of EIRs on proposed burns, in view of its traditional responsibility for fire protection and range management.

system regulating controlled burning of rangeland. A programmatic EIR would accomplish the same objectives as a case by case determination of the environmental effects of a burn, and, in fact, it would do so more economically and in a more administratively efficient manner.

A recent opinion<sup>60</sup> from the state attorney general points out that CEQA does not necessarily require agencies issuing permits to prepare separate EIRs for each individual permit application. The opinion advocated that the environmental impact report requirement of CEQA be applied to the issuance of use permits for pesticides. It concluded, however, that this did not of necessity mean that a new EIR should be prepared for each use permit issued.<sup>61</sup> The opinion said that the use of a single EIR for the issuance of multiple permits might be appropriate under certain unspecified circumstances.

The use of programmatic EIRs also has support in current agency practice. The U.S. Forest Service requires environmental impact statements<sup>62</sup> for its prescribed burning programs.<sup>63</sup> Programmatic statements are prepared for "rangeland enhancement" activities and the Forest Service advocates this approach because it has the advantage of permitting analysis of the cumulative effects of a series of actions. While programmatic EIRs in this context lack the specificity that individual impact reports would provide, programmatic reports nevertheless are recognized as having outweighing advantages, including the advantage of economy in meeting the requirements of NEPA,<sup>64</sup> since only one environmental statement need be prepared rather than several individual assessments.

The Resources Agency Guidelines set forth criteria for the use of a programmatic EIR. A lead agency may employ a single EIR to describe more than one project if such projects are essentially the same in terms of environmental impact.<sup>65</sup> This criterion for the use of a programmatic EIR easily may be satisfied by the agencies that regulate controlled burning. The Department of Forestry as lead agency<sup>66</sup> could write an EIR for its entire controlled burning program in preparation for future application if it finds that the environmental effects of planned burns are similar enough to warrant the same treatment in an EIR and that a single EIR adequately will cover the impacts of any single burn. If a single EIR will not adequately cover the impacts of any

---

60. 59 Op. Cal. Att'y Gen. 300 (1976).

61. *Id.* at 306.

62. An environmental impact statement is the federal equivalent of an environmental impact report under the National Environmental Policy Act, 42 U.S.C. §§ 4321-4347 (1970).

63. U.S. DEPT OF AGRIC., FOREST SERVICE MANUAL § 8421.43 (2)(n) (1977).

64. *Id.* § 8421.44.

65. CAL. ADMIN. CODE, tit. 14, § 15068.

66. *See* note 59 *supra*.

single burn, the Department merely should supplement the EIR it prepares for the burning program to apply it to an individual project.<sup>67</sup> Although the Air Resources Board has followed the programmatic approach in establishing ambient air quality standards throughout the various air basins of the state, the Board presently makes no provision for supplementing earlier factual findings with information about current proposed projects. The Department of Forestry, as lead agency, therefore should collect and evaluate such information to supplement any programmatic EIR it prepares.

### CONCLUSION

Controlled burning for range improvement substantially changes the quality of the environment through its effect on soil, water, wildlife habitat, livestock forage and air quality. It is therefore a classical problem for the application of the California Environmental Quality Act, which requires that governmental agencies prepare environmental impact reports whenever a proposed "project" will "significantly" affect the environment. Both the Department of Forestry and the Air Resources Board issue permits for controlled burning, a regulatory function that clearly brings controlled burning within the term "project" for purposes of CEQA. The Department of Forestry, however, currently exempts controlled burning permits from the requirements of CEQA. This is improper because the agency procedures followed when issuing a permit do not approximate the function of an EIR. No information about the ecological effect of a fire is assessed prior to the issuance of a permit and the Air Resources Board also fails to assess the impacts of particular burn applications.

Besides the appropriateness of applying CEQA to controlled burning, it is also feasible to do so. The CEQA requirement of an EIR readily can be integrated into the existing agency permit issuing process. An EIR need not, however, be prepared for each burn application in order to comply with CEQA. A single EIR may be prepared for the entire regulatory program, thus allowing analysis of the cumulative effects of a series of actions. This "programmatic" EIR can be supplemented by the agency if it fails to adequately cover the impacts of any single burn. Thus, the programmatic approach is probably the most economic and administratively efficient way of integrating the EIR mandate of CEQA into the current regulatory process.

Controlled burning is an expensive process,<sup>68</sup> and the requirement of an environmental assessment prior to a burn will add greatly to its

---

67. CAL. ADMIN. CODE, tit. 14, § 15068.

68. Phillips, *supra* note 1, at 15.

cost.<sup>69</sup> Requiring an EIR for controlled burning, however, may encourage alternative technology less destructive to the environment. This is especially desirable since there are significant doubts about the effectiveness of controlled burning as a land management tool and since the use of fire has high potential for damaging resources.

*Jan Eileen Schori*

---

69. The lead agency prepares the EIR and charges the cost to the permit applicant. CAL. PUB. RES. CODE § 21089 (West Cum. Supp. 1978).